

Systemic Racism and 529 Plans

Victoria J. Haneman, Frank J. Kellegher Professor of Trusts & Estates, Creighton University School of Law

Abstract

One of the fastest growing investment products in the United States since 2001 is the 529 plan, and as of June 2020, it is estimated that more than \$373 billion has been invested in 14.6 million 529 plans. These plans presently cost the federal government an estimated \$2 billion a year in lost revenue, with revenue losses projected to exceed \$30 billion over the next decade. A provision was inserted in the 2017 Tax Cuts and Jobs Act by Texas Republican Sen. Ted Cruz, allowing \$10,000 per year of private school elementary tuition to be tax-sheltered through a 529. Although the provision appears racially neutral, this provision only inures to the benefit of those who are either overfunding 529 plans for their elementary-aged children, or those who have children who are the beneficiaries of dynasty 529 plans or dynasty education trusts that have been in place for some time. This piece considers the way in which one provision of the Tax Cuts and Jobs Act (TCJA) has essentially turned 529 plans into a government-subsidized school voucher scheme for the children of the white and wealthy, and on a meta level, considers the way in which tax law and property law collide with education finance with potentially serious long-term consequences that have been unconsidered.