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PUBLIC HEARING
before
ASSEMBLY EDUCATION COMMITTEE
on
ASSEMBLY BILL 3738

(An Act concerning deductions from gross income under New Jersey gross
income tax and amending N.J.S. 54A:3-1)

Held:
October 13, 1983
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Mildred Barry Garvin (Chairwoman)
Assemblyman Joseph A. Palaia

ALSO PRESENT:

John A. White, Research Associate
Office of Legislative Services
Aide, Assembly Education Committee

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ATTORNEY GENERAL'S LIBRARY

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New Jersey State Library

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ASSEMBLY, No. 3738

STATE OF NEW JERSEY

INTRODUCED JUNE 30, 1983

By Assemblymen PATERO and ADUBATO

AN ACT concerning deductions from gross income under the New Jersey gross income tax and amending N. J. S. 54A:3-1.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 54A:3-1 is amended to read as follows:

2 54A:3-1. Personal exemptions and deductions. Each taxpayer
3 shall be allowed personal exemptions and deductions against his
4 gross income as follows:

5 (a) Taxpayer. Each taxpayer shall be allowed a personal
6 exemption of \$1,000.00 which may be taken as a deduction from his
7 New Jersey gross income.

8 (b) Additional exemptions. In addition to the personal exemp-
9 tions allowed in (a), the following additional personal exemptions
10 shall be allowed as a deduction from gross income:

11 1. For the taxpayer's spouse who does not file separately—
12 \$1,000.00.

13 2. For each dependent who qualifies as a dependent of the tax-
14 payer during the taxable year for federal income tax purposes—
15 \$1,000.00 [plus, for each dependent child attending on a full-time
16 basis an elementary or secondary educational institution not de-
17 riving its primary support from public moneys—\$1,000.00].

18 3. Taxpayer 65 years of age or over at the close of the taxable
19 year—\$1,000.00.

20 4. Taxpayer's spouse 65 years of age or over at the close of
21 the taxable year—\$1,000.00.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics *thus* is new matter.

22 5. Blind or disabled taxpayer—\$1,000.00.

23 6. Blind or disabled spouse—\$1,000.00.

24 7. *For each dependent child attending on a full-time basis an*
 25 *elementary or secondary educational institution, the lesser of actual*
 26 *tuition costs or \$1,000.00.*

27 (c) Special Rule. The personal exemptions allowed under this
 28 section shall be limited to that percentage which the total number of
 29 months within a taxpayer's taxable year under this act bears to 12.
 30 For this purpose fifteen days or more shall constitute a month.

31 (d) Nonresidents. A nonresident taxpayer shall be allowed the
 32 same deduction for personal exemptions as a resident taxpayer.
 33 However, if (1) the nonresident's gross income which is subject
 34 to tax under this act is exceeded by (2) his gross income which he
 35 would be required to report under this act if he were a resident by
 36 more than \$100.00, his deduction for personal exemptions shall be
 37 limited by the percentage which (1) is to (2)

1 2. This act shall take effect immediately.

STATEMENT

This bill provides for a deduction from gross income of actual tuition costs up to \$1,000.00 for any student enrolled in a public or private elementary or secondary school.

The "New Jersey Gross Income Tax Act" as originally enacted provided for a \$1,000.00 deduction from gross income for each dependent child enrolled in a nonpublic elementary or secondary school. That deduction was found in violation of the First Amendment to the U. S. Constitution on the basis that it would have the effect of engaging State Government in excessive entanglement with religion.

Most recently the U. S. Supreme Court found a Minnesota statute providing a deduction for the cost of tuition, books, and transportation for any dependent child enrolled in an elementary or secondary school to be not in violation of the First Amendment noting that the deduction is available for all dependent children, not only those in nonpublic schools. This bill follows that model providing for a deduction for tuition paid for any dependent child enrolled in any elementary or secondary school.

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ASSEMBLYWOMAN MILDRED BARRY GARVIN (Chairwoman): Okay. I am going to open this public hearing. This public hearing is on Assembly Bill 3738, a bill introduced by Assemblyman Patero. What I would like to tell the audience today is, the purpose of this hearing is to gather information so that the Assembly Education Committee will be able to review the transcript of this public hearing before this bill will be scheduled for a Committee meeting. So, the purpose of today's hearing is to hear from people who are concerned about this Assembly Bill 3738.

I would ask Assemblyman Patero to present his comments on the bill to this Committee. Assemblyman Patero.

A S S E M B L Y M A N J O S E P H D. P A T E R O: Assemblywoman Garvin, thank you very much for calling this meeting, especially during the time of our campaign, a time when I know we should be out there campaigning door-to-door and so forth. I think you feel, as I do, that this is an important matter. I don't know which way you are going to be voting, but I have to thank you for giving me this opportunity to present the case here today.

First of all, what I would like to do is, present to your Committee this mail that I received within the past ten days since you have announced that we were having a public hearing. This is just the central part of New Jersey. I don't know about the rest of the State, but in my area, this is the mail that I received. So, at this time, I would like to take this opportunity to give it to your Committee. (hands boxes of mail to Committee)

ASSEMBLYWOMAN GARVIN: Is this by county or city?

ASSEMBLYMAN PATERO: It is all mixed up, county and city.

ASSEMBLYWOMAN GARVIN: I'm going to ask an interesting question. Would you say all of this mail opposes or supports your bill? (laughter)

ASSEMBLYMAN PATERO: I would like to say it supports my bill, Assemblywoman.

ASSEMBLYWOMAN GARVIN: Thank you.

ASSEMBLYMAN PATERO: Thank you for giving the public the opportunity to comment on this very important bill.

Assembly Bill 3738 would provide parents a State income tax deduction of up to \$1,000 for tuition expenses at any elementary or secondary public or private school.

Its passage would help lift a great burden from the shoulders of thousands of New Jersey parents who must pay tuition to send their children to nonpublic schools while at the same time paying taxes to support their public schools.

While A-3738 will help many parents, its cost to the State is modest, to say the least. The Office of Legislative Services estimates the bill will cost between \$3 1/4 million and \$3 1/2 million.

There are two points that I would like to make very clear concerning A-3738. They concern its constitutionality and its effect on the public schools.

Concerning the constitutionality of the bill, with the technical amendments I am proposing, and will be giving to you, Assemblywoman Garvin, it is similar to the Minnesota law which was found constitutional by the United States Supreme Court on June 29, 1982.

This is not the first time we have tried to help parents of children attending nonpublic schools.

In 1976, a similar bill giving a tax deduction for tuition was approved by the Democratic Legislature and became law. Unfortunately, that law was found to be unconstitutional by the Courts.

One of its defects was not allowing appropriate education deductions for the parents of children in public schools. In this bill, parents of children in public schools would also qualify for certain tax deductions.

My second point concerns the impact of the bill on the public schools. Minnesota has had its law since 1955, and the law has not had an adverse impact on its public schools. And, I know this bill will not have an adverse impact on our public schools either.

Again, thank you for this opportunity, Assemblywoman Garvin. If you have any questions, I will be glad to answer them.

ASSEMBLYWOMAN GARVIN: Okay. Assemblyman Patero, I don't know if you are going to remain with us today during this hearing. Perhaps you will hear some of the other people who are here and have specific questions after we have heard from other people.

ASSEMBLYMAN PATERO: The only thing I would like to conclude with, Madam Chairman, is, we did have this in 1976. There was no outcry from the public at that time. If it wasn't proven to be unconstitutional, this would be in effect at the present time and there would be no need for this hearing. So again, thank you, and I will be here if anything comes up.

ASSEMBLYWOMAN GARVIN: I just have one question. This amount of cost estimates, \$3 1/2 million, is that going to be a fiscal note that you are going to attach to the bill?

ASSEMBLYMAN PATERO: Yes. The Office of Fiscal Affairs, to my understanding, is working on that now.

ASSEMBLYWOMAN GARVIN: Okay. Thank you.

ASSEMBLYMAN PATERO: Thank you very much.

ASSEMBLYWOMAN GARVIN: Our next speaker will be Octavius Reid, Deputy Executive Director, New Jersey School Boards Association.

OCTAVIUS T. REID, JR.: Thank you, Madam Chairman. I am Octavius Reid, Deputy Executive Director of the New Jersey School Boards Association, and I appreciate the opportunity to present our views on Assembly Bill 3738 to you.

Board members across the State consider A-3738 as yet another attempt to divert public funds from public education and channel them to private schools where they do not belong. Income deductions, tuition tax credits, and vouchers are all slightly different means to the same end. We oppose these measures in principle and philosophy as well as for the financial implications.

Although this bill offers an exemption from gross income to all parents and does not differentiate between public or private school tuition, the true benefactors of this proposal will be those parents who have chosen to send their children to private schools since they are the primary individuals paying tuition. In New Jersey, public education is available to all children without charge. Ultimately, the effect of A-3738 would be to use public funds as an incentive for nonpublic school enrollment.

We are deeply concerned with the negative impact that A-3738 will have on State funds. Its estimated cost in the first year is \$3.8

million. By way of explanation, we arrived at that figure by assuming at the \$20,000 a year income level, a two percent State tax is required. If we take two percent of that \$20,000, it would be roughly \$20.00, and if we multiply that times the amount of nonpublic school enrollment of 193,000 students, you come out with a figure of approximately \$3.8 million. That, of course, would be a minimal cost and does not take into account any additional enrollments that may occur. However, our overriding concern with proposals such as this is for the precedent that will be established. Too many times we have seen a movement started by a token approach. We fear that the offer of a rather modest income deduction may be the open door to increased public support for private education. Today's most modest deduction can easily become tomorrow's substantial tax break to support private education, just as the initial \$150 subsidy per year for transportation to private schools has become a constantly escalating figure, which now stands at \$370 per pupil.

State revenues are limited and have not been sufficient to fully fund public education. The revenue that is raised through the State income tax is dedicated to property tax relief and direct aid to education. Reduction in the State's revenues through an additional exemption would only further disadvantage the public schools.

Year after year, public school districts have been forced to cope with losses in the aid to which they are entitled under the constitutional provisions of a thorough and efficient education. Since 1975, losses in aid to public education have totaled in the hundreds of millions of dollars. It is not only unwise but totally inconsistent for the State to consider tax benefits for private schools when it is unable to meet its current statutory obligations to the public schools.

Private schools already reap the benefit of public support without the accountability that comes with public control. The State and Federal governments have declared that private schools are eligible for textbook loans, transportation aid, auxiliary services, compensatory education block grants and more. In the 1982-1983 school year alone, some \$69 million in State and Federal public funds went to private schools in New Jersey. This figure must not be increased; it is far too high already.

The expenditure of public funds demands public security and control. Funds spent on private education have neither. It is irresponsible to continue to channel hard-earned tax dollars into private schools without subjecting those schools to the same State and Federal regulation that public schools must undergo. Yet, to do so would be to undermine the very premise of private education -- a freedom from government interference. Clearly, there is no responsible way to use public funds to subsidize a private undertaking.

One of the major arguments for tuition tax credits and other forms of aid to nonpublic schools has been that private school parents suffer "double-taxation." The logic in this argument is false on several levels. First, the decision to send children to private schools is a freely made, purchasing decision. Tuition is the price of that purchasing decision, not a tax that must be paid.

It is ironical that the real double-taxation argument can best be made by the opponents of tuition tax credits or deductions. The real double tax is placed on every taxpayer who does not send children to private schools. These people, the vast majority of taxpayers, pay their own taxes and then may be taxed again to make up for the revenues lost through the tax credit or deduction. This double taxation is unfair. These taxpayers have no choice and receive no benefit for their extra taxes.

Moreover, A-3738 blurs the line of separation between church and state. In New Jersey, there are 850 nonpublic schools serving nearly 200,000 private school students. Of those numbers, 650 private schools are religious-based and 80% of the students are in parochial schools. It is a fallacy to pretend that the income tax deduction of A-3738 does not intend public monies for religious support.

The State must recognize that it has a commitment to public education, and that commitment should be directly reflected in its financial support. All of the rhetoric about upgrading the schools, raising standards and the pursuit of excellence are only meaningless phrases unless the resources to create them as reality are also made available.

We implore you not to channel more education funds into the private sector. We must stand firm in opposition to the use of public

funds for nonpublic education. We urge the defeat of A-3738 and all similar bills.

Thank you for listening to our concerns, Madam Chairman.

ASSEMBLYWOMAN GARVIN: Okay. Assemblyman Palaia, do you have any questions?

ASSEMBLYMAN PALAIA: I have no questions.

ASSEMBLYWOMAN GARVIN: Okay. Thank you, Mr. Reid. Our next speaker will be Mr. John Flammer.

J O H N H. F L A M M E R: Good afternoon. My name is John Flammer, I am the Education Coordinator for the New Jersey Catholic Conference, and welcome this opportunity to address the Assembly Education Committee on A-3738.

The Catholic Bishops of New Jersey have authorized the New Jersey Catholic Conference to advise you of their full support of legislation that would provide for a State income tax deduction similar to the Minnesota law which was found constitutional by the United States Supreme Court on June 29, 1983.

We feel that a statute in New Jersey should be enacted so as to mirror the Minnesota statute. It is for this reason, the Catholic Conference has submitted amendments to the present bill, A-3738, that would expand the scope of the legislation to include textbooks and transportation, in addition to tuition. These amendments had been submitted to Assemblyman Patero, and have met with his approval.

It is the firm belief of the Catholic Conference that such legislation would serve directly the fundamental American principles of increasing opportunity and equality in education for all our children. The issue of a tax deduction would give credibility to the freedom of choice principle enacted in the 1926 Supreme Court decision of Society of Sisters vs. Pierce.

In the long run, it is our firm belief that this legislation will strengthen families by giving them choices which they may not have now.

New Jersey, historically, has always prided itself on the ability to support educational opportunity for all its children, and especially in the support for the nonpublic sector in this State. By

enacting a tuition tax deduction bill, New Jersey once again is reaffirming to the nonpublic community, which presently makes up 17% of the State educational community, the right as a matter of justice to continue to send their children to nonpublic schools. Thank you.

ASSEMBLYWOMAN GARVIN: Thank you, Mr. Flammer. Are there any questions?

ASSEMBLYMAN PALAIA: No questions.

ASSEMBLYWOMAN GARVIN: Thank you very much. May I assure you that I will make sure these amendments appear when the Committee calls for a meeting. Thank you.

MR. FLAMMER: Thank you.

ASSEMBLYWOMAN GARVIN: Our next speaker is Wayne Dibofsky, NJEA.

W A Y N E D I B O F S K Y: Thank you, Madam Chairman. My name is Wayne Dibofsky, I am an Associate Director of Government Relations for the New Jersey Education Association. I am here speaking in opposition to Assembly Bill 3738.

I am here also representing 117,000 members of the New Jersey Education Association, and thank you for the opportunity to testify.

It will should come as no surprise that we oppose Assembly Bill 3738, for we believe it is well known that tuition tax credits are not in the public's interest.

We are against the principle of government giving assistance to school systems competing with public education. Certainly, the Legislature should give no monetary aid to private academies and church schools before fulfilling its financial obligation to the public school system. Yet, as we all know, under the current State school law formulas, we have not fully funded education in this State since the enactment of T&E formulas in 1975.

This bill is also being called a bill that might aid parents of children in private schools. We feel that is misleading as well. Ninety percent of so-called private pupils attend schools run by the Catholic Church. What we really have here is a bill that would aid parents of children attending Catholic schools. While we hold that faith -- and all religious faiths -- in the highest respect, we believe

that the State of New Jersey has no business using public funds to give aid to religious institutions.

Some observers also claim that the enactment of this bill would be one that would aid the "educational alternative" to the poor living in our big cities. I think this is a false notion. The maximum benefit this bill would bring to the taxpayer is an estimated \$35 a year. That wouldn't make any significant difference in the ability to remedy the needy families who would pay tuition taxes.

Public schooling is a national necessity and an American tradition. It provides a common experience that makes for a healthy America. The public schools are open to all, and through taxation, everyone shares in the cost. We support the right of parents to elect to send their children to a church school or private academy, but those who choose this path must also pay the burdens. They should not expect to take monies from this bill to pay the billings of their neighbors.

Some people claim that it is unfair to make parents pay twice, once in tuition to a private school and once in taxes for the public schools that they themselves do not use. This is like saying to people who drink bottled water that they should not pay the utility taxes or those who hire private guards should be exempted from local taxes that pay for police protection. I don't think this is unfair. When you want Deer Park bottled water or Pinkertons, you pay for them. You should pay for private schooling as well.

This bill is modeled after the Minnesota law that the United States Supreme Court decided was unconstitutional because it appeared to offer the same tax break to parents of public school students as to those sending their children to private schools. In this bill, I assume the offer, if taken, is genuine. It is a mere pretext of the constitutionality, and that becomes suspect.

In the State of New Jersey, however, the premise of the bill becomes flawed. It becomes a sham to claim that this bill offers a benefit to public school families here. The bill offers a credit only for tuition, textbooks and transportation. Public school in New Jersey is already tuition-free. New Jersey students don't pay a penny for textbooks. School buses run at no extra cost to students. The reality is that the bill offers nothing to the public school parent within our State.

I think I can make this point even clearer. There are two figures that one should bear in mind. One is, the State of New Jersey has about 200,000 students in private and parochial schools; and the other is, the probable benefit will be the \$35.00 per family. Multiplying these two factors together yields a cost estimate of approximately \$7 million. Now, \$7 million is also the cost estimate on this bill, and that simple arithmetic reveals that you expect only families in private schools to benefit. Claims that public school families could benefit, too, become bogus. And, if in that case, the bill should be found unconstitutional.

Enactment of this bill would give church schools and private academies a foot in the door of the New Jersey Treasury. The benefit may only be \$35.00 this year, but once it is in place, though, there will be pressure to increase it. The best way to prevent a significant giveaway in the figure is to keep the door closed now.

We further oppose the bill because of its financing. We believe that the State cannot afford this revenue loss. Every year we all see prolonged battles to balance our State budget. Worthy areas are always cut. If this bill becomes enacted, another \$7 million would have to be pared from already existing programs and services. We can't afford that.

And, I also wonder what the cost would be if the tax credit really is not limited to just the private school families. Suppose public school parents find ways to take advantage of the tax credit: deductions for dictionaries, deductions for encyclopedias, nonfiction books relating to school subjects; taxi fare to the child when it rains; computers, television sets to hook them up to, educational software to run them through, etc. Suppose every public school family finds a way of exploiting the act. What would the cost estimate be then?

Moreover, one has to mention the cost to the Division of Taxation in administering this proposal. Certainly, there will be a need for an investigation and ruling of a host of new claims that this bill could generate. This could require personnel, more salaries, and more cost to our State.

The public schools serve the public interest, accepting all those who apply. Before more tax money is given to church schools and private academies, we feel that these institutions should guarantee that they, too, will serve the entire public from which their funds would come from. To do so, they would have to accept every applicant for admission, as do the public schools, they must observe all rights ordered by the courts, the same for public schools, and must offer appropriate education for the handicapped and retarded as public school districts now do. And, they should hire only trained and certified teachers, as do the public schools.

NJEA feels this bill presents bad economics, bad sociology, and bad philosophical planning. We recommend that it not be adopted, and thank you for the opportunity to state our views.

ASSEMBLYWOMAN GARVIN: Thank you very much, Mr. Dibofsky.

MR. DIBOFSKY: Thank you.

ASSEMBLYWOMAN GARVIN: Our next speaker is Carol Talbot, League of Women Voters.

C A R O L T A L B O T: I am Carol Talbot, Director of Education for the League of Women Voters of New Jersey. I speak on behalf of the League in strong opposition to A-3738.

The League of Women Voters of the United States has had a long standing interest in equal access to education for all students. We feel that a deduction from the gross income tax of actual tuition costs up to \$1,000 for public or private elementary or secondary school students will adversely affect tuition-free universal education which has been available historically to all students. We support State financial measures that include and equalize opportunity for public, elementary and secondary schools. Such a deduction would encourage more affluent parents to enroll their children in private schools, leaving a disproportionate number of poor and handicapped children in the public school system. This disparity would, in effect, create an educational caste system.

The League of Women Voters of New Jersey has long been concerned with adequate State funding for elementary and secondary education in order to equalize and improve opportunities for public

education. Tax exemptions for tuition paid to private or public schools would decrease State revenues, and thus further hamper the State's aid to these schools. This is not the time to reduce State support for public schools; rather, given the need to improve funding for education, all current sources of revenue must be retained.

There are questions: What will happen in the future? How many more private schools might be built and how many children will go there? How much tax money will be lost? Do we want to encourage the flight from the public schools? Do we want to decrease the Treasury and reduce the resources available for State aid? The League of Women Voters of New Jersey does not. We oppose A-3738.

ASSEMBLYWOMAN GARVIN: Thank you for your testimony. Our next speaker will be Jim Dougherty, Lindenwold Board of Education. (not present) Rabbi Dombroff, from the New Jersey Region.

R A B B I Y A K O V D O M B R O F F: Madam Chairman and members of the Committee, my name is Rabbi Yakov Dombroff. I am the Director of the New Jersey Region of Agudath Israel of America.

Agudath Israel of America is a sixty-one year old national Orthodox Jewish movement headed by the nation's most eminent Jewish scholars. It sponsors a broad network of youth education, rescue and relief, and social programs. For more than two decades, Agudath Israel has served as the chief legislative advocate for the Jewish nonpublic schools throughout the country. It has been in the forefront of the battle to promote tuition tax relief programs, both on a national level, before Congress, and on a State level in various states in the country. In New Jersey, there are approximately thirty Orthodox Jewish nonpublic schools with a total enrollment of about 8,000 students.

I thank you for granting me the opportunity to speak before this Committee and to bring to the fore our views regarding tuition tax deductions.

Tuition tax relief, although not a new idea, is an idea whose time has arrived. The opposition to it grows weaker while the arguments against it are increasingly being proven to be groundless.

There are essentially two arguments against tuition tax relief. The first argument is that the whole idea is unconstitutional.

It oversteps the boundary between church and State. It causes excessive entanglement between the government and religious institutions. As such, it cannot be passed into law without trampling upon the constitution. This argument has already been disproven.

In June of this year, the United States Supreme Court, in the matter of Mueller vs. Allen, upheld a Minnesota statute allowing tax deductions for certain educational expenses. In delivering the majority opinion, Justice Rhenquist wrote the following:

"A state's decision to defray the cost of educational expenses incurred by parents...evidences a purpose that is both secular and understandable. An education populace is essential to the political and economic health of any community, and a state's efforts to assist parents in meeting the rising cost of educational expenses plainly serves this secular purpose of insuring that the state's citizenry is well education."

The bill before this Committee, A-3738, sponsored by Assemblymen Paterno and Adubato, has been effectively removed from any excess entanglement with religion and as such fits squarely within the parameters set down by the Supreme Court in the Mueller matter. This bill provides a tax deduction for each dependent child attending any full time elementary or secondary educational institution.

As with all institutions, schools too, require a diversity so that one may choose that which is most suited to personal needs.

It is not reasonable to expect any one school to be able to cater to the needs of all children. Are we going to deprive some children of the freedom of choice in schooling because they come from middle and low income families? According to statistics, 54% of the children enrolled in nonpublic schools come from homes with an income below \$25,000.

The second argument commonly used in opposition to tuition tax relief, is that it is unfair to expect parents who avail themselves of the public school system to have to subsidize those who choose to use nonpublic schools. This argument however is specious. The reality of the situation is that it is the parent of the nonpublic school child who is being unjustly treated. That parent pays for two educations; once at the public school which his child does not attend, and the

second at the nonpublic school that his child does attend. The State of New Jersey realizes a savings of about \$525 million annually by not educating the nonpublic school students. By giving some sort of tax relief to the nonpublic school parent, whether through deductions or credits, the State would still come out about \$275 million ahead. It is not more equitable to allow these overburdened parents who are paying for two educations some tax relief from a service which they are not using?

Tax credits is not a novel idea. We have already seen Federal tax relief in such instances as political contributions, child care expenses, and for the installation of energy saving devices, to name a few. Our tax laws as presently written, allow for credits under two broad categories: one is for those who contribute to the public good such as charitable contributions and the other is for extraordinary expenses, such as medical expenses. Tuition tax relief fits into both groupings. By sending children to nonpublic schools, the public schools are saved the enormous expense of educating another approximately 250,000. And, any parent who has had to pay tuition to a nonpublic school will readily attest to the fact that it definitely falls under the heading of being an onerous expense.

The main goal of education is to produce an educated citizenry, as stated by Justice Rhenquist in the Supreme Court decision upholding the constitutionality of the Minnesota tax deduction statute. Our State's policies should not be guided by whether children are educated in the public or private sector, but rather, by which schooling best suits the needs of the individual student.

In a nation where priorities are so important, education should not be shunted aside. To deny tuition tax relief is to deny the legitimacy of educational plurality and to deny many low to middle income family children the road to academic success. I urge you to support academic free choice and to vote in favor of this bill.

ASSEMBLYWOMAN GARVIN: Thank you very much. Our next speaker will be Ray Peterson, President of the American Federation of Teachers.

R A Y M O N D A. P E T E R S O N: Assemblywoman Garvin and members of the Committee, I am Ray Peterson, President of the New Jersey State

Federation of Teachers, affiliated with the American Federation of Teachers in the AFL-CIO.

Good afternoon, and thank you for this opportunity to present the position of the New Jersey State Federation of Teachers on this bill.

We oppose the bill for several reasons. First, because it would siphon off funds from the State Treasury at a time when funding is needed for so many other mandated State programs. Second, because the enactment of such deductions would set a precedent that would open up a Pandora's box filled with requests for deductions for other seemingly worthwhile reasons, while eroding the progressivity and fairness of New Jersey's Income Tax Law.

Please let me elaborate on the first reason. The State of New Jersey has made a commitment to fund 40% of the cost of public education from a broad-based income tax. In recent years, the State has failed to live up to that commitment, and in many cases, communities have had to make up the difference from property tax revenues. Partially, as a result of the shortfall in the State's share of educational funding, and partially as a result of the cap law on property taxes and the reluctance of local school boards and local communities to increase property taxes, teachers salaries and teacher purchasing power has declined so that today, New Jersey's teacher salaries rank 14th in the nation. I'm sure that you are aware that the New Jersey per-capita income is third in the nation, and that the cost of living in our State is among the highest in the nation.

It is no secret that public education is in a crisis, and that every one of the reports on this crisis has called for higher salaries for public school teachers.

Since the State's income tax is dedicated to supplant the property tax as a revenue source for public education, it is incomprehensible to me that the Assembly Education Committee should give serious consideration to any measure that would reduce the funds available for public education.

I would like to remind the Committee that the State's commitments to its community colleges have not been met according to the statutory mandate, and that students at the State colleges, the

State University, and other public institutions of higher education are paying higher tuition fees every year.

It is clear from all the advice and pronouncements coming from Washington that the Reagan Administration views public education as the responsibility of state and local government. How, then, can the State direct funds from public education in order to subsidize education in private schools?

People who send their children to private schools want something special for their children. Some may want smaller classes, some a religious indoctrination, or others may want a safer classroom environment. Regardless of the motivation, the net result would be the subsidization of private education at the expense of public education. I submit to you that while the State of New Jersey is having such difficulty supporting a system of public education, how can it at this point in time, even consider further subsidization of an alternative system of education?

The other major point I would like to make is that New Jersey Gross Income Tax Law has been relatively free of the loopholes that have made the Federal Income Tax laws a farce to those with the wherewithal to hire a tax accountant and the will to evade the taxes. If the New Jersey Legislature were to start giving tax deductions to every taxpayer who wants to provide his own alternative to a State or local service, where will it end?

Will those who are not satisfied with the local police force be allowed deductions to employ private police to patrol their neighborhoods?

Will those who don't want their children to ride the public school bus be allowed deductions for taxes on other means of transportation?

Will those who don't want their children to use the public swimming pool be granted tax deductions for using a private swimming pool?

Some of these questions may seem facetious, but they are not. The mind of man has devised hundreds of seemingly reasonable ways to circumvent the Federal income tax laws. The New Jersey Gross Income Tax needs to be made more progressive, not less, and we urge that you

reject this measure that, if enacted, would only encourage other parties to propose deductions that, in time, could render our State tax system less progress and less fair.

ASSEMBLYWOMAN GARVIN: Thank you, Mr. Peterson. Are there any questions? (no response) Thank you very much. Our next speaker is John Bodnar, New Jersey Division of Taxation.

J O H N T. B O D N A R: My name is John T. Bodnar; I am the Assistant to the Director of the Division of Taxation and I am here today to provide your Committee with our observations pertaining to the technical and revenue implications of A-3738.

The bill, as proposed, would allow a deduction from gross income for actual tuitions costs of up to \$1,000 for each dependent child attending on a full time basis an elementary or secondary educational institution. Section 54A:3-1(b) of the Gross Income Tax Act would be amended by adding a new paragraph 7 which would, in effect, apparently treat the tuition expenditure deduction as if it were an additional personal exemption allowance deduction. I might add, Madam Chairman, that we do not have the benefit of the amendments that I understand were proposed to the bill, so I am addressing our comments to the version of the bill that we had before us, without those amendments.

ASSEMBLYWOMAN GARVIN: We'll see that your Department gets a copy of that.

MR. BODNAR: Thank you. As you know, the Gross Income Tax Act as originally enacted in 1976, authorized a personal exemption allowance for dependent children attending elementary or secondary educational institutions which did not derive their primary support from public monies. Taxpayers were granted an additional \$1,000 personal exemption allowance for each dependent child that fell into that category. The deduction was not conditioned upon tuition expenditures. However, as a result of litigation which ensued in Public Funds for Public Schools of New Jersey vs. Byrne, this personal exemption allowance was found to be unconstitutional. The court held that it violated the establishment clause of the First Amendment, ruling that such exemption had the primary effect of advancing religion.

Recently, however, in the matter of Mueller vs. Allen, the U.S. Supreme Court upheld a Minnesota statute -- Minnesota section 290.09(22) in its Income Tax Law -- which allows a deduction of up to \$500 for each dependent in grades K to 6, and \$700 for each dependent in grades 7 to 12 for tuition, textbooks, and transportation, in connection with the attendance at an elementary or secondary school situated in Minnesota, North Dakota, South Dakota, Iowa, or Wisconsin wherein a resident of that state may legally fulfill the state's compulsory attendance laws, and provided that the educational institution is not operated for profit and that it adheres to the provisions of the Civil Rights Act of 1964 and Minnesota statutes, Chapter 363.

As noted, it is solely the Division's purpose to address the technical and revenue aspects of this bill. The question as to whether this proposal should or should not be adopted is a matter of policy which falls, of course, outside of our purview. Accordingly, the Division wishes to advise the Committee that if it is the intent to adopt a deduction similar to the Minnesota tuition deduction, it would appear desirable to model such deduction upon the Minnesota provisions which were upheld by the U.S. Supreme Court. It would also seem inappropriate to us to treat the tuition deduction as a personal exemption allowance, as Assembly Bill 3738 attempts to do. Section 54A:3-1 of the Gross Income Tax is utilized solely for the purpose of authorizing personal exemption allowances. There are, however, separate sections in the Act which provide for the two classes of deductions presently allowed in our law.

Under section 54A:3-1, a deduction is allowed for alimony and separate maintenance payments, and under section 54A:3-3, a deduction is allowed for certain medical expenses. It would, therefore, seem to follow that the proposal should be characterized under its own separate section as a "Tuition Deduction," and not as a "personal exemption deduction."

For your further consideration, we wish to bring the following technical observations to your attention:

One, the bill would allow the deduction to all taxpayers. Is it the intention to allow the deduction to both "resident" and "non-resident" taxpayers?

Two, the term "educational institutions" is undefined. Is it the intention to limit the tuition deduction to amounts paid to educational institutions in New Jersey accredited as such by the State Department of Education?

With regard to the potential revenue impact, we note that the bill would allow a maximum annual tax benefit of \$20.00 to \$35.00 per child. However, based upon an estimated average annual tuition cost of \$638, which would amount to a tax benefit of \$12.76 to \$22.33 a child, the Division estimates that there would be a cost to the State of approximately \$4.3 million in fiscal 1985, and \$4.6 million in fiscal 1986.

Thank you for the opportunity to address your Committee.

ASSEMBLYWOMAN GARVIN: Thank you very much. Assemblyman Palaia has a question.

ASSEMBLYMAN PALAIA: I'm starting to get confused with numbers. I heard Assemblyman Patero say \$3.5 million. I heard Ted Reid say \$3.8 million. Now I hear you saying \$4.3 the first year. I heard the NJEA, Mr. Dibofsky, say \$7 million. Anything is too much. It is getting mind boggling here. We're going to have another five people come up, and I think they are going to come up with another set of numbers here. Being from the Division of Taxation, I would have to atune myself to somebody who would--

MR. BODNAR: I might suggest that--

ASSEMBLYMAN PALAIA: Tell me.

MR. BODNAR: The method that we used in making the calculation was based on the number of exemptions that were claimed in 1976, and updating those numbers to reflect what would appear to represent the total number of students that would qualify today. There is no one who can say precisely. I would suggest that the \$7 million estimate would be the approximate estimate of the Division of Taxation, if each taxpayer was entitled to a \$1,000 deduction. However, based on information that the Division obtained, we are inclined to feel that the average deduction would be approximately \$640.00. So, if you use

\$640.00, you will find that the \$4.3 million has the same relationship to \$7 million. So, it depends on what you are using as your basis for making your estimate. I don't know what methodology was employed in arriving at the \$7 million. I can tell you, though, that if we used a \$1,000 deduction for each child, our estimate would be \$7 million. However, we used \$640.00. That would explain the difference.

ASSEMBLYMAN PALAIA: Okay. It is just in the formula that each one is using to actually benefit their own needs of what they are trying to do.

MR. BODNAR: Well, I think the object is really to try to arrive at the estimate which is deemed to be the most realistic estimate. We don't feel that each parent would be entitled to the maximum deduction of \$1,000, based on current statistics as to what the tuition expenditures are. This legislation, as we have seen it, allows a deduction for tuition only. If you are going to add transportation and textbooks, you are going to increase the cost of our estimate.

ASSEMBLYMAN PALAIA: Thank you, John.

MR. BODNAR: All right. Thank you.

ASSEMBLYWOMAN GARVIN: Assemblyman Patero, do you have a question?

ASSEMBLYMAN PATERO: No question, but, as Chairman of a labor committee, I have to commend the Division and compliment Mr. Bodnar, because too many times the Division would come in and either kill the bill or support the bill, but I think you have given the information which this Committee needs.

MR. BODNAR: We are here solely for technical assistance.

ASSEMBLYMAN PALAIA: I agree with the Assemblyman. I think you have been fair in your analysis. We do appreciate that, instead of just coming out and being negative about the whole thing.

MR. BODNAR: We try not to be.

ASSEMBLYMAN PATERO: For Joe's information, whenever you have a bill with a financial note, if you are for it, you always take the lower cost, if you are against it you take the higher cost.

ASSEMBLYMAN PALAIA: Is that it? I figured people were putting the numbers in according to how they wanted us to view it.

ASSEMBLYWOMAN GARVIN: Thank you, Mr. Bodnar. Our next speaker is Laurie Fitchett, New Jersey State PTA.

L A U R I E F I T C H E T T: I am speaking to you on behalf of the New Jersey PTA, whose 225,000 members comprise the largest volunteer organization in the State. We are all volunteers dedicated to working for the benefit of children and youth.

The PTA heads a coalition which opposes tuition tax credits on the Federal level, and now the New Jersey PTA is also directing its efforts to oppose A-3738 and any other bill which provides for tuition tax deductions. We strongly support public education since we feel that the strength of America has been built on the foundation of our public school system. Tuition tax deductions will chip away at the basic structure of our public schools.

The previous tuition tax deduction plan in New Jersey was declared unconstitutional in 1979 by the Supreme Court. Then, on June 30, 1983, A-3738 was introduced based on the June 29th, U.S. Supreme Court 5-4 decision upholding the Minnesota tuition tax deduction statute, which has been in effect since 1955, for educational expenses incurred by parents of elementary and secondary school students enrolled in private and public schools. The Court's dissenting minority stated that the Minnesota plan violated the First Amendment. In Minnesota, there are 91,000 students attending private schools, 95 percent of which are church-related. A very important point -- of the 800,000 public school students in Minnesota, less than 90 students claimed tuition tax deductions. Obviously, legislation such as A-3738 will benefit nonpublic school students, and public school students are included to circumvent the question of constitutionality.

The New Jersey PTA has consistently opposed the use of public funds for nonpublic school students. We have recently completed a project to determine how much is being spent in public funds to support nonpublic education in New Jersey, and we sent a copy of the attached pamphlet to all of our legislators. In 1982-1983, about \$69.5 million was spent for nonpublic schools in our state, an increase of more than \$8.9 million over 1981-1982. At the same time, local school districts have sustained losses in state aid due to the underfunding of the formula established by law and have also had a reduction in Federal aid. For example, the New Jersey block grant formula in 1982 decreased

the funds for public schools and almost doubled Federal funds for nonpublic schools. Funding nonpublic school students is done at the expense of public education, and any additional such funding is unconscionable.

Some legislators have said that the tuition tax deduction provided for in A-3738 is minimal, since the maximum deduction would be \$30 per child for a taxpayer in the three percent bracket; however, this is nibbling away and further eroding public education. It has been estimated that the loss of tax revenue to the State would be about \$5 million. This deduction is just a first step and would no doubt escalate. Parents in Minnesota are currently pushing for another increase in deductions.

We must support public education and put our money into upgrading public schools for everyone. Tuition tax deductions could conceivably toward urban flight into the suburban districts, since there are some public schools facing declining enrollment and advertising for tuition students. We do see a massive effort underway to continue improving public education, and many more of our members are getting involved in the educational process in their districts.

Public schools must educate all children, and parents may send their children to nonpublic schools if they choose to do so; however, the taxpaying public should not be forced to pay twice to underwrite a dual school system. In addition, nonpublic schools can select the students whom they wish to admit and can refuse to offer services that public schools must provide.

Assembly Bill 3738 will only undermine and further erode support for public education. The New Jersey PTA strongly urges you not to support A-3738 or any similar tuition tax deduction bill.

I sincerely thank you for the opportunity of appearing before you to present the views of the New Jersey PTA.

ASSEMBLYWOMAN GARVIN: Okay. Thank you, Laurie. Our next speaker will be Dennis Crowley from the Department of Education.

D E N N I S C R O W L E Y: Thank you for the opportunity to address you this afternoon. Assemblywoman Garvin, Assemblyman Patero, and members of the Committee, we are here today on behalf of the Department

of Education and the Commission to indicate to you that at this time we must oppose Assembly Bill 3738.

We do so in a restatement of many of the reasons put before you today. Let me summarize just four of them for you. We will join the parade, Assemblyman Palaia--

ASSEMBLYMAN PALAIA: Yes. I noticed your number.

MR. CROWLEY: I noticed the number in there was matching somebody's earlier figures.

ASSEMBLYMAN PALAIA: Yes. I said we had two for \$7 million.

MR. CROWLEY: I think the discussion on numbers does highlight a point in terms of the fiscal impact of this bill, because so many of the factors are yet unknown on this issue. It comes down to the bottom political line, that if it walks like a duck and it talks like a duck, it is a duck. And, it is going to cost quite a bit of money to provide this kind of option at this time in the State of New Jersey.

Unfortunately, even spending anywhere from \$3 million, \$7 million and perhaps more to provide tuition tax deductions for private school parents, offers meager, if any, benefit to those parents. That is one of the things we want to draw to your attention among the other side of the cost estimates.

We have heard rhetoric here today that indicates that this offers freedom of choice, this supports the options of the American way, of competition of institutions, but, in fact, it really does little from our perspective.

If you look at a \$1,000 tax deduction on an income of \$2,000, you're talking, at the very most, about \$14.00 a year off that person's State income tax. It is more likely that that person is paying somewhere in the neighborhood of \$200.00 to \$500.00 for the tuition. Let's just take, as an example, somebody who pays \$250.00 a year tuition to a nonpublic school. At the end of that year, that individual will be benefited by this legislation to the tune of \$3.50 off his State income tax. That is meager, at best, and I think it is also, in a sense, misleading. It doesn't offer the hope of the State meeting that additional cost that affect double taxation argument, it denies it. It will probably do little but encourage that person to

come back to this forum in a year or so and say, "You were kidding about that deduction. What you really meant was a tuition tax credit." and will be debating that again next year.

Laurie brought up a point in her testimony which concerns us as well. That is, by making this bill constitutionally acceptable, it also creates a serious problem for the many public school districts around the State who are struggling to maintain, create, build, and develop competent educational programs with the support of their own people. This bill encourages people to look for other public school districts, rather than to stick around and help their own. We think that is unfortunate, because this is the very kind of people we need to help our school districts continue to build themselves into better places that provide free and appropriate public education for students.

Finally, the double taxation argument, to us, and we have heard it called specious from both sides of the position, but we happen to fall on the side of the NJEA on this issue. We feel that it is, in effect, a double taxation, but a double taxation of the people who can't afford or choose not to send their children to nonpublic schools, and indeed support and participate in the public school system. In effect, those people are asked to not only pay their taxes to support that public system, but to subsidize the choices made by people who have decided that they don't like or don't want the public schools.

It is a question of money, it is a question of policy, and there are just too many questions for this bill to move any further at this time. So, we recommend that you do nothing on this bill, continue to study its impact in its implications. Unfortunately, we must say to you that the Department of Education opposes this bill at this time.

ASSEMBLYWOMAN GARVIN: Thank you very much. Assemblyman Patero, I think one of the requests that we should make, since we have so many different figures, is, to have those who testified and gave a figure, that they send to you, as the sponsor of this bill, the formula they used to develop that figure.

ASSEMBLYMAN PALAIA: I think we deserve one, too. John, we should have that figure, too, how they arrived at these figures.

ASSEMBLYMAN PATERO: It should come to the Committee.

ASSEMBLYMAN PALAIA: To you, too, as the sponsor.

ASSEMBLYWOMAN GARVIN: We have so many different figures. We will just make sure that we request of the other people to send us the formula used for the figure presented. Thank you, Dennis.

ASSEMBLYMAN PATERO: Pardon me. First of all, that is the reason for these public hearings, so when all of these questions-- It is a controversial bill. There is no getting away from it. That is why we are having this public hearing, so that we can answer all of these questions that come up. Also, the fact that you are saying, you move from the inner city to the suburbs. Let's take Trenton, for example. If I lived in Trenton and I wanted to send my son or daughter to a public school in Hamilton Township, would that be free?

MR. CROWLEY: No. You would pay tuition at the Hamilton Township schools.

ASSEMBLYMAN PATERO: All right. I would pay a tuition. Now, you are saying that \$14.00 would be the benefit, approximately?

MR. CROWLEY: If the tuition was \$1,000 and if you made \$20,000.

ASSEMBLYMAN PATERO: But I think the tuition would be more than \$1,000, if I am sending them to another school. I don't know how many people for that \$14.00 would send their child to another school or to a private school. I really don't know. I just want to make that clear. I don't want to make people think they are going to be getting \$1,000 credit. I want them to know that they are getting approximately \$14.00 to \$20.00. You agree with that?

MR. CROWLEY: I agreed that there would-- I would agree if they would only be getting \$14.00. Yes.

ASSEMBLYMAN PATERO: Right. I would be paying \$1,200, \$1,400, and I would be getting \$14.00 off.

MR. CROWLEY: Right.

ASSEMBLYMAN PATERO: Okay. Thank you.

ASSEMBLYWOMAN GARVIN: Okay. Thank you, Mr. Crowley. Our next speaker is Mrs. Mary Patnaude, New Jersey Right to Educational Choice.

MARY M. PATNAUDE: My name is Mary Patnaude. I chair the New Jersey Right to Educational Choice Committee. I would like to testify in support of A-3738.

In any discussion of the merit or lack of merit of legislation which would give tax relief to families who send their children to nonpublic schools, the basic question which must be addressed is whether the present method by which government funds the education of our young people is just and equitable. If the answer to this question is "yes," then there is no need for change. If, on the other hand, the answer is "no," then a remedy must be found to correct the flaw.

I believe that the present method by which government funds education at the elementary and secondary levels discriminates against families who choose or would like to choose nonpublic education for their children. A tax deduction for tuition and other expenses represents a method of remedying that discrimination.

Why is the present method of funding discriminatory? Government mandates the education of all of our young people as being in the best interests of our society and levies taxes on all taxpayers to pay for this universal education. Government also guarantees parents the right to choose the type of education they want for their children. In the Supreme Court decision, *Pierce vs. the Society of Sisters*, the Court said, "The fundamental theory of liberty on which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not a mere creature of the state; those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligations." However, in spite of this guarantee of parental choice, government imposes a financial penalty on parents who choose nonpublic education for their children, thereby denying any real choice to most poor and many middle income families.

In view of the fact that most of the nonpublic schools in our country are religiously affiliated, the so-called neutrality of government with regard to religion should also be considered. Can it really be considered a neutral position for government to fully fund education in the public system while it refuses any meaningful educational financing to those families who prefer the philosophies of religiously affiliated schools? Does government really believe that

parents have the ability to exercise a choice in view of this one-sided funding policy? If attendance at a nonpublic school fulfills the mandate regarding compulsory education, should government continue to impose financial penalties because of the philosophies of the school? I think not. To be religiously neutral, government should allow parents to choose a religious or non-religious philosophy of education without imposing a penalty on either choice.

The education received by students in nonpublic schools is accepted as fulfilling the mandate for compulsory education. The diplomas of these students are accepted as valid at both public and private high schools and colleges. The earning power of nonpublic school graduates, enhanced and increased by their education, is taxed by government so that all of society benefits from that education. Nonpublic school graduates participate in all segments of our society, in the industry, in education, in politics, in the arts, and in the military. They are deemed worthy by our society in all things but one. They are not deemed worthy of a meaningful share of education tax money for their education. Can this be considered just and equitable government policy?

Recognition should also be given to the fact that many poor families have never suffered directly from the financial penalties involved in the choice of nonpublic education because they have never had the option to make such a choice in the first place. They have been denied any choice in the education of their children whether or not the philosophy of the public school is compatible with their own or whether or not they believe that their children are learning in the public school. Why is such a denial of an alternative in something as basic as children's education allowed to continue?

It is not my purpose to criticize public education or to argue against the interests of public students. The nonpublic school community has never had a policy of doing so. But, I strongly urge that government the question of, what is the primary purpose of its policies on education -- the advancement of maximum education opportunity for each of our young people in the school chosen by his parents as best qualified to accomplish this purpose or the protection and preservation of the public system only, by the continuing

imposition of financial penalties on those families who seek an alternative to public education.

For those in our society who believe that the present system of funding education is unjust and discriminatory, arguments concerning possible problems involved in remedying the system are secondary. This is not to say that they are unimportant, but rather, that however difficult and worrisome the establishment of a more just and equitable system of funding may be, the task must be undertaken by our society for the same reasons that discrimination against black people and women had to be addressed, no matter how worrisome it might have been for those who preferred the status quo.

It might be beneficial to examine the objections which are most often raised by the opponents of legislation which would benefit nonpublic school students and their families.

One, such legislation is unconstitutional. The decision of the United States Supreme Court, which earlier this year upheld a Minnesota statute which allowed certain tax deductions to families of nonpublic school students should relieve the concern of those who have opposed all such legislation on constitutional grounds.

Two, tax deductions for parents of nonpublic school students would destroy the public schools. I quote William Bentley Ball, past Chairman of the Committee on Constitutional Law of the Federal Bar Association and Professor of Constitutional Law of Villanova University Law School, in his statement before the Subcommittee on Taxation of the United States Senate Finance Committee regarding Federal tuition tax credit legislation. "If public education is highly valued, and if it is doing a job that is commendable in the eyes of most Americans, then it is inconceivable that the passage of the tuition tax credit legislation would "doom" public education. But the doomsayers go on to say that public education, regardless of its failures, must not be competed with, because it bears the sacred character of unifier of our society, teacher of common values, embodiment of the democratic way of life. That argument gives public education virtually the status of a civil religion." I believe that Mr. Ball's statement would apply equally to the proposal which is being discussed here today.

Three, nonpublic schools discriminate against the poor and minority. This argument is not only untrue, but it is an insult to the majority of religiously affiliated schools which were founded to educate the children of the poor and have continued in this commitment despite government imposed financial roadblocks. It is true, as I have stated previously, that many poor families, including minority families, cannot choose nonpublic education for their children because of the financial penalties involved. To cite this fact while at the same time opposing any and all proposed legislation which would broaden the choice of poor families, is both contradictory and cynical. It should be noted that in spite of the present unjust funding policies, many of New Jersey's low income families, both white and minority, use nonpublic schools for the education of their children. The overall minority enrollment in the Catholic schools in our State is approximately 20% with the highest minority enrollment in the inner city schools. The sacrifices made by these low income families illustrates a commitment to quality education for their children far more forcefully than anything I could say on the subject.

Four, such legislation would cost too much. I join the proponents of increased funding for the improvement of public education when I say that the education of our young people is worthy of the financial investment it requires. The fact that all taxpayers benefit from the major financial contributions made to education by the nonpublic school community further justifies the cost of the proposed legislation.

In closing, let me point out that the Minnesota statute on which the New Jersey proposal is patterned has been in place for more than twenty years and all of the evils and abuses feared by the opponents of any relief for nonpublic school parents have failed to materialize. Encouraging choice in education for the poor and middle class is an idea whose time has come. Therefore, I urge this Committee to support A-3738. Thank you very much.

ASSEMBLYWOMAN GARVIN: Thank you. Our next speaker is Concetta Mac Kenzie, Leonia Board of Education.

C O N C E T T A M A C K E N Z I E: Good afternoon. I am Concetta Mac Kenzie, Board Trustee in the Borough of Leonia, and a member of NJSVA's legislative committee representing District 37, Bergen County. I am here today to urge you to oppose Assembly Bill 3738.

One of the things I learned at public school in New Jersey was basic math. Very basic math, for example, explains that when you take a slice from the pie, there is less for all the rest.

We have already cut into our anemic educational pie by \$69.4 million in 1982 and 1983. This breaks down to over \$350 per private school student.

How can you consider giving additional tax credits -- and yes, they are additional, because all New Jersey taxpayers are now subsidizing private school education -- to what amounts to over \$113,000 per New Jersey school district.

If you add the proposed increases, each school district would lose another \$6,200 annually. What would these funds represent to Leonia? For \$120,000, we would have the options of enhancing our computer program by placing it in our K-4 elementary school; of retaining some advanced language courses; or expanding vocational opportunities for our students.

Think of what this money could provide for your school district.

The actual tax benefits to a private school parent seems so minute as to almost escape notice, but an additional \$3.8 million taken away from our pie is not minute.

We have also not considered what else this bill will be doing: This bill will be setting a precedent, a precedent for additional tax credits, or perhaps a voucher system to come.

Before I close, I would like to cite to you a few other figures, which I know you love.

In the United States, New Jersey ranks 49th of 50th in the percentage of educational budget that is derived from the Federal government. That's not so good. Within our own State, comparing it to the United States, we only supply 35% on a State level, 35% to the fifty states. We are 35th in the percentage of state aid that we receive for education. In our localities, then, we must pick up the 56.43%. This is the tenth highest amount in the United States.

Therefore, I urge you act in the best interest of all school children and a majority of the taxpayers and oppose A-3738.

Thank you for allowing me the opportunity to speak.

ASSEMBLYWOMAN GARVIN: Okay. Thank you. Our next speaker is Mr. Ed Martone, American Civil Liberties Union of New Jersey.

EDWARD MARTONE: Thank you, Madam Chairman and members of the Committee and staff. The American Civil Liberties Union of New Jersey strongly opposes Assembly Bill 3738. As we say in our statement, this bill will provide for a deduction from gross income of actual tuition costs up to \$1,000 for any student enrolled in a public or private elementary or secondary school.

The bill attempts to model a Minnesota statute, recently upheld in a narrow 5-4 vote by the U.S. Supreme Court, providing a deduction for the cost of tuition, books, and transportation for any dependent child enrolled in an elementary or secondary school.

A-3738 misses the mark from an educational, financial, and constitutional framework.

The selling point of this bill is that it pretends to aid the parents of all children regardless of whether the school involved is private or public, secular or not.

However, this benefit will fall most exclusively on private school students as only out of district public school students are charged tuition. Additionally, well over 90% of those attending private schools attend religious schools. Of the thousands of children affected in the Minnesota legislative scheme, for example, only seventy-nine attended public schools.

Public schools are open to all children, regardless of their religion. It is therefore fair to tax all parents for public school support. Indeed, we even tax persons who have no children or whose children have long since graduated from public schools, and nobody contends that this is unjust or unconstitutional. This is so because the schools belong to the public, benefit the public, and are controlled by the public.

Parochial schools, on the other hand, have the constitutional right to govern themselves and to bar children because they do not have

the right religion. It is unfair to tax parents in order to finance schools over which they have no control and which are closed to their children because of their religion.

Tuition tax credits for private schools have the direct and immediate effect of advancing religion in that the benefits are not restricted to the secular functions of sectarian schools, thus promoting even the religious aspects.

Implementation of this bill would prove divisive as nonpublic schools tend to be religiously homogeneous, to serve more affluent families, to enroll proportionately fewer minority children than public schools, to be academically selective, and to provide only rarely for handicapped children. Tuition tax credits would use public funds to divide children along credal, class, race, academic ability level, gender, and other lines. These divisions in turn would exacerbate the divisions in our society as a whole, weakening both social harmony and democratic government.

Public education is not only an important public policy of our State, it is a constitutional imperative. We do not now provide ample resources to fulfill the constitutional obligation of a "thorough and efficient" education for all of our public school children. Moreover, we have yet to equalize the amount of money spent per capita between "rich" and "poor" school districts. We cannot afford to discuss channeling funds to private, primarily sectarian education, until we have fulfilled our public and constitutional obligation to public school children.

The ACLU has been joined in opposition to tuition tax credits by many educational and community organizations including the American Federation of Teachers, the New Jersey Education Association, the New Jersey School Boards Association, and the New Jersey American Federation of Teachers. Our shared concern is the debilitating effect that these credits will have on existing public schools when a substantial segment of the student population is subsidized and thereby encouraged by the government to transfer into private schools.

On the issue of promoting religious interests in the public arena, James Madison, the principal architect of the Bill of Rights, warned against this in his historic remonstrance:

"Public money devoted to payment of religious costs, educational or other, brings the quest for more. It brings too, the struggle of sect against sect for the larger share or for any. Here one by numbers alone will benefit most, there another. That is precisely the history of societies which have had an established religion and dissident groups."

The thousands of ACLU members in New Jersey vigorously oppose tuition tax credits as threats to religious liberty and public education, and ask that this Committee reject the proposal.

ASSEMBLYWOMAN GARVIN: Thank you.

MR. MARTONE: May I make one short additional note?

ASSEMBLYWOMAN GARVIN: Yes, sir.

MR. MARTONE: We conducted, for our quarterly newsletter that was just published recently, a survey. We sent out a questionnaire to all Assembly and Senate candidates throughout the State. One hundred and twenty candidates responded mostly incumbent, and mostly Democrats and Republicans as opposed to fringe or independent candidates. May I say that I was a little surprised by the results. Of the 120 who responded, I counted thirty-eight candidates supported tuition tax credits, sixty-three -- almost two to one -- were opposed to it, sixteen were undecided, and three did not respond to that particular question. Again, I thank you for your time and courtesy. Thank you.

ASSEMBLYWOMAN GARVIN: Thank you. Is there a Mr. Jim Dougherty? I called him before.

MEMBER OF AUDIENCE: He's not here.

ASSEMBLYWOMAN GARVIN: He's not here? Okay. Our next speaker is Mr. Russell Stanley, President of the New Jersey Principals and Supervisors Association.

RUSSELL STANLEY: Before I start, thank you very much for the promotion. I am President-elect, Assemblywoman Garvin. It probably doesn't appear in your notes.

Assemblywoman Garvin and members of the Assembly Education Committee, I am Russ Stanley, President-elect of the New Jersey Principals and Supervisors Association, which represents over 4,000 principals and supervisors employed in the State of New Jersey. I have taken the time to come before you this afternoon because of the

importance of Assembly Bill 3738 and its potential impact on the public schools of the State.

Our Association has had a long standing position opposing any kind of tax credit or deduction which would provide either direct or indirect support to private schools. We feel that because we have a constitutional mandate to provide a thorough and efficient system of education to the young people of the State, that anything which diverts educational funds to some other purpose would be counter-productive.

We are also very much concerned about the impact this bill would have on our public school population. A national study shows that anywhere from 5% to 15% of public school students would exit from our schools if any kind of financial incentive is offered to parents for sending their students to private schools. Not only would this shrinking enrollment have a negative effect on the abilities of the public schools to offer an extensive curriculum, but would also have a negative effect on the abilities of the local school boards to staff their schools because state aid is based on student population.

Another more subtle effect would be that we would tend to lose many of our best students, and this, in turn, would mean that we also would lose many parents who are strong supporters of quality education. These are the parents who demand excellence of our public schools. Once they leave our ranks of supporters, we feel that public support for education will diminish, the net effect being less effective education. This could jeopardize the future of advanced placement and small classes in special areas, such as the math, science and foreign language programs, the humanities, and courses that are the excellent courses that the Legislature demands us to maintain.

We also oppose this bill because it represents a loss of revenue to the State of New Jersey. It is estimated that the loss would approximate \$5,000,000, at a time when State government is seeking ways to reduce aid to public education because of the problems involved in creating sufficient revenues to operate our State and local governments. It would be counter-productive to divert funds to provide more financial aid to private education. We are already spending approximately \$69.5 million to support private and parochial schools, and what is needed during this time of crisis in education is more funding of public education, not less.

We also feel that the language of the bill is misleading in that it implies that all parents may be eligible for a tax deduction. The language should make it clear that this is a bill which will benefit parents of private and parochial school children, and would only place an additional tax burden on the public at large.

It seems to us that the bottom line on this issue is fairness. Is it fair to tax everyone so that a small select group can reap the rewards of a direct tax deduction because they have chosen not to send their children to public schools?

Is it fair to put more money into private education, while our State public school system suffers annual losses of funds because of general revenue problems?

Is it fair to provide support to schools who can choose to educate whomever they please, while public schools must provide equal education for all?

We think not, and we ask that you not release this bill from Committee. Thank you.

ASSEMBLYWOMAN GARVIN: Thank you so much, Mr. Stanley. Assemblyman Palaia, do you have any questions?

ASSEMBLYMAN PALAIA: No.

ASSEMBLYWOMAN GARVIN: Okay. We thank you for your testimony. That is all the names we have who have preregistered for the hearing. Is there anybody here who chooses to testify whose name I did not call? (no response) If not, I will ask Assemblyman Patero, who is the sponsor of this bill, to comment.

ASSEMBLYMAN PATERO: Again, thank you for having this meeting. I think it was very informative. The two things I want to make clear are, first of all, if students leave to go to another school district, they are still paying over \$1,000. I don't want to leave the impression with this Committee when they read the minutes that they are going to have fear that everyone will be leaving Trenton or Newark to go to another suburban community, because the cost will still have to be absorbed by the parent. Secondly, as was stated in one of these reports, it said that the overall minority enrollment in private schools in our State is approximately 20% with the highest minority enrollment in the inner city schools. I wanted to clear that up, that

just the minorities would be staying in the public schools and everyone else would be going to private schools. Just those two issues.

I know this is not a very complicated bill, because it is very simply. It gives \$1,000 tax tuition credit. What I would recommend to the Committee is, maybe the Committee -- I don't know what their feelings are -- give an opportunity to the General Assembly as a whole to vote for this bill.

ASSEMBLYWOMAN GARVIN: Okay, for the record, Assemblyman Patero, I think my intention at this point, as Chairman of this Committee -- I have not scheduled my next Committee meeting, but this bill will go through the Committee process, as all bills, where there will be further discussion and a work session of the Committee itself.

ASSEMBLYMAN PATERO: I understand, because there are questions that should be looked into that came up at this hearing. I agree with you.

ASSEMBLYWOMAN GARVIN: I just didn't want the record to show that your request of the Committee process be eliminated.

ASSEMBLYMAN PATERO: As a Chairman, I would never do that, Mildred.

ASSEMBLYWOMAN GARVIN: All right. Thank you. If there are no more comments, I intend to study what has been presented here, and at the proper time, when my Committee goes into work session, I, as Chairman of this Committee, as an individual, will make my statements at that time. Thank you for coming.

(HEARING CONCLUDED)

