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ABSTRACT

This book presents the proceedings of a symposium sponsored by the National Catholic Educational Association (NCEA). One-hundred leaders of the Catholic school community came together to heighten awareness of the diversity and power of the parental choice movement, thus enabling Catholic educators to take a more effective leadership role in influencing public-policy debates. The symposium had four goals: (1) appreciate the complexities of the issues and the forces driving the school-choice movement; (2) explore the legal, political, and practical implications and challenges of school-choice options; (3) enable participants to take active leadership roles in the school-choice movement when they returned to their dioceses; and (4) publish the proceedings of the symposium. Several issue papers, which appear here, were commissioned for the symposium. These addressed the historic role of the Catholic church in supporting parental choice, a rationale for publicly funded school choice as good public policy, the legal perspective of choice initiatives, the impact of tax policy, and some findings of education research on school choice. Other topics include implications of school-choice experiments for urban education, a legal history of vouchers, and future directions. The presentations include: (1) "The Catholic Church's Involvement in the Educational Choice Movement" (Robert J. Banks); (2) "Implications of School Choice Experiments for Urban Education" (Paul E. Peterson); (3) "School Choice Programs--A Status Report" (Nina Shokraii-Rees); and (4) "Legal History of Vouchers--A Federal Constitutional Review" (Mark E. Chopko). An appendix includes a statement by the NCEA on parental choice in education. (RJM)

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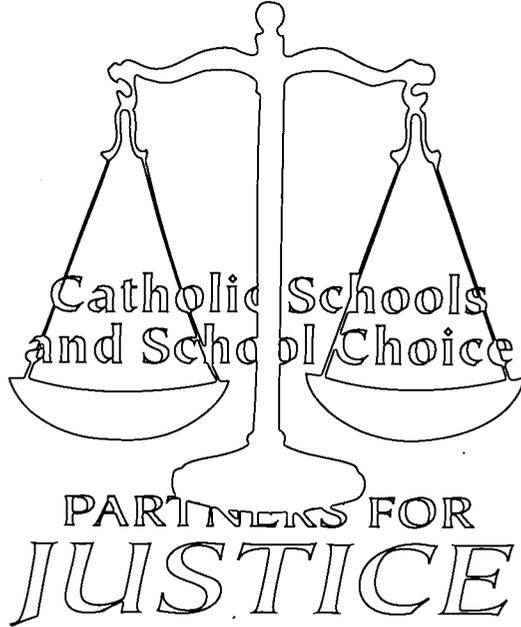
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*Proceedings of the
NCEA Symposium*

Dale McDonald, PBVM
Editor

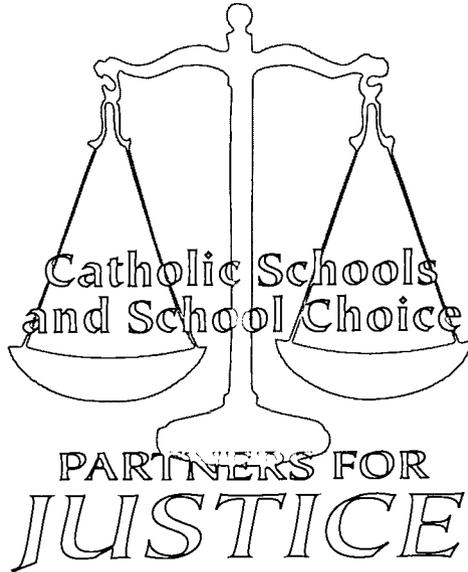


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Dale McDonald, PBVM
Editor



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Acknowledgements

The NCEA invitational conference, *Partners for Justice: Catholic Schools and School Choice*, that met in Washington, D.C. February 4-7, 1999, was made possible through the generous financial assistance of the Lynde and Harry Bradley Foundation and two other Catholic foundations that wish to remain anonymous. The support of these three foundations enabled NCEA to conduct the symposium, publish these proceedings, and provide on-going activities to disseminate the work of the project. The foundation support also will allow NCEA to assist diocesan efforts to take a more effective leadership role in influencing school choice debates at the local level.

The Joint Schools Committee of NCEA, comprised of the executive directors and elected leadership of the elementary, secondary, and chief administrators departments, envisioned the symposium as a forum for the exchange of ideas and experience that would create a synergy to move the conversation outward to ever widening circles of influence and action. A special note of commendation and appreciation is to be given to these members of the committee that planned

and implemented the symposium:

Leonard F. DeFiore, NCEA president

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Anne Manchester, CACE leadership

James Silver, CACE leadership

Robert J. Kealey, executive director of elementary schools department

James Brennan, elementary department leadership

John Burke, elementary department leadership

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Daniel Kerns, secondary department leadership

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Dale McDonald, PBVM
Symposium Coordinator
NCEA, Washington, D.C.

Preface

The National Catholic Educational Association's long-standing commitment to working for full and fair educational choice for all parents is rooted in the conviction that it is a justice issue and, therefore, is good public policy for the United States. The Association believes that all parents should have the right to select the best educational environment for their children and that such a fundamental right should not be conditional upon parents' ability to pay tuition or to afford to live in neighborhoods where the public school system meets the needs of their children.

In America, the financially disadvantaged cannot exercise their right to select alternative schooling for their children since public policy today is formulated to offer parents choices that are restricted to public school options only. Parents who wish to send their children to parochial or private schools are financially penalized for exercising their right. While the United States is the only Western democracy that does not provide parents with a fair share of their education tax dollars so they may choose a nonpublic school education, the tide of

public opinion is beginning to turn in support of publicly funded school choice initiatives. The 30th Annual Phi Delta Kappa/Gallup Poll reports that a majority of the American public now supports the use of vouchers and tuition tax credits to cover part of the costs of attending private schools. Fifty-one percent of all those surveyed favor tax-funded support for parental choice, 45 percent oppose, and 4 percent were undecided. Demographic profiles within the survey indicate that ethnic minorities responded with a 68 percent level of support.

Presently, momentum is building around the school choice movement, but the leadership is in the hands of politicians and philanthropists who are not part of the Catholic school community. Numerous private scholarship programs, under the leadership of corporate America, are providing millions of dollars for tuition grants to disadvantaged children, and Catholic schools are the primary constituents/beneficiaries of the parents' choices. Consequently, school choice is happening to/for/around us, and the design and implementation of programs are advancing rapidly, apparently without significant input from the Catholic school community. Theoretically, this may be a good thing, as it will help to focus the choice debates on the justice and educational merits and not make it simply a "Catholic issue."

While private programs that directly benefit children are valued and collaboration with corporate America is essential, Catholic educational leaders must be a more articulate and assertive force in shaping both the direction of choice programs and the content of public policy debates about future parental choice initiatives. Unfortunately, there is a great deal of apathy and/or ignorance about the conceptual and practical aspects of parental choice as a public policy issue among our own Catholic school leaders and consumers. Consequently, the debate is largely defined and shaped by those who oppose school choice: the Clinton administration and U.S. Department of Education, as well as the various education associations and agencies representing public schools interests in Washington, D.C.

Recognizing this situation as no longer tenable, the Joint Schools Committee of NCEA sponsored a three-day invitational symposium called *Partners for Justice: Catholic Schools and School Choice* in Washington, D.C. February 4–7, 1999. The purpose was to gather approximately 100 leaders of the Catholic school community in the hope of heightening their awareness of the diversity and power of the parental

choice movement and enabling them to take a more effective leadership role in influencing public policy debates.

The goals of the symposium were:

- 1) to develop an understanding of the complexities of the issues and the forces driving the school choice movement,
- 2) to explore the legal, political and practical implications and challenges of school choice options;
- 3) to enable participants to take active leadership roles in the school choice movement when they return to their dioceses and states,
- 4) to publish proceedings of the symposium and disseminate them to the wider Catholic school community.

The symposium provided an exciting, informative and motivational program, featuring presentations by members of the church, school, business, civic and academic communities.

The Rev. Dr. Floyd H. Flake, a staunch supporter of school choice, a former Democratic member of the U.S. House of Representatives and a leader in the African-American community, delivered the keynote address. The NCEA *Children's Choice Awards* were presented to individuals whose efforts significantly advanced the right of parents to select their children's education by making financial resources available for them to do so. Awardees included John Coons, professor emeritus, Boalt School of Law, University of California at Berkeley; Virginia Gilder, founder of A Better Choice; J. Patrick Rooney, founder of Educational Choice Charitable Trust; and Senators Joseph A. Lieberman (D-CT) and George Voinovich (R-OH).

Several issue papers were commissioned for the symposium. Most Rev. Robert J. Banks, chairperson of the NCEA Board of Directors, discussed the historic role of the Catholic church in supporting parental choice and Dr. John Coons, University of California, Berkeley, articulated a rationale for publicly funded school choice as good public policy. The legal perspective of choice initiatives was presented by Mark Chopko, general counsel of the United States Catholic Conference (USCC), and the more specific issue of tax policy was discussed by Frank Monahan, director of the office of government liaison at USCC. Dr. Paul Peterson of Harvard University and Ms. Nina Shokraii-Rees of the Heritage Foundation described what educational research shows about school choice and the implications of the various models of publicly funded choice programs that are in existence.

Panelists shared the successes as well as the problems and practical concerns that have surfaced in the privately and publicly funded programs already in existence. These presentations represented perspectives of school and diocesan administrators, parents, state Catholic conference directors who were involved in the adoption of legislation, and CEO's who have sponsored private programs.

The lively and challenging interaction of participants and presenters helped to prepare the leaders of the Catholic educational community to engage actively in changing the climate of public policy debates in support of full and fair parental choice in education. However, the ultimate success of the symposium lies not in what happened in Washington, D.C. during those four days in February, but in how well the participants inform others about the nature and complexities of parental choice options and in the plans that will be developed and implemented at the local level to make full and fair educational choice a reality for all American families.

In the pages to follow, you are invited to share in some of the insights and exchanges that took place during the symposium.

Dale McDonald, PBVM
Director of Public Policy and Educational Research
National Catholic Educational Association



CHAPTER 1
*Children's Choice
Awards Banquet:
Recognizing Individual
Contributions*

The *Catholic Schools and School Choice: Partners for Justice* symposium was held February 4-7, 1999 in Washington, DC. Delegates were welcomed by NCEA President, Leonard F. DeFiore, who outlined the goals and expectations of the symposium. At the opening banquet, Children's Choice Awards were presented and Reverend Floyd Flake delivered the keynote address.

Welcoming Remarks: Leonard F. DeFiore

We gather on the cusp of a new millennium which, we believe, will see a new order in American education—a new order built around the concept of choice, a concept which is at the heart of any free society.

We gather to review the status of the continuing challenges of school choice and to identify ways in which to respond more effectively to these challenges.

We gather, also, to sharpen our understanding of the emerging challenges of implementing various programs of school choice, and to seek to identify ideas and responses to these challenges:

1. What has been and what might be the impact of a lottery and/or a financial-need-driven eligibility process on the task of developing and maintaining community within a Catholic school? Do internal school problems develop when some parents work multiple jobs and serve at bingo etc. to pay tuition while others receive scholarships or vouchers?

2. What are our contingency plans to expand the number and capacity of Catholic schools to accommodate increased student demand as a result of expanded school choice?

3. Can we develop a financial model for schools that provides us with the ability to disengage from a voucher program and still remain fiscally sound, should circumstances require us to do so?

4. Will all voucher holders be enthusiastically embraced in all of our schools? Is there a problem with welcoming diversity in enrollment, especially in our suburban schools?

The larger issue concerns what it is that expanded school choice will provide. I would submit that it will provide two things: justice and hope.

School choice will prevail because it is the just and right thing to do. Choice empowers parents and benefits children. When parents are empowered to choose the schools their children attend, they can demand and will get better schools, and the act of choosing will strengthen families. It will bring parents and their children closer together in an educational partnership in which they are determining their own destiny.

Further, choice benefits children by making it more likely that they will be enrolled in a school whose philosophy, program, and methodology suit their needs. What could be better educationally than families that choose schools because they meet their children's needs and schools that have children in them because they want to be there? What could be more democratic? What could be more American?

Children's Choice Awards and Recipient Remarks

The Partners for Justice symposium opened with a banquet at which the NCEA Children's Choice Awards were presented. The awardees were recognized for their significant efforts to advance the rights of parents in the selection of the educational setting for their own children.

The awards were presented to the following leaders in the cause of advancing parental choice in education.

John E. Coons is professor emeritus, Boalt School of Law, University of California at Berkeley. Professor Coons was recognized for his expertise on the law, education, and religion. He has written several books and numerous articles on the justice of school choice and has engaged in public debates and lectures advocating parental choice in education. Mr. Coons presented a paper at this symposium which is reprinted in Chapter Two of these proceedings.

Virginia Gilder is founder of A Better Choice, an Albany, New York program. She was honored for her innovative experiment and impact on the school choice movement. Ms. Gilder participated as a panelist during this symposium, and excerpts of her remarks are found in Chapter Three.

J. Patrick Rooney is founder of Educational Choice Charitable Trust, the first private scholarship program. His corporation, Golden Rule Insurance, has contributed almost \$4 million to the program, enabling almost four thousand students to attend the private school of their choice. More than 40 cities in America today have children participating in other privately funded choice programs modeled after the one begun by Mr. Rooney. His panel presentation remarks are included in Chapter Three.

Honorable Joseph I. Lieberman is a democratic senator from Connecticut who was honored for his continuous efforts to persuade his Senate colleagues about the justice and merits of school choice legislation. In his acceptance remarks, Senator Lieberman noted the following:

I have been inspired by the Catholic school sense of mission in city schools, where poor children are brought in as part of a mission built on a faith that understands that each child of God has extraordinary potential. No child is ever undersold; every child is raised as high as he or she can go. Catholic schools have done this brilliantly and with extraordinary results.

Choice can give poor parents a way out of a bad school, and competition will—and already has, in some places—raised up standards of public schools.

Securing publicly funded choice is a long march in Congress. We have entrenched opposition, but will keep going and keep marching forward until we get it done. Meanwhile, it is happening without the federal government because of the extraordinary generosity of private philanthropy.

The Talmud teaches “If you save one life, it is as if you saved the world.” Thank you for all the lives you save in your schools.

Senator George Voinovich was honored for his long-term commitment to advancing parental choice in education. As governor of Ohio, he was instrumental in obtaining passage of the Cleveland Scholarship Program, which provides scholarship vouchers to thousands of parents in Cleveland to pay for the education of their children at the school of their choice, including religious schools. Senator Voinovich is bringing this same commitment to his new role as the junior senator from Ohio. In his acceptance remarks, he noted:

There is a whole lot more that states could be doing in this country for our nonpublic schools through vehicles that are perfectly constitutional. I would urge you, in your efforts to improve school choice, to look at your respective states to see if there isn't a lot more that they could be doing now to support our nonpublic school students through auxiliary services.

The choice program in Cleveland was very difficult to get through the state legislature, and once implemented, there's been every effort to undermine it. In spite of the fact that many members of my party give lip service to school choice, when lobbying efforts began, much support disappeared because of the very strong opposition.

I have found that most people are fairminded. If we can get a good choice track record behind us, we can start a tidal wave. Choice is making a difference in the lives of thousands of children in this country and, as that message is spread, choice will become irresistible.

I have two mottoes: “Together we can do it,” and a motto of the state of Ohio, “With God, all things are possible.” I think certainly the Holy Spirit is with us on this.

Keynote Address: Reverend Floyd Flake

The Reverend Floyd Flake, former member of Congress, pastor of Allen Methodist Episcopal Church in New York City and a long-time activist on behalf of school choice, presented the keynote address. Excerpts of his moving presentation are included here:

I want to commend Catholic education for building a paradigm that is now being copied by many who are in the process of exploring what school choice is really all about. Catholic schools have demonstrated that it is possible for students from almost any background to learn. Without religion in education, we cannot talk about building holistic individuals capable of doing everything in life. Educators must not leave out the most significant part of what is necessary to teach students about the values they must possess in order to build self-respect and respect for others.

Our challenges are great and come on many fronts—but we must stand united as partners for justice. We cannot afford the luxury of looking at all those who want to profit by a new arrangement by which we will deliver education and ask them to wait. Presently, no law exists in this country which would prohibit other constructs, different from the present mode, by which we can deliver public education.

Choice represents to us the next move in the civil rights movement. If everyone is not getting a quality education, then *Brown v. Board of Education* (1954) needs to be done away with because the reality is that the people for whom that case was fought are the same people who are suffering the most under the current public education constructs. What are we looking for? Opportunity for parents to make a choice about how they want to educate their children and a way to make it happen.

We are grateful to private philanthropy, but much more needs to be done. The choice movement will not be able to move freely and accomplish what is needed to educate every child in America without government assistance. Our challenge is to bring about equality within the system so that those who are the least know that they can get the kind of education that qualifies them to get the best jobs and move into the best institutions. Choice gives us an opportunity to create new capacities by opening up new doors for the development of new institutions of learning.

We must join hands and move toward that day when justice will become a reality and every child in America will see that this democracy is more inclusive than it presently is and that every child will have the opportunity to participate on an equal footing with others as God made them equal.

We must bring about an understanding that equality is best served when everyone has the kind of education where all can stand up and proclaim who they are, not based on the color of their skin or on gender, but on the basis of the strength they have gained through an holistic educational experience that has prepared them to enter new doors and, once inside, to know “I am not here because of some special program, but I am here because I am special.”



CHAPTER TWO

An Exploration of the Justice Issues of Parental Choice in Education

Introduction

The conference began with an exploration of the religious and philosophical concepts which underpin the justice and moral aspects of educational choice. Most Reverend Robert J. Banks, DD, bishop of Green Bay, Wisconsin and chair of the board of directors of NCEA, led off with an articulation of the position of the Catholic church regarding parental rights in education and their impact on educational choice movements.

Dr. John Coons, professor emeritus at the Boalt School of Law, University of California, Berkeley, explored the various rationales of public policy that promote school choice.

The complete texts of these two presentations and a summary of the participants' conversations about the meaning and implications of the ideas advanced follow.

**The Catholic Church's Involvement
in the Educational Choice Movement**
Most Rev. Robert J. Banks

The fundamental theory of liberty upon which all governments in the 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 the 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 obligation. (*Pierce v. Society of Sisters*, 1925)

This fundamental liberty—the belief that “the child is not the mere creature of the state”—was upheld by the U.S. Supreme Court in the *Pierce* decision in 1925. Today millions of Americans exercise the right to choose schools for their children. This freedom, however, depends on their ability either to pay tuition to a private school or to live in neighborhoods where the public school system meets the needs

The school choice movement is, simply and unequivocally, about the right of parents to choose the appropriate education for their children.

of their children. As Catholic educators, we believe that if children are not the mere creatures of the state, they are entitled to attend schools which will help them develop their full potential regardless of race, creed, or the ability to pay (*NCEA Statement on Parental Choice in Education*).

As Catholic educators, we believe that the school choice movement is, simply and unequivocally, about the right of parents to choose the appropriate education for their children. This concept is a fundamental human right that has been recognized not only in the teaching and practice of the Roman Catholic Church but also in American civil society and in international covenants.

Civil Society and the Rights of Parents in Education

In 1925, the federal government, in effect, enabled the establishment of a dual system of schools in the United States through the Supreme Court decision in *Pierce v. Society of Sisters*. This decision, quoted at the outset of this talk, protected the right of the nonpublic school to exist. When the state of Oregon attempted to require all

students to receive public instruction, the Sisters of the Holy Names of Jesus and Mary, who operated a religious school, brought suit. The legal department of the National Catholic Welfare Council, the forerunner of the United States Catholic Conference, and the Knights of Columbus provided substantial assistance in bringing the case to final resolution before the U.S. Supreme Court. Fifty-five years later, the Supreme Court, in *Yoder v. Wisconsin* (1972), a suit brought by Amish parents who did not want their children to attend public high schools because of the influence of secular culture on their religious beliefs, ruled in favor of the freedom of parents to choose from among educational alternatives for their children. The court ruling declared:

This case involves the fundamental interest of parents, as contrasted with that of the state, to guide the religious future and education of their children... This primary role of the parent in the upbringing of their children is now established beyond debate as an enduring American tradition. (1972, p. 232)

The existence of this dual system of education has resulted in a diversity of educational opportunities and a variety of ideologies concerning the role of education in a democratic pluralistic society.

The international community, in the United Nations charter, spoke of the “faith” of the organization in human rights and pledged itself to work for the protection of international cooperation in realization of the most fundamental of human rights: “all human beings are born free and equal in dignity and rights.”

The *Universal Declaration of Human Rights*, a major affirmation of this new philosophy, was adopted by the UN General Assembly in 1948. The Declaration contains 30 articles, several of which refer to the rights of the family:

Article 16: The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

Article 18: Everyone has the right to manifest his religion or belief in teaching, practice, worship and observance.

Article 26.1: Everyone has the right to an education. Education shall be free, at least in the elementary and fundamental stages.

Article 26.2: Education shall be directed to the full development of the human personality and to the strengthening of respect for

human rights and fundamental freedoms.

Article 26.3: Parents shall have a prior right to choose the kind of education that shall be given to their children.

The Vatican Council decree on the *Declaration on Religious Liberty (Dignitatis humane, 1965)* included in the universal right to religious freedom the right of a genuine freedom of choice in education:

Every family, in that it is a society with its own basic rights, has the right to freely organize its own religious life under the control of the parents. These have the right to decide in accordance with their own religious beliefs the form of religious upbringing which is to be given to their children. The civil authority must therefore recognize the rights of parents to choose with genuine freedom schools or other means of education. Parents should not be subjected directly or indirectly to unjust burdens because of this freedom of choice. Furthermore, the rights of parents are violated if their children are compelled to attend classes which are not in agreement with the religious beliefs of the parents or if there is but a single compulsory system of education from which all religious instruction is excluded. (#5)

Catholic Church Teachings and Philosophy

It is a fundamental tenet of Catholic theology and philosophy that parents are the primary educators of their children. The encyclicals of Pope Leo XIII, *Officio sanctissimo* (1887), and Pius XI, *On the Christian Education of Youth* (1929), proclaimed the rights and duties of the three societies—parents, church, and state—regarding the role of each in the education of youth. In the natural order, primacy of responsibility for the education of youth is assigned to the family over the church and society, and these parental rights are to be supported by the church and state in an harmonious and cooperative venture.

Parental rights regarding the education of their children are derived as a consequence of their freely participating in the procreation of their children. The Papal documents describe parental rights and responsibilities not only as a natural obligation to support their children's general growth and development but also as a moral obligation to rear their children in the life of the soul.

The aim of Christian education is man as a whole, united by body and nature, together with all his faculties, natural and supernatural, such as right reason and revelations show him to be, fallen from his original state but redeemed by Christ and restored to the supernatural condition of an adopted son of God. (*Officio sanctissimo*)

This theme has been reiterated in various Vatican documents. In 1965, the *Declaration on Christian Education* urged educators to “teach the whole child.” This concept was further expounded upon in *The Catholic School* (1977) when the Sacred Congregation for Catholic Education urged every school to “integrate all the different aspects of human knowledge through the subjects taught in the light of the Gospel” and to become authentically formational schools (#31).

All true education must be holistic, having as its aim the formation of an authentic human being.

Twenty years later, the Congregation for Catholic Education issued *The Catholic School on the Threshold of the Third Millennium*, which enunciated the preeminent characteristic that a Catholic school must possess if its educational activity is to be effectual in the church and society: “the Catholic school is a place of integral education of the human person thorough a clear education project of which Christ is the foundation” (#4).

All true education must be holistic, having as its aim the formation of an authentic human being. This can best be accomplished through a philosophical and pedagogical perspective that incorporates character and faith formation with academic instruction. Catholic schools, by providing this kind of integrated and holistic education, fulfill this aim. From our perspective, the aim of educating children is not an either/or choice between academic excellence and moral development; holistic education in a Catholic school is a both/and proposition!

Church’s Role in Pluralistic Society

It is this holistic view of education that underlies the church’s courageous and incredibly generous support of inner-city schools where the majority of students enter as non-Catholics and graduate as non-Catholics. The Catholic school is not intended to be simply a daylong catechetical program or exercise in evangelization. If it

were, our schools would be for Catholics only or for students whom we intend to attract to the Catholic church.

The mission of the Catholic school is to offer the best possible total education for students. That necessarily includes a religious or ethical perspective for the whole program. That kind of education is valuable for anyone and, at great cost to the church, we make it available to young people who so often are deprived of the possibility of a good education in our major inner cities.

In order to understand the church's commitment to the preservation of Catholic education in Catholic schools, particularly in the inner-city areas where such schools are largely populated by non-Catholic students, it is important to examine the church's sense of mission. Two key documents emanating from the Second Vatican Council, *Dignitatis humanae* and *Gaudium et spes*, portray the church's understanding of its mission in the modern world. The former accepted religious pluralism as integral to human freedom and the condition under which the church would structure church-state relationships; the latter articulated a theological conception of the promotion and protection of human dignity which situated social ministry as an integral part of the church's life.

These developments in the church's self-understanding and the implications for social ministry heralded a shift in theological vision, which now focuses on the promotion of the transcendent dignity of all persons:

The church sees social, political and economic issues through the prism of the dignity of the human person. Embedded in this concept of social ministry is the logic of Catholic social teaching: a concern for human dignity as expressed in a philosophy of human rights, and this in turn, requires a theological conception of ministry to the social system, all in the name of the person. (Hehir, 1986, p. 58)

These are significant perspectives through which we attempt to contextualize the role of the Catholic church in assuming the right and duty to articulate its position and its concerns regarding the education of youth. Recently, the document on the *Catholic School on the Threshold of the Third Millennium* situated the Catholic school at the service of society:

The school cannot be considered separately from other educational institutions...but must be related to the world of politics, economy, culture and society as a whole... For her part, the Catholic school must be firmly resolved to take the new cultural situations in her stride and, by her refusal to accept educational projects which are merely partial, be an example for other educational institutions in the forefront of the ecclesial community's concern for education. (#16)

Development of American Catholic Schools

In early nineteenth-century America, the common school movement was begun to ensure the continuance of the fragile democracy through a process of educating citizens in civic responsibility, useful knowledge, and a common Christianity. Schools were used as the transmitters of the dominant culture, teaching a social and political ideology which reflected uniformity based on the Protestant ethic (Spring 1990, pp. 110–111). In a relatively homogeneous Protestant culture of the era prior to large Catholic immigration, American Protestant church leaders had agreed to end their sectarian quarrels and developed an evangelical consensus termed “non-sectarian” which was the basis of the common school curriculum (Tyack, 1974). Schools were required to develop religious attitudes as well as social habits as part of a “civil religion” which taught students to love civic duties and their fellow citizens.

By mid-century, Catholics were experiencing the system of public schools as not only denominationally Protestant but also increasingly anti-Catholic and discriminatory in nature (O’Keefe, 1991). Amid the increasing hostility of the Protestant majority and under threats of loss of ability to hand on the faith in the traditions of the European cultural heritage, the Catholic bishops committed the church to the establishment of a separate school system and required parents to send their children.

The bishops dissented from the common school consensus as the “one best system” and sought to create an alternative form of schooling which allowed parents and the church to give children an education that responded to their needs as citizens and Catholics. This action was taken in response to directives from the Vatican after it had become involved in the school controversy during the 1840s, when New York began to deny funding to parochial schools (Ravitch, 1981).

This commitment to alternative schooling was formalized in May of 1884, when the American Catholic hierarchy convened the Third Plenary Council of Baltimore. This council decreed the establishment of an extensive system of parochial schools—mandating that every parish erect a school within two years and obligating every Catholic parent to send their children to these schools—directly attacking the Protestantism of the common school (Guilday, 1969).

Since it is evident that the nature of public education in many of these Provinces is so developed that it serves heresy, as well as that the minds of Catholic children are little by little imbued with the false principles of the sects, we admonish pastors that they must see to the Christian and Catholic education of their children with all the zeal that they have, and diligently watch that no Protestant version of the Bible be used, nor hymns of the sects be sung or prayers recited. These efforts of the sects are to be resisted everywhere...imploring the help of those who have authority to use a fitting remedy. (Council decree as quoted in Leavey, 1989, p. 178)

Significantly, the Vatican mandated that the schools operated by the church be “in no way inferior” to the public schools, and mandated that the schools be modeled on the public school system:

Catholic bishops called American public schools defective yet parish schools were deliberately made to imitate them. The Council of Baltimore decreed the establishment of a parochial system based on the public school model to satisfy Catholic parents who demanded that their children receive an appropriate American education. The concept of alternative education meant an alternative to the moral education component of public education, not alternative schools. (Leavy, 1989, p. 3)

The growth and development of American Catholic schools in the 19th and first half of the 20th century were rooted in a clear sense of purpose and identity. Defense of the faith, enculturation, and escape from religious and ethnic prejudice were significant factors in the creation of these schools (Buetow, 1988). Catholic schools paralleled the common schools in most aspects, save one: they placed religious instruction at the core of the curriculum (Leavy, 1989).

At first, some state funding was provided for religious schools, but over time, changing political and social circumstances led to re-interpretations of the establishment clause that effectively eliminated direct support for all nonpublic schools (Ravitch, 1988; Sanders, 1977).

In this century, constitutional battles were fought over compulsory public education and the liberty to choose alternatives, culminating in the legitimization of a dual system of education (*Pierce v. Society of Sisters*, 1925) and greater parental choice and control over alternatives to state schooling (*Yoder v. Wisconsin*, 1972). As these alternative systems began to reflect upon their service to the common good and examined the fiscal costs in providing such public service, they began to challenge the inequities inherent in the denial of funding because of educational choices exercised by parents.

Catholic Schools Serve the Common Good

Today, the national agenda on school reform and restructuring is focusing public attention and academic scholarship on the question of school choice, with heated debates about the inclusion of private and religious schools and school students in such initiatives. The contribution of American Catholic schools to the common good through the education of almost three million children each year should be a significant part of the national dialogue.

Statistical data regarding Catholic school enrollments document major demographic changes in the Catholic schools over the past quarter century. Non-Catholic population in Catholic schools increased dramatically in the years between 1965–1998. The substantial and growing numbers of non-Catholic (14 percent) and minority students (24 percent) primarily served by inner-city parochial schools (NCEA, 1998), and their demonstrably higher levels of academic achievement, indicate that this issue is one which cannot be readily dismissed nor superficially investigated.

Significant and highly respected research on Catholic schools by Bryk (1992, 1996) resulted in what he termed “Catholic lessons for improving urban schools.” His findings concluded that “Catholic schools achieve relatively high levels of student learning, have this

The contribution of American Catholic schools to the common good through the education of almost three million children each year should be a significant part of the national dialogue.

learning more equitably distributed with regard to race and class than in the public sector, and sustain higher levels of teacher commitment and student engagement” (1996, p. 25).

Current scholarship, which has examined the parallelism of public/private schooling, has found that the Catholic school system, when viewed in light of the ideals inherent in the founding of the common school movement, is more faithful to such values today than is the public school system (Leavy, 1989; Bryk, Holland, Lee, 1992). This has significance for those who seek to reform American education in both its public and religious schools.

Several authors have examined the nature and purpose of schooling and conclude that all schools, regardless of how they are financed or administered, are institutions which serve public purposes. Buetow (1985) suggests that the term “private” connotes separation from public purposes and participation in the common weal. He argues that there is no such thing as a private school: “every school takes students from the public and returns them to the public; uses texts and materials from publishers who are public; forms curricula in accordance with a vision of public needs; abides by at least minimum public standards set by the state; accepts teachers from institutions publicly approved” (p. 5). He contends that it is more accurate to call such schools denominational rather than private.

The public function argument was also advanced by Herberg (1957) in his assertion that parochial schools are, in fact, public institutions:

They perform a public function, supplying large numbers of children with an education that is everywhere taken as the equivalent of the education given in the public schools; they have full public recognition as educational agencies; their credits, diplomas, and certificates have exactly the same validity as those issued by governmental agencies...they are thus publicly recognized educational institutions performing a public educational service. (p. 190)

Given the significant contribution of private education, perhaps it is time to take a new look at the concept of American pluralism and “define a new national concept of ‘public education’ which embraces all schools that serve a broadly social purpose” (Kraushaar, p. 290).

From the Catholic church's perspective, we recognize the power of education to develop a student's intellectual, spiritual, moral, civic, and physical development in a nurturing and hope-filled environment, and authentic education must address all of these perspectives. We recognize that quality education is critical to the well-being of the family and society, as well as of the individual student. For this reason, our church is committed to providing quality education in our Catholic schools and to making that opportunity available to all those who wish to benefit from it, particularly the poor and disadvantaged who have few other opportunities for advancement:

It is for this reason that our faith community cares so deeply about the value of education. Not only do we believe that education holds the key to overcoming material poverty, more importantly, we recognize the power of education to change hearts, and to topple such barriers as racism, consumerism, and the apathy that allows human being to turn silently away from the specter of suffering and injustice. As a faith community, we share the fundamental belief that truth exists, that education can lead us to truth, and that the truth will lead us to a more perfect society. (Russell, 1999)

In 1995, the Committee of Education of the United States Catholic Conference, of which I was then chair, issued a statement on *Principles of Educational Reform in the United States*. On behalf of all American bishops, I wrote in the conclusion:

We believe that the issue of providing a quality education to all of our children is of the utmost importance to the future well-being of our nation and our children. We come to this issue as advocates for all children, whether they are educated in a public, private or religious setting.... We believe that the challenges we face in this endeavor can only be met and overcome if we [public/private school advocates] join together, put aside all that might potentially divide us and seek to serve our common public goal of providing all of our young people, especially the poor and vulnerable, with a quality education that will provide them with the knowledge and skills to live happy, productive and rewarding lives. (Banks, 1995)

As we engage in conversation during the next few days regarding the justice issue of allocating public and private resources to provide students with equitable opportunities for academic success in whatever educational setting the parent chooses, let me make it perfectly clear that we are advocating for all students in public, as well as our own Catholic, schools. More than 80% of Catholic children are in public schools, and our mission extends to their well-being just as it extends to the well-being of those who attend our Catholic schools, other independent schools, or are home-schooled. We believe that all children must be provided a quality education so they may lead good and productive lives as citizens of the church and world, regardless of the socio-economic status of their families.

Furthermore, we believe that Catholic schools are equally capable of transmitting the ideals and traditions of the American democratic way of life. Public institutions are not the sole guardians of American life. This has become a significant issue of late in the public debates about school choice and vouchers in which proponents of public education pit public and private education against one another and infer that there can be only one “democratic” choice—the public school.

Unfortunately, Richard Riley, U.S. Secretary of Education, who in many ways has been helpful to Catholic schools, gave public voice to this position in a 1997 white paper and public address in which he claimed that only public schools are truly American and those who support school choice are destructive of the public schools. Dr. Leonard DeFiore, on behalf of NCEA, and Msgr. Thomas McDade, for USCC, along with other leaders in the private school community were quick to strongly challenge this assumption, noting that the ideals which the secretary claims are the sole prerogative of public education—quality education, hard work, and good citizenship as the American way to achievement and freedom—have always been hallmarks of religious and private education.

The perception that support of public education and support of private education are mutually exclusive and that one cannot be supportive of both has found its way into the policy statements of the National Council of Churches. It approved a draft resolution at the November 1998 General Assembly that calls upon all 35 communions of the NCC to “use their moral vision and political power” to support

public education. The policy statement expressed NCC's theological basis for its position as rooted in Jesus' extraordinary care and concern for children in Mark 9:36–42. It stated: "in our society, to fail to provide a child with the best kind of education available is to put an almost insurmountable stumbling block in the path of that child." Their conclusion, however, is that the best kind of education is public education since "public schools have been the cornerstone of our democracy" and have and continue to be both "an avenue of opportunity and a major cohesive force in our society which is becoming daily more diverse racially, culturally, and religiously." The statement also says:

We repeat our convictions that parents have the right to select private or parochial school for their children, but with that personal right comes the obligation to support public schools for all children. To that end, we affirm once again that public moneys should be used only for public schools.

We respectfully disagree with this draft resolution of the National Council of Churches and its interpretation of a theological basis which calls for supporting only public schools with public funds earmarked for serving the common good. Because of our concern for all children and our insistence on the education of the whole person, the Catholic bishops have consistently taught that all persons have the right to a quality education, that parental rights and responsibilities are primary in education, and that parents should not be financially penalized for exercising their rights. Thus, in our *Principles of Education Reform*, we also stated unequivocally that government has a responsibility to provide adequate resources for the attainment of a quality education for all children.

Advocacy for a Fair Share of Taxpayer Resources for Parents

In seeking a just allocation of educational resources for all children, we are interested first and foremost in meeting the needs of families and students, not in preserving our institutions. It is a justice issue for Catholic and other private school parents who contribute their fair tax share to support public education while, for most, also bearing the enormous financial burdens required to exercise their

choice of a quality education for their children. American Catholic schools save American taxpayers more than \$17 billion annually as they educate more than 2.6 million American children without financial relief.

Every Western democracy, with the exception of the United States, has what amounts to publicly funded school choice. The Canadian, British, Australian, and Swedish experiences reflect that the government investment in private education is not a detriment to the common good. Research data have shown that rather than weakening public education, parental choice has lowered costs and improved student performance in both sectors (Groome, 1998).

Efforts to secure state financial support for parents to exercise their right to educate children in schools of their choice are being mounted in many parts of the country. Cardinal Bevilacqua in Philadelphia, Cardinal George in Chicago, and Bishops Curtiss, Bruskewitz, and McNamara in Nebraska have written public statements arguing the justice issue and urging their people to advocate for their fair share of the tax dollar at both the state and federal levels. Precedents exist, which others will discuss these days, for enacting state legislation that will pass constitutional challenges.

Unfortunately, many Catholics are not fully aware or deeply concerned about the justice issues involved in seeking taxpayer assistance for parents who support both the public schools through taxation and their Catholic school through tuition payments. The attitude of apathy or opposition of many among even the Catholic population has been formed, in some cases, by a lack of information or erroneous information which claims that all forms of aid are unconstitutional violations of the separation of church and state. Other misguided assumptions regarding the effect of state aid for parents center around notions of loss of independence and/or control of the schools by the state or fear that seeking state aid may rekindle old religious prejudices.

The United States Congress has attempted to enact tax relief, demonstration school choice projects, and a scholarship program for students in the District of Columbia. Despite strong support in both houses, continued threats and an actual presidential veto have prevented any national program from being enacted into legislation.

If we are to go forward with any national efforts on behalf of parental rights in education, it would be well to be aware of lessons

learned in previous undertakings. Several efforts to mount a national campaign to lobby for tax relief for private schools parents were undertaken in the 1970s and 1980s to little avail.

An historical analysis of the lobbying efforts around three pieces of federal legislation to attain tuition tax credits for parents of private school children may provide some useful insights into process and procedures for other efforts. This study concluded that:

1) The data demonstrate that there was not a monolithic private school organization engaged in public policy formation or advocacy. Despite efforts to form an ecumenical coalition, the tuition tax credits campaigns of 1972, 1978, 1983 were considered by much of the public as primarily a Catholic movement.

A coalition was formed among the various private school organizations and while the ultimate objective was the same for all of the constituents—attainment of tuition tax credits or voucher assistance—the constructs of the individual groups resulted in differences of opinion about: a) strategies to be used to influence policy makers, b) with whom to form alliances, c) how much individual effort and membership support each organization was willing to contribute, and d) perceptions about the need for consensus and uniformity of action.

2) The impetus for the first tuition tax credit campaign was a bipartisan congressional effort. However, by the 1980 election, the Republican Party adopted the issue and has continued to espouse it as a party platform commitment. The coupling of the inclusion of nonpublic school choice and an anti-abortion position in the Republican agenda has significant congruence with key aspects of the social agenda of the Catholic church, as well as of the Christian churches of the “religious right” and with conservative political philosophy in general. Since the 1980s, the school choice issue has been increasingly opposed by liberal Democrats and has taken on a partisan appeal.

Today, it is incumbent upon the pro-school-choice forces to find ways to situate the issue of parental school choice within a political philosophy that is more moderate and would allow for broader bipartisan examination and support of the issues on their merits.

3) The Catholic school community position in support of tax credit assistance has been reactive rather than proactive; consequently, the efforts were short-lived, episodic, and fragmented. Politicians developed the tax credit agenda and appealed to the religious interests

for support. When success seemed possible, the Catholic school community mobilized in support of specific legislation, but there has been no long-term commitment to work actively to formulate an agenda and aggressively pursue it.

Campaign offices were created for each of the efforts, but a permanent office was never maintained. It became more difficult to mobilize grassroots participation in each of the succeeding efforts and some of the constituents expressed unwillingness to get people involved when there was no real sign of imminent success.

4) No consensus has been sought from the Catholic school community regarding what the pursuit of federal (or state) tax-assisted support for nonpublic schools should entail. The ramifications of accepting public funding on the independence of the schools surfaced frequently in the tax credit debates but were not explored fully.

Untested assumptions about the type of government regulations that might ensue and how they would impact separation of church and state were introduced into House and Senate floor debates. Ambiguity about the impact of regulations on the independence of the nonpublic schools was exploited by opponents to polarize elements of the nonpublic school community. At the other end of the spectrum, fear of regulation was countered with naive assertions by supporters about the government's legal inability to impose any regulations or measures of public accountability (McDonald, 1995).

Conclusion

As we meet during the next few days to discuss parental choice in education as a policy issue, we need to strategize about developing better communication about the nature of the contributions of Catholic schools to the public good. In an article written for *America* in 1957, Will Herberg wrote:

We would do well to reassure public opinion that this kind of school [nonpublic] is not divisive or a threat to the public school system. It is not divisive because American unity is not uniformative and monolithic, but essentially pluralistic and the religious school fit very well as an American institution into the scheme of American religious pluralism. (p. 193)

The misperceptions that Catholic schools are elitist, divisive and segregationist, successful with minorities due to the selectivity of the recruitment and retention policies, and generally harmful to public schools need to be aggressively countered. An effective public relations campaign is needed to provide accurate information about Catholic schools to policy makers as well as the general public in ways that will focus the debate on the issues of the value and need for a pluralistic system of education in a pluralist society.

These factors will have to be addressed as the Catholic educational community strategizes to fulfill its commitment to “create structures to direct and coordinate the political agenda of tax-supported choice in education for all parents” through a public policy agenda that will “aggressively pursue legislation enabling all parents to choose the education appropriate for their children with their share of the education dollar” (Guerra, Haney, Kealey, 1992).

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An Embarrassment of *Ratios*

John E. Coons

Several of us have been asked to identify the “rationale of public policies that promote school choice.” A rationale is “a statement of reasons” or justifications—a ratio—for some course of action. In this case it is for the provision of government scholarships (or their equivalent) to all or selected families for the purchase of formal education from those public and/or private providers who constitute a subsidized and regulated market. Many justifications have been or could be offered for choice; these we could sort endlessly into species and subspecies, as we find them rooted variously in utility, egoism, morality, religion, or justice as their informing principle. Kant, J.S. Mill, Aquinas, and Bill Bennett might each propose his distinctive apology.

However, such a philosophical pedigree is not only beyond my reach but unnecessary to the task. The grand policy premises needing to be scanned are those few sufficiently favored to carry political weight in this society—and these only insofar as they entail mutually contrary views of choice. For example, toward the end I will suggest how choice might be differently assessed by two distinct theories of the good person that are encountered among philosophers of the Natural Law traditions and among moral theologians.

In our search for the rationale of school choice, most such disagreements about philosophical and theological starting points can be finessed; even among citizens working from rival premises there exists a rough accord regarding certain objectives of schooling. That popular agreement limits our inquiry in a practical way. As a proposal with political hope, school choice must claim to be the most efficient agent of a consensus that is composed, not of professional educators, but of the voters who must give choice their imprimatur. (Professionals do not always share these popular aspirations; indeed, there is much division among them both as to theory and practice, a dissensus which I will invoke as a primary justification for choice.)

The content of this consensus is likely to change either by addition or by subtraction. For example, school choice itself could become a conscious general ideal—an institution popularly valued for its own sake; among the wealthy this is already the case. For the moment, however, let us understand any regime of state scholarships for paren-

tal choice simply as the plausible instrument of the hopes that ordinary people hold for education.

I. Choice as the Instrument of Popular Consensus

School choice has in fact been touted politically as the best tool for a wide range of objectives. Its proponents talk as if the following twenty educational outcomes were favored by a popular majority and would be advanced by a properly designed system of choice:

- The learning of basic skills
- The transmission of Western culture
- The introduction of competition, hence of accountability
- The protection of children and their rights
- An increase of total investment in education
- An increase in the accessibility of all schools to all social classes
- The professionalization and welfare of teachers
- A general reduction in school (and class size)
- More effective school discipline
- The raising of scores on standardized tests
- An increase in racial and class integration
- Reduction in the crime rate
- An increase in the high school graduation rate
- Empowerment of poor and working class families
- The diversification of curricula and methods
- Rationality and fairness in the finance of school systems
- The encouragement of tolerance among social groups
- The restoration of family values through parental responsibility
- Practical increase in religious freedom
- Enhancement of the authentic teaching of values

Support for any specific goal on this list varies according to many factors, but all plausibly command a majority. In these few pages I cannot canvas the case for and against choice in respect to each and every objective. It is sufficient to address a few examples and—for the rest—to grasp their variety sufficiently to appreciate the political implication of the claim that parental choice would help to realize all of them.

First, however, note that most of these desiderata are widely understood to be characteristics of those schools that the rich presently select for themselves within an effective educational market. These privileged families purchase their child's place either by locating resi-

dence in a particular public school attendance zone or by paying private tuition. It is no stretch to say that the consensus among ordinary citizens consists in a valuing of what the rich have been able to achieve for their own children. Indeed, one aphoristic rationale for choice is simply that what is good for the rich would be good for the poor. In fact, of course, there are major structural imperfections even in the educational markets that serve the rich, giving them, too, a plausible interest in the fate of school choice. Nevertheless, the aphorism captures a good deal of what I will now say in a discursive way. I have long wondered why Marxist philosophy has ignored the class implications of our public school system.

As we proceed to consider choice in its instrumental role, note that almost every particular objective on this long list can itself be labeled either an instrument or a goal, the answer depending a good deal upon the world view of the particular observer.

One aphoristic rationale for choice is simply that what is good for the rich would be good for the poor.

For example, while most Americans regard the free market as mere instrument, an important few consider it pure value. Conversely, while the enhancement of parental responsibility can to many seem desirable for its own sake, others emphasize the dozen consequential blessings that family responsibility

would bestow on children. Whatever the reader's own perspective on any particular goal, for the moment I interpret parental choice itself merely as its instrument.

Our list of consensus goals can be divided into two other types that recapitulate the means/end distinction. The first is the child's acquisition of particular skills and their defining knowledge base (including the 3Rs and probably other mental and physical disciplines); within the American consensus these skills are themselves to be understood principally as practical means to a variety of ends, public and private. The second is the child's adoption of certain moral attitudes; these include respect for law plus respect for other persons regardless of their origins, gender, and race—and despite their diverse and conflicting views about the content of the good life. Expressed in the language of means and ends, this "civic" outlook can itself be understood as an instrument of goods still more ultimate, consisting in correct conduct toward others. Within the spirit of the current debate, however, the child's acquisition of this desired civic perspective can be

construed as a true end of education, one that is to be sought by society through a school assignment made either by choice or force.

II. Getting More Specific About the Generation of Skills and Right Attitudes

By what calculus does one decide whether choice nourishes a desired skill or inculcates a preferred attitude? There may be various forms of evidence and argument proper to prove or disprove that choice is either an instrument of or an impediment to any particular objective. As I take them up individually, I find myself tending to conflate each proposed rationale—test scores, racial integration, children's rights—with the discrete question of whether choice actually advances it. For me the two inquiries inevitably merge. My excuse for this is that no argument for choice can be understood except within this dialectic between means and ends. Allow me the truism that no outcome can serve as a rationale, unless choice plausibly favors it.

Consider first the question about skills which in recent decades has generated a distinctive standard by which to judge the efficacy of any favored means. Here, as everyone knows, both choice and its opponents deploy evidence of a semi-scientific sort. Success in producing student mastery of a skill is measured by test scores, graduation rates and other quantifiable standards that can be made more or less transparent to the media. Such criteria are tenable, even traditional. So far, it seems agreed that choice has much the better of these technical arguments about the production of skills. Candidly, however, given two practical realities in the world of education, this result was predictable (and the rationale for choice thus already manifest).

The first of these practical realities is the enduring babel among competing pedagogies, each seeking to dominate the teaching of basic subjects. The best way to transmit the 3Rs turns out to be something that is wholly indeterminate among the experts. There is no common professional wisdom—only discord. The second reality is the diversity of gifts, life experience, and personal traits of the children to be educated. Even if we concluded that some or even all of these disputed methods worked to transmit these skills in certain cases (or in the hands of certain teachers) this in itself would be no reason to subject these very diverse children to any particular praxis; and it would be

grotesque to do so simply on the basis of a child's street address. This, nonetheless, has been the rationale of our historic conscription of the non-rich; they are delivered by force to the regime of method X, which is the style favored at School Y located near Freddie's residence. The prevailing indeterminacy of method argues exactly the opposite—requiring an open system in which diverse producers and consumers can seek each other in the hope of making that one match that is best for both. In a crude and practical way such a policy of freedom presently holds for most families using either the suburban public schools or paying tuition in the private sector. What social science reports about their schools merely confirms the obvious—that the free connection of child to educator results in the most efficient teaching of basic skills.

But if choice is truly fruitful in producing skills, there could still be a question about where to locate the authority to match the particular school to the particular child. In theory society could anoint professional experts to identify each child's ideal pedagogy and then make the right choice of school for him or her. Practically speaking, that idea may be nonsense, but it is useful here as another way to pose the question about rationale. By what theory would society identify the individual human decider whose choice of school will maximize Mary's mastery of the desired skills? Or, in other words, what are the ideal qualities of a personal educational guardian? I will discuss three but begin by noting a fourth that is obvious; these crucial qualities, whatever they are, should be embodied in an adult who will be there to take responsibility for decisions—not episodically at age five or thirteen—but continuously over the entire school life of the individual child. And that persistent decider should be a person who knows Mary, loves Mary, and suffers when she suffers. In short, the salient criteria of the best decider are knowledge, caring, and personal accountability for mistakes—all three continuing in the same person through the child's middle teens.

Who tends to embody these qualities? The only possible doubt here concerns the criterion of knowledge; in certain cases a professional stranger is the most likely to recognize something about Mary (e.g., dyslexia) that could be important to the choice of her school. Should the professional, at least in such cases, be the decision maker? Not necessarily, so long as there is an adult with personal knowledge

of the child, to whom the insight and recommendation of the expert can be transmitted and who (unlike the expert) both loves Mary and inevitably shares her fate for better or worse. Only parents can embody these three qualities over that span of time in which the choices for a child must be made and, if necessary, corrected. Knowledge, caring, and accountability provide a rough rationale for the location of the authority to choose the school; and all three point to the parent except in those relatively rare instances of parental incompetence, neglect, or abuse as to which school choice makes no claim.

So much for skills. What about the ends which these skills are intended to serve? For example, does the superiority of parents as choosers extend to the inculcation of correct civic attitudes? The Victorian autocrats who created our government schools worried about this. They designed a public system that they hoped would transmit democratic values. It took a somewhat paradoxical form, adopting the assumption that non-rich families, if allowed to exercise educational freedom, would produce bad citizens. Choice by have-nots would divide the nation. Democracy can trust only the opulent.

The rationale for universal school choice, of course, begins with the opposite premise; it makes democracy the responsibility of ordinary citizens. And it justifies this enfranchisement of all with a mixture of real history, common sense, and, now, social science. Its historical argument asserts that a century of conscription of the poor and working classes for government schools has demonstrated nothing so plainly as the deadly efficiency with which state coercion can extinguish the natural civic-mindedness of ordinary people. Supporters of a universal and democratic parental choice see all too clearly, for example, the historic impact of involuntary racial segregation—then of involuntary integration—upon the attitudes and culture of racial minorities and their not-so-rich white neighbors. The ordinary citizen must regret what even this most exigent case of culling and herding has done to civic spirit. He tends to conclude that the surest way to encourage either sullen apathy or active discord is to liberate the rich while we strong-arm the poor in the name of democracy.

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Such are the claims of history and common sense. To these the proponents of choice today can add a burgeoning social science that is busy recording the relative effects of force and choice upon civic attitudes. A vivid selection of this literature appears in the recent Brookings Institute volume called *Lessons from Choice*, broadening a trail of inquiries that dates from the 1960s. Insofar as society seeks the transmission of positive civic attitudes, all these reports encourage state assistance for the family's free connection to the schools. And this conclusion holds across races, church denominations, and social classes. When ordinary and low-income people are able to exercise responsibility, the capacity of their chosen schools to teach citizenship is enhanced.

Systematic professional reporting of this sort is invaluable to choice's image in political debate; but science here only confirms daily experience and personal judgment. When all forms of evidence are taken together, the extension of choice to all families becomes the most plausible therapy for our most evident civic pathology. I would summarize this part of the underlying rationale in this way: When ordinary people are trusted to express and preserve their own identity, they tend to return that trust in the form of loyalty to the society and respect for one another.

III. Responsible Families as a Rationale for the Instrument of Choice

Its potential as social glue implies a separate and equally profound rationale for choice when viewed still as an instrument of the present popular consensus. That is, policies of force and choice have contradictory effects upon the family itself. Inescapably, school policy is family policy. And those non-rich families who are drafted for the government school typically experience injury to the relation of parent and child. This injury consists, first of all, in the dramatic cessation of a parental authority which to that point was virtually plenary. The adult who was both sovereign and protector now ceases to be either of these in respect to this new and dominating experience. The five-year-old grasps and assimilates the impotence and frustration of the parent. The first lesson taught by this new sovereignty of strangers is that family is an evanescent and puny thing.

Some regard this degradation of the parent-child relation as a

benign result of state conscription; according to James Dwyer, the child is “liberated” from a mischievous dependence. I shall address this point later. Here let us reassure Mr. Dwyer that, at least for the non-rich family, the present regime of conscription is the sworn enemy of the family authority he despises. However, insofar as the popular consensus grasps this reality, unlike Dwyer, it deems the damage to family a social cost, a threat to the common good; but that grasp is yet feeble. Sadly, it is still common—indeed, it is popular—to rail at inner-city mothers who are “irresponsible” about school; these well-meaning critics have yet to apprehend that, in respect to schooling, America has *ex industria* eliminated all opportunity among the poor for parental responsibility. Public educators have actively sought from parents not volition but submission. Without freedom, there can be no dereliction for which the poor could properly be blamed. It is the school regime itself that is the enemy of responsibility and a primary source of educational apathy. Proponents of choice will presumably stress this point, making it an emergent element of the consensus. A properly concerned public needs to see that school choice is the pre-condition of any parental sovereignty that can responsibly deliberate, choose, err, and correct itself on behalf of its infant subjects. Choice is a primary hope for restabilizing and inspiring families that have been stripped of their defining role as educator.

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With a little help from intelligent publicists America might even begin to appreciate the family as a primary contributor to the marketplace of ideas. The “media” are not the only sources of important speech. The most profound of all human communication is delivered between mother and child; and her choice of school is a crucial occasion for the free expression of ideas. For wealthier families, picking the school has been a signal example of what lawyers call a “speech act”—one in which the parent addresses the child: “Here in this school you will encounter the content and values we want to share as a family. Heed the voice of your teachers; they speak for us.” But, note that this foundational form of individual human speech is addressed not only to the child but to the society at large through the agency of the chosen school. The wealthy parent appropriates the school’s message as her

own and wills, not only that the child learns it, but that, in due course, he or she carries it to the world. We are all by our free and rational nature messengers of one gospel or another, and we hope to train our children in the service of that message. Ordinary families have been systematically denied the school as a medium of expression. A policy of choice would dethrone this primitive censorship, opening new forms of access to the market of ideas for ordinary parents—both as speakers and voluntary listeners. Every citizen authentically devoted to the core values of free speech should find this part of the rationale compelling. It is a reproach to the civil liberties community that it has shamelessly cooperated in muzzling the voice of the ordinary family.

Given this insight, the relevance of our traditions of free religious exercise become so obvious, familiar, and intense as to need no separate comment, and I will move on. Summing up thus far: Choice claims to maximize skills, attitudes, and various constitutional and political values that together represent the shared popular ideal. This ideal in most respects is already manifest; in other respects it is inchoate, waiting to be brought to general consciousness by an honest and open dialogue that ideally will include even those who have until now opposed the extension of liberty while sheltering in her name.

IV. Radical Marketism and the Isolated Moral Self

We can distinguish among the objectives of the popular consensus in yet another way. They fall into an obvious and traditional division between two related forms of the moral good. For convenience here I will call these “First Good” and “Second Good.” First Good consists in the moral perfection of the self; Second Good consists in correct conduct of the self toward others. The two goods are subtly—even mysteriously—related. We either promote or prevent our own personal perfection—the First Good—by freely choosing our disposition toward or against the Second Good. In all of life, and profoundly in the regime of formal education, each of us is invited by nature to advance in perfection by consciously developing his or her gifts as a step toward the service of the Second Good; our given responsibility (or imperative) is to seek out the content of correct conduct and then to try to realize it within the human community. We achieve First Good by striving for Second Good, and schooling is one important environment for striving. We seek preparation for a life of service.

Still, the right behavior that constitutes Second Good remains a thing distinct from our own personal moral perfection. Simply put, the good person is one reality; the good act is another. And these discrete goods have rather different roles to play in the arguments about school choice. Unfortunately, the significance of First Good has not been sufficiently appreciated by most of those enthusiasts who so far have claimed to speak for choice. Their failure is at ground philosophic, born of the dogmas of Individualism in its more radical forms.

With few exceptions the arguments for school choice over thirty-five years have focused upon those benign effects that education can have upon the child's potential for "success," defined as an influential career in science, business, the arts, or the professions. The mastery of elementary skills and basic learning is to be valued primarily as enhancing individual power (in a free market) to contribute to economic growth and national security—and, first of all, to personal achievement. In short, education is to make children materially useful to self and others, and only a policy of universal choice would make education fully efficient in this respect, preparing citizens to do the tasks that need to be done.

This is well and good; few of us parade as anti-utilitarians, and choice necessarily implies a free market. What is strange about the tone and content of this apology is its virtual disregard of any distinctive good that is embodied in the child himself other than "success." Apart from the child's acquiring power (and its material rewards) through education, little is said about the perfection of the child's person or even what such a perfection could mean. The debate has been conducted in terms of a market individualism rooted in Hobbes, and for Hobbes personal goodness—when it makes sense at all—consists in getting what you want. Hence there is little to be said about the good of the person except to remark the success or failure of his private project to shape the environment to suit himself. So conceived First Good has no content other than individual preference.

Radical individualism nonetheless has sought pride of place as the rationale for school choice, viewing moral pluralism not only as man's natural condition but even as the cultural aspiration for America. What is good—both for the individual and society—is conveniently defined by the individual will. Now, individualism cannot apply such a premise directly to the social order—what I have called the Second

Good; that would be anarchy. Instead (somehow) it must invent a Second or common good that is defined and secured by social contract (mysteriously, it turns out that keeping promises is, indeed, a moral duty). Conveniently, those mythical regimes of contract that actually have been proposed in our time have tended to resemble traditional mainline models of society, and John Rawls can (to a point) coexist with Leo XIII or even Milton Friedman. So far as the Second Good—that of the social order—is concerned, this coincidence of policies accommodates school choice well enough; for choice serves as the plausible instrument of these practical goals that happen to be shared by these conflicting philosophies.

However, in the individualist world choice cannot be evaluated and promoted as a means to the moral welfare of the child himself, because that concept lacks content. It is the deep failure of radical individualism that it leaves out the most important of all human questions. This is a criticism that Patrick Brennan and I have pursued elsewhere and is in any case a staple of post-Enlightenment philosophy. Here I want only to suggest that this point carries practical implications for choice. One is political. The American popular consensus simply rejects the individualist notion that the good is a mere human invention; any claim that the preferences of individuals who happen to be parents could automatically constitute the ultimate good makes the ordinary citizen nervous. He is prepared to understand the market as a tool but not as an end in itself. He is also concerned about the moral self-perfection of the child, for he understands it as a thing to be won or lost according to rules we do not invent for ourselves.

Fretting, then, at the individualist dogma, the typical citizen hesitates to dismantle the last of the nation's great bureaucratic monopolies. Congenial to the free market, and still open to persuasion about school choice, the public appears to be waiting for some rationale that runs deeper than the promotion of individual adult autonomy. In their eyes the primary object of a policy of choice cannot be mere parental satisfaction or even the sum of family choices. There are real goods to be pursued through schooling; and crucial among these is the moral good of the child whom nature has lodged in an inevitable state of subordination to some adult decider. Indeed, this reality of adult power should itself bring the individualist up short, reminding him that—even if getting one's own way could constitute the real

good—within a regime of choice it would not be individual boys and girls, but only grown-ups, who were assured of getting theirs.

V. Nature, Religion, and Real Morality Meet Choice

At least this much seems clear: if school choice seeks a rationale grounded in some philosophically or religiously based morality, this cannot be one that ignores First Good; put in political terms, moral self-perfection is too widely understood and accepted as a primary object of schooling. However, the ostensible candidates for this ideological foundation abound within those broad Western traditions that feature natural obligation and/or Judeo-Christian belief. These ancient premises command wide support even in a pluralistic society such as the United States. Perhaps they simply go with the human territory. I cannot neglect this difficult point, but in this brief essay I must compress its scope by adopting a few crucial assumptions.

Let the following be the case: certain behaviors are truly good or bad apart from any judgment we make of them. Their status is “pre-institutional,” being determined either by nature or by divine will—in any case, not our own. In short, the Second Good is something very real. But, the First Good is equally real, even though it subsists in the person and not in his or her external acts. Every minimally rational human, in freely seeking or ignoring correctness in conduct, acquires degrees of moral self-perfection or of self-corruption even as he creates effects in the external order.

Still another assumption: humans are fallible and, while striving for the Second Good, can honestly mistake its behavioral content. This fallibility may differ in degree among individual persons according to their natural gifts, education, and experience. One with native wit and proper instruction can easily see that a particular war is unjust; another—dull or poorly instructed—volunteers, mistaking the war as just, and viewing his own acts of violence as his moral duty.

These assumptions may bear upon school choice, because they are shared by two common but also very distinct theories of First Good. These theories agree that formal schooling can help the child achieve moral self-perfection, but would they also agree that parental sovereignty would enhance this end? To answer that question, I will identify these two basic ideas and show how they differ in ways that might reflect upon school choice.

Intending no criticism, I will call the first theory of moral self-perfection “gnostic,” meaning simply that those who hold it emphasize knowledge as a criterion of personal goodness. In the eyes of the gnostic moralist, humans advance in perfection only by making and executing correct judgments about the content of Second Good. Our blundering but well-intending volunteer for the unjust war not only perpetrates a wrongful act; by mistaking the real content of Second Good he diminishes his own moral status. I should add that most moral gnostics (Aquinas and Gilson are examples) require the blunderer to follow his erroneous conscience, leaving him, in effect, demoralized.

The alternative to gnostic morality I shall call “obtensionalism” (the word is legitimate and, I fear, necessary). An actor obtends when he strives diligently to discover the behavior that is correct and then attempts to realize whatever outcome is apparently best. Prominent obtensionalists include the theologian St. Alfonsus Liguori and the philosopher Bernard Lonergan. For each it is commitment of the person to seek the Second Good and to honor its apparent content that constitutes the exclusive means of our moral self-perfection. That is, humans advance in their own moral state exactly—and only—by their diligent quest for right conduct quite apart from their success in identifying and realizing it. Thus our striving blunderer, though he mutilates Second Good, realizes First Good with full efficiency. As Lonergan would have it, he becomes “authentic.”

These competing concepts of moral fulfillment appear among the ranks of both natural philosophers and moral theologians with diverse implications that Brennan and I have scanned more generally elsewhere. Here I speculate only about the respective conclusions of gnostics and obtensionalists on the issue of school choice as an instrument for First Good. Obviously, their answers could be interesting to educators, religious or not.

My reading of the gnostic moralist is that her reaction to subsidized parental choice would vary according to the society for which it is proposed. Where the population of the society (and the gnostic herself) are in agreement concerning the rules of correct behavior, educators should compel a uniform moral curriculum. For, to the gnostic eye it is necessary that the child grasp correctly the terms of the Second Good in order to advance in moral self-perfection. The

child is perceived as morally vulnerable to his own ignorance, even when that ignorance is for him invincible. If he is taught, and in good faith accepts, false adult notions of what is correct in economic, sexual, military or political matters, he simply cannot become good. Thus, insofar as justice for the school child is our object, it forbids our giving him access to incorrect answers. (This would not foreclose subsidizing choice among diverse methods of instruction.)

By contrast, the gnostic in a morally pluralist society finds herself in a bind. Here, beyond the minimal claims of civil peace, there is no public canon of correct behavior. Whatever might be taught in addition to this minimum—even in state schools—must therefore be selected privately by whoever gets the power to set the curriculum. The moral pedagogy of all schools will consist exclusively of private opinions about the content of the Second Good.

In such a society the gnostic's question is how to secure her own ("correct") moral curriculum for the greatest number of children. Unless she can somehow capture the educational machinery of the state and impose her private views (and is indifferent to the tyranny required to do so), she is likely to opt for parental choice. For this would assure that at least some children hear the right answers that are necessary to their own moral perfection. However, the gnostic finds no consolation for the damage to those other children who get morally miseducated through the incorrect choices of schools by their parents.

The obtensionalist too regrets such miseducation, but only for the damage that it inflicts upon Second Good. Regarding First Good, he is consoled by the impregnability of every child. The universal capacity for moral self-perfection is invulnerable to honest mistake, and the child is morally undamaged by bungling—or even corrupt—teachers; he is fulfilled by doing the best he can with what they give him or what he can discover on his own. Neither state nor parent can curtail the freedom of any child to become good or bad.

Further, in respect of First Good, the obtensionalist is not merely consoled, but encouraged; indeed, his philosophy provides a specific and positive rationale for parental choice. For him choice becomes something owed the child as a matter of justice; one could even call it natural justice, for it is a right grounded in human moral ontology. Here in a nutshell is the argument: As a rational being the child recognizes the authority of the Second Good—the order of correct

behavior. Its specific content remains a permanent question, and one he constantly must ask; but the basic imperative to keep on asking is utterly clear and insistent. No less than the adult, the child becomes good precisely in freely striving to find and do what is correct. But, as a beginner in this quest for right answers, the child (again, as a rational being) acknowledges the need for apprenticeship to an adult moral guide. And, at least in a pluralist setting, this guide is the parent. The state cannot compete; the moral dissensus of the society disables it as an oracle of the Second Good.

But, if the parent becomes sovereign, this is not merely by default of the state, but also by virtue of two distinct but corresponding natural imperatives that respectively inform parent and child. The parent, *qua* parent, embodies a peculiar moral reality. Though fallible and diverse concerning the behavioral content of Second Good, parents are infallible and homogeneous in one crucial respect. Whatever they may say or do outside the home, when they address their own child they do so as moral objectivists. At least within the family forum, they correctly understand that the Second Good is a thing not relative but real. They affirm the child's duty to seek it and their own corresponding duty to preach it. This moral symmetry of the adult and infant natures constitutes the premise of the child's claim upon the state. At least in a pluralist society justice requires the state to give that symmetry its practical affirmation in a regime of parental choice.

So far I have put the distinction between theories of gnostic and obtensional morality largely in secular and natural terms. Obviously these claims for parental choice entail also the dimension of moral theology—one that for many of us—multiplies its practical importance. In place of the bland expression “self-perfection” the religious educator will substitute “salvation,” and the policy issue becomes posed again, but with higher stakes. It is the believer who now inquires; and he starts with the specific assumption that humans have the capacity and exigence to cooperate with God's will for their eternal salvation (absent that assumption there is no issue). The question now becomes: is it sufficient that one do his best to find the correct way, or, as the gnostic would have it, do his honest errors work his own reprobation?

Our conclusions regarding the moral theologians parallel those I have already ascribed to natural moral philosophers. At least in a pluralist society such as ours, religious educators—whether gnostic or

obtensional in belief—will support choice. Gnostics will do so reluctantly, viewing choice as the least evil option, meanwhile grieving at the catastrophe of those children who are introduced by their chosen teachers to false gods and freakish moralities, risking their damnation. They will support parental choice only because, without it, this tragedy would be compounded.

By contrast, the religious obtensionalist will see the child's opportunity for salvation to be undiminished by false moral (or religious) information. And, on the positive side, he will rejoice in the vindication of the child's right to be subject to the specific adult authority that in any case he ought freely to seek (and, in general, obey) in confirmation of the real good. Finally, like the natural lawyers, both schools of religious education should be relatively optimistic about the practical effect of choice upon the Second or common Good.

If both schools of morality support choice, why do I bother to make the distinction? One answer is that, while the gnostic version of education can tolerate parental control, it is a feeble rationale contingent upon a particular social reality. Worse, it implies an embarrassing natural inequality of our individual prospects for moral perfection and/or salvation. That is, given our diverse access to correct answers, gnostic theory must view "created equal" as a false description of human moral capacity. Granted, many a religious (and especially Catholic) educator blithely teaches the mutually conflicting propositions of moral gnosticism and human equality as if they were co-existent truths: Salvation requires correct answers; and we are equal. Clearly we have a problem.

Educators—and especially religious educators—preparing to do battle for choice ought first to clarify their position on the effective means of self-perfection. Far the stronger rationale for choice lies in the obtensional position (consistent with Vatican II) that all rational humans, regardless of their intellectual circumstances (or the gift of faith), have the same opportunity to achieve personal goodness and salvation by diligently seeking the content of the Second Good.

VI. Getting the Point

Our "rationale" has proved to be a menagerie of popular educational hopes ranging from the most immediate and measurable to the most ultimate and subjective—from pure means to pure end. This is

not the place to prove, one at a time, that each of these particular goals finds choice its most congenial instrument. But I do confidently assert that very conclusion, and I invite the reader to test it for himself in light of the ever-expanding evidence. I would go even further; it becomes constantly clearer that whatever authentic educational good one proposes, it will be maximized in a regime of choice that is sensibly designed. Some proponents call choice a panacea. My belief in the Fall makes me hesitate. I am content to say that freedom in schooling, as elsewhere, has all the best arguments.

Properly skeptical, the reader might try an experiment. Identify some authentically educational good for which choice is not the best policy. Sit back, take your time, and avoid the temptation to sarcasm. For example, maintenance of the present monopoly over the poor, though plainly the hope of some among us, is not an objective that can properly be classified “educational.” Likewise, the concern to “save the public schools” can become a coherent purpose only when such schools are finally brought into existence; at present the more intelligible hope would be to “create public schools,” but that slogan would merely restate the case for universal democratic choice. Meanwhile, has our pondering reader uncovered even one educational aspiration that is inconsistent with family sovereignty?

The problem of choice, I think, is not the want of a rationale. It is the want of something in those among us who flaunt their stewardship for the poor while tolerating a system that keeps the poor in their place. The time has come to deal with this contradiction. Either let the poor choose, or stop pretending that you represent them.

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Highlights of the Symposium Participant Conversations

Symposium delegates were asked to discuss what similarities they noted in the presentations by Bishop Banks and John Coons. Their responses included the following:

- Educational choice is a social justice issue.
- Holistic education—integration of good academics with moral values—is the only true education.
- The poor must be the focus of choice efforts and we must measure all proposals against equity for the poor.
- There is concern for the lack of interest of the Catholic parents in supporting the choice movement.
- There is a need to educate political leaders to the justice aspect of choice and encourage them to put families first.
- Exchange the primacy of parents in selecting education: choice vs. conscription.
- Refute the assumption that Catholic schools are no less public in purpose and effect than schools designated as public schools.
- Educational choice is a “non-institutional issue”—it is about improving education for all children, not about saving Catholic schools.
- The common school is a myth; there is no national agreement as to what should be the role and purpose of schooling.
- Parental choice is not just a “Catholic” issue; it is a social justice issue for all Americans.
- Both speakers provided foundational materials and/or basic understandings: Bishop Banks, the theological foundations; Dr. Coons, the secular philosophic and pragmatic. Taken together, they could serve as a model for framing the public conversation for public policy debates.

When asked what might be done to diffuse the perceptions that school choice and support of public education are mutually exclusive concepts, the participants advanced these ideas:

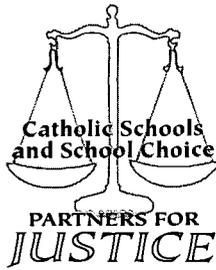
- Greatest challenge: advance the perception that choice advocates want to improve educational opportunities for all children, not destroy public education.
- We must break down the idea that children in Catholic schools are not a part of the public. Emphasize that all schools serve

the common good and public purposes, but each school's mission is unique.

- All Catholics need to affirm public education, emphasizing that all schools serve a common purpose and that cooperation and options best serve education of children. Public education does not necessarily mean education exclusively by public schools.
- Attack objections one-by-one; especially diffuse them within our own Catholic school community. Clarify the fact and the message pertaining to educational choice motives and options; talk justice, parents rights, impact of Catholic schools on the common good.
- We must educate our own Catholic people and clergy regarding the value of Catholic schools. We need a huge public relations program regarding the concepts of school choice and need the support of all Catholics on this issue, not just the 20 percent using Catholic schools.
- Separate the notion of support for public education (institutions) and support of public school students (people). Too frequently the opposition revolves around saving the schools, not the children. There are genuine institutional concerns, but the focus has become the reverse of what it should be.
- Break down barriers of the mythology that the American goal of the "melting pot" is best served only by public schools. Focus on human rights and civil rights as the key issue; need to broaden the beyond that of its being a Catholic issue.
- Emphasize primacy of parents' rights and their ability to choose the best education for children.
- Obtain good research data on effects of the school choice movement; diffuse the perceptions of elitism and exclusivity.
- Avoid polarizing and the notion that aid for private school students takes away scarce resources from public schools. Legislation can be crafted so that public schools are not penalized by the development of publicly funded choice programs. Make scholarships usable in both sectors, e.g., through public school choice, the voucherization of federal entitlement programs, etc.

When asked to discuss which of the various rationales offered by Professor Coons had particular significance for Catholic education, the respondents offered these ideas:

- Primacy of parents'/family's freedom to choose schools as enabling civic society. The choice programs advanced cannot price the poor out of this right. Most important is the tilt toward the poor in the design and regulation of choice initiatives.
- The public sector must be deregulated through parallel scholarship mechanisms that provide for the accessibility of all schools to all social classes.
- Hold discussions about the definition of "good life" and how Catholic schools fit into public version/definition of "good life."
- Discuss ways to best enrich Catholic schools and how they affect the entire human person. The reinforcement of spirituality is seen as a priority for improving Catholic schools but this may present difficulties to the choice movement.
- Significant access to religious/moral education empowers our students to be change-agents.
- Catholic higher education institutions have become more private, secular; Catholic schools may move the same way as we move from religious to lay delivery of education.
- Trustee-held funds and child benefits from the public sector may increase fears of government control of private schools.
- Conversion to charter schools may be a possible solution to choice.



CHAPTER THREE

Privately Funded Educational Choice Programs

Introduction

Privately funded school scholarship/voucher programs operate in more than forty states in America. Their existence is due to the extraordinary generosity of philanthropists who provide children with an opportunity to obtain an education in a school of the parent's choosing.

Harvard professor Paul Peterson presented research findings based on students participating in privately funded scholarship programs, with a focus on a program in New York City. His address and the participant reactions form the first section of this chapter.

The panel presentations that followed afforded the symposium participants the opportunity to hear from philanthropists who sponsor choice programs, a school administrator whose students benefit from private scholarships, the executive director of a scholarship program, and two parents whose children are the recipients of scholarship assistance. Excerpts of the panel presentations and the participant table conversations are included in this chapter.

Implications of School Choice Experiments for Urban Education

Paul E. Peterson

Whether viewed in comparison with other countries or looking within the United States over time, the state of American education appears pretty grim. For example, the well-regarded international math study, that compares U. S. students with peers abroad, finds that even though American fourth graders keep pace, by 8th grade they have fallen to the middle of the pack (and below other major, industrial nations). By age seventeen, U. S. students trail virtually everyone. The longer U. S. students remain in school, the further behind they fall.¹

Equally dark results are emerging from the National Assessment of Educational Progress (NAEP), long known to provide the best overall estimate of the cognitive skills being acquired by the nation's young. A report just issued by Paul Barton and Richard Coley, researchers at Educational Testing Service (the respected firm that administers NAEP), focuses on what students are learning in school, as distinct from the educational impacts of a student's family life. ETS researchers note that the test scores of students at age 9 have been rising over the past two decades, but they point out that these scores are shaped by everything that happens to children between the day a child is conceived and the day he or she takes the fourth grade test. The clear gains among fourth graders (and especially African-American fourth graders) are caused not simply by what has happened in the first few years of schooling but also by gains in prenatal care, birth weight, pediatrics, nutrition, and early childhood experiences—gains that have been occurring especially within a Black community that is considerably more prosperous and well-educated today than it was a generation ago.²

To detect what is happening strictly within schools, the latest report focuses on test score growth between fourth and eighth grade. By fourth grade, much of the family background impact has already shown up in the test scores. What happens between fourth and eighth grade depends much more on what is happening in school.

Viewed in this way, NAEP results are of no less concern than the international math and science results. Students are learning less

during the middle-school years than they once were. When test score growth in the 1990s is compared with growth a generation earlier, students are slipping in math, science, and writing (though not in reading). Blacks are slipping just as much as Whites are—even more so in reading. Schools serving families without a high school education are deteriorating the most.

The problem is nationwide. One finds little difference among states—except that Garrison Keillor and his fellow Lake Wobegonors will be pleased to learn that Minnesota, North Dakota, Nebraska, and Michigan are doing the most to buck the trend.

The District of Columbia anchors the bottom of the scale; it trails every state as well as the island of Guam. The District's growth performance is particularly discouraging, despite the fact that elsewhere Black students are making as many gains as White students. Since the District of Columbia is the only "state" that is at the same time an "inner city," these results suggest that problems in American education are particularly severe within our central cities.

Many are giving serious consideration to the possibility that school vouchers or some other mechanisms for increasing parental choice provide a way of reversing these educational trends. However, these same people wonder whether this solution to our educational ailments, however good it may sound in theory, may in practice be worse than the disease. As a result, the public splits about evenly between those who support and those who oppose government funded vouchers. In this essay, we consider the latest evidence with respect to many of the practical issues that arise in an urban context.

We begin by describing some of the major school choice experiments, then we consider the kinds of individuals who take advantage of choice when the opportunity is made available; the factors parents consider when choosing a school; the level of satisfaction parents express with the choices they have made; the access low-income families have to choice schools; the effects of school choice on social capital, student learning, and ethnic relations; and the effects on students remaining in public schools.

Major Choice Experiments in Central Cities

School choice experiments have been undertaken in several central cities. In two cities, Milwaukee and Cleveland, state funded choice

programs are giving eligible families a chance to pick their school. In more than thirty other cities, privately funded scholarships provide over 30,000 students with the private school of their choice. The largest programs are to be found in Dayton, Indianapolis, Milwaukee, New York City, San Antonio, and Washington, D.C.

The most dramatic program is to be found in the Edgewood school district in San Antonio, where a private foundation, CEO America, announced in the spring of 1998 that it would provide every low-income child in the district a ten-year scholarship worth as much as \$4,000 a year. The Edgewood program is an expanded version of a program inaugurated in Albany where philanthropist Virginia Gilder provided a similar opportunity to all children attending the city's lowest performing elementary school. In the fall of 1997, parents of about a quarter of the students made use of this scholarship.

The basic characteristics of the nine largest programs are set forth in Table 2 (see p. 76). The first state funded program was established in Milwaukee in 1990. Although it has received a good deal of publicity, originally it offered the least amount of choice. Though the scholarships are generously funded at a maximum of \$4,700, the program had important restrictions: only secular schools could participate, half the student body had to non-choice students and the family could not supplement the scholarship. Because of these restrictions, only 20 schools and some 1,600 students participated in 1996, most of them in elementary schools.

However, the state legislature allowed the inclusion of religious schools in a major expansion of the program that was declared constitutional by the Wisconsin Supreme Court in the summer of 1998. Although this decision was appealed to the U. S. Supreme Court, the expanded program opened in the fall of 1998, replacing a privately funded program in Milwaukee known as Partners Advancing Values in Education (PAVE). PAVE was established in 1992 and by 1998 was providing 4,465 children from low-income families as much as \$1,500 to attend any one of 97 religious and secular schools.

The Cleveland Scholarship Program, serving students in kindergarten through grade three, was established by the State of Ohio in 1996, becoming the first state funded choice program allowing students a choice that included religious schools. The state scholarship amounts to as much as \$2,500 and can be supplemented by families

or other sources. In 1998, over four thousand students received a scholarship enabling them to attend over fifty schools.

The oldest of the privately funded programs, Educational Choice Charitable Trust, was begun in Indianapolis in 1991. Six years later it provides \$800 to 1,014 students attending 70 schools, religious and secular.

In February 1997, the School Choice Scholarships Foundation (SCSF) in New York City announced its 1,300 scholarship program for students in grades one through five. Over 20,000 applications for the \$1,400 scholarships were received; scholarships were awarded to students by lot; scholarship recipients attend one of approximately 250 schools religious and secular schools. One year later, similar programs were begun in Dayton, Ohio and Washington, D.C.

In 1992, the Children's Educational Opportunity (CEO) program was set up in San Antonio; in 1996 it provided nearly one thousand half-tuition scholarships to elementary and middle school students attending some forty schools. As mentioned above, this program was expanded in the spring of 1998 to include offers to all students in the Edgewood school district within San Antonio. Finally, in June 1998 the Children's Scholarship Fund announced a nationwide program that would make available as much as \$100 million in matching funds for locally funded scholarship programs for low-income families in cities across the country. New or expanded programs are being launched in Chicago, Los Angeles, New York City, Washington, D.C., and elsewhere.

Characteristics of Those who Exercise Choice

Critics of school choice have argued that choice programs do not give low-income families a viable choice of schools. In the words of educational sociologist Amy Wells, "White and higher-SES [socio-economic status] families will no doubt be in a position to take greater advantage of the educational market."³ Defenders of private schools reply that private schools have an ethnically and economically diverse population.

The best information available on those who exercise choice comes from the New York City scholarship program. The New York School Choice Scholarship Foundation received applications from over twenty thousand students. To be eligible, a family had to qualify for the

federal free lunch program, have a child currently in a public school and live in New York City. To have one's name entered into the lottery, applicants had to participate in eligibility verification sessions during which their children were tested and parents filled out questionnaires. It is possible that the application process attracted a population substantially different from a cross-section of all those eligible.

Those who received scholarships were educationally disadvantaged in several respects. Average pre-test scores of eligible applicants were very low. The median National Percentile Ranking (NPR) score for all students throughout the United States who take the ITBS is 50, but the average NPR score in reading for scholarship recipients was 27; in mathematics, it was 22.

To estimate the extent to which the social background characteristics of the applicant population differed from the potentially eligible population, Rachel Dayette at Harvard's Kennedy School of Government obtained demographic information on the population that would have been eligible had scholarships been offered in 1990, the last year in which a U. S. census was taken.⁴ Her estimate is based on data collected at a time in which New York's economic and social conditions differed from those prevailing at the time parents were surveyed. For one thing, 1990 was a recession year, and 1997, the year of application, was in the midst of a boom. Also, education levels of the adult population have risen. Nonetheless, Dayette's data provide a useful estimate of the extent to which the applicant population differs from those eligible.

Dayette finds no significant difference in the income of applicants compared to the eligible population, once income is adjusted for inflation between 1990 and 1997. Father employment rates are similar. Also, the residential mobility of the applicant population is about the same as among the eligible population. And applicant mothers are no more likely to be foreign born than is the eligible population. However, applicants were more likely to be dependent on government assistance for income. Also, the applicant population is less likely to be non-Hispanic White and more likely to be African-American. If these findings suggest that the applicant population was particularly disadvantaged, other findings point in the opposite direction. Mothers and fathers are considerably more likely to have some college education, English is more likely to be the language spoken in the

household and mothers are more likely to be employed either full or part-time.

In sum, applicants for the New York program were more disadvantaged than the eligible population in some respects, less so in others.

Choosing a School

School choice advocates say they wish to empower parents by giving them a choice among schools. But critics say that parents, especially poor parents, do not have enough information to make intelligent choices and, when given a choice, academic considerations are not paramount. The Carnegie Foundation for the Advancement of Teaching has claimed that “when parents do select another school, academic concerns often are not central to the decision.”⁵ But Hoxby has found that when public schools face greater competition (due to the larger number of school districts within a single metropolitan area), parent involvement in schools increases, student achievement rises, more students attend college, and graduates earn more.⁶

These findings might be limited to middle-class families living in suburban areas; it might be quite different for low-income families. A Twentieth Century Fund report claims that low-income parents are not “natural ‘consumers’ of education...[Indeed,] few parents of any social class appear willing to acquire the information necessary to make active and informed educational choices.”⁷ Similarly, the AFT report on Cleveland suggests that parents sought scholarships not because of “failing public schools” but “for religious reasons or because they already had a sibling attending the same school.”⁸ Public intellectual Nicholas Lemann makes the point most provocatively: When a major impediment to the achievement of poor children is “their parents’ impoverishment, poor education, lax discipline, and scant interest in education,” he asks, isn’t it absurd to think that these same parents will become “tough, savvy, demanding education consumers” once they have the right to choose?⁹

Not much support for such rhetoric can be found in the responses given by the parents of scholarship recipients in Cleveland. Asked why they applied for a scholarship, 85 percent of parents new to choice schools said they wanted to “improve the academic quality” of their child’s education. Second in importance was the “greater safety” to be found at a choice school, a reason given by 79 percent of the

recipients. “Location” was ranked third. Contrary to AFT’s suggestion, “religion” was ranked fourth, said to be very important by just 37 percent. Finally, “friends” were said to be “very important” by less than 20 percent of the scholarship recipients.¹⁰

Families in Washington were also asked to state the importance of various reasons for applying for a school choice scholarship. Once again, “higher standards” and a “better curriculum” were the reasons most frequently said to be “important” by public school parents for applying for a scholarship. Over three-fourths of the applicants gave these clearly academic reasons as an important motive for the application. And over half the parents said they were seeking better teachers and smaller schools with smaller class sizes. Nearly half said that an important reason was “safety.” One of the least important reasons was the “location” of the school, mentioned by only 16 percent of the public school applicants.¹¹

Parental Satisfaction with Choice and Public Schools

Many economists think that customer satisfaction is the best measure of school quality. According to this criterion, there is little doubt that school choice is a success. Both anecdotes and more systematic studies confirm that most participating families love their choice schools. When the winners of the New York lottery were announced last may, winners were ecstatic: “I was crying and crying and crying,” smiled Maria Miranda, a permanently disabled single mother living in Brooklyn. “It was the best Mother’s Day present I could have asked for.”¹² A year into the Cleveland choice program, Pamela Ballard, parent of a new choice school in Cleveland, exclaimed, “HOPE Academy was my last hope. I took my third grade child, who had been in several Cleveland schools and was labeled a ‘problem child.’ I now have a successful child. Where there were D’s and C’s, there are now A’s and B’s.”¹³

In their enthusiasm, Maria Miranda and Pamela Ballard represent the norm, not the exception. According to studies of parental satisfaction in Milwaukee, Indianapolis, and San Antonio, choice schools are more popular than public schools.¹⁴

In a recent survey of choice applicants from public and private schools in Washington, D.C., nearly 60 percent of private school parents gave their school an “A,” as compared to less than a fifth of public

school parents. Significantly, the opinions of public school applicants in Washington, D.C. do not differ from those views of a national sample of public school parents who were asked about the school their oldest child attended.¹⁵ A comparison of a national sample, public school applicants and private school applicants is as follows:

Table 1: Grade given school

| | Public School Parents (National Survey) | DC Low-Income Applicants from Public School | DC Low-Income Applicants from Private School |
|------------|--|--|---|
| A | 22% | 18% | 59% |
| B | 40 | 42 | 30 |
| C | 25 | 31 | 10 |
| D | 8 | 7 | 1 |
| F | 3 | 2 | 0 |
| Don't Know | 2 | | |
| Total | 100% | 100% | 100% |

In other words, applicants from D.C. public schools do not seem to be a particularly discontented group of public school parents. Their overall assessments of their children's schools were essentially the same as those of public school parents nationally. However, both the parents in the national sample and the D.C. applicants were much less likely to give their children's school an "A" than were the applicants from D.C. private schools.

The larger level of satisfaction with private schools becomes especially evident when you ask about specific aspects of school life. When it comes to safety, for example, private school applicants are the more satisfied group of parents. Two-thirds of the private school parents, but only a quarter of the public school parents, were "very satisfied" with school safety. Nearly two-thirds of the private school parents, but less than one-fifth of the public school parents, were "very

satisfied” with their school’s academic program. Two-thirds of the private school parents were “very satisfied” with safety at the school, compared to less than one-fourth of the parents of students still in public schools.

On a couple of items, transportation and location, the differences between the satisfaction levels of the two groups of Washington parents were not so large. For example, two-thirds of the private school parents were very satisfied with the school’s location, but so were half of the public school parents. But on almost every other item in the questionnaire—teachers skills, parental involvement, class size, school facility, respect for teachers, teacher and parent relations—differences in satisfaction levels were large.¹⁶

In Cleveland, one can compare the assessments of parents attending choice schools with the assessments of parents who remained in public schools after indicating an interest in the choice program. Two-thirds of parents new to choice schools reported being “very satisfied” with the “academic quality” of their school, as compared to less than 30 percent of public school parents. Nearly 60 percent were “very satisfied” with school safety, compared to just over a quarter of non-recipients in public school. With respect to discipline, 55 percent of recipients from public school, but only 23 percent of non-recipients in public school, were very satisfied. The differences in satisfaction rates were equally large when parents were asked about the school’s “private attention to the child,” “parent involvement,” “class size,” and school “facility.” The most extreme differences in satisfaction pertained to “teaching moral values”: seventy-one percent of the recipients from public schools were “very satisfied,” but only 25 percent of the non-recipients in public schools were.

It may be hypothesized that these differences in parental satisfaction might be a function of the fact that the comparison group of public student students consists of those who had applied for a scholarship but had not received it. To see whether this was the case, my colleagues and I isolated the satisfaction levels of parents who voluntarily decided to leave their children in public schools. We found that those students with children in established private schools scored considerably higher on a satisfaction scale than these parents.¹⁷

It is also of interest to inquire whether scholarship families coming from public schools were as satisfied as those who had already been

enrolled in private schools. The AFT, in its report on the Cleveland program, suggested that scholarship recipients from private schools were given important advantages. In the words of the report:

Voucher students who had previously been enrolled in private schools held a “monopoly” on placements in the established private schools. In contrast, almost half of the voucher students who moved from public to private schools were enrolled in four schools with little or no educational and financial track record.¹⁸

There is some evidence from the survey in support of the AFT suggestion that scholarship recipients from public schools had a less satisfying educational experience than those from private schools. However, the differences between the two groups are, in most cases, minor. For example, 67 percent of recipients from private schools say they were “very satisfied” with the academic quality of the school, while 63 percent of those from public schools gave the same response. For school discipline, the percentages were 62 percent and 55 percent, respectively. The biggest difference was with respect to school safety, 69 percent as compared to 59 percent.¹⁹

Social Capital

In a well-known study of public and private schools, James Coleman and his colleagues developed the concept “social capital” to refer to the resources that are generated by the more or less accidental interaction among adults in a well-functioning community.²⁰ Coleman thought that Catholic schools were effective at least in part because Catholic parents met one another at religious services, bingo parties, Knights of Columbus ceremonies, scouting events, and other community gatherings. Although these communal occasions had no ostensible educational content, the social capital generated by adult interaction had important, if indirect, educational consequences. At these public gatherings, adults met the parents of their children’s friends and acquaintances and, as a result, parents together could monitor more easily their children’s relationships with peers. Aware that their parents may learn what was happening, young people governed themselves accordingly. Anthony Bryk and his colleagues have shown that the process, deeply rooted in Catholic traditions, is subtle, implicit, but effective.²¹

Recently, Robert Putnam has documented a serious decline in the nation's social capital. People participate less in community activities, group sports, and neighborhood picnics. TV watching, movie going, Web site searching and workout sessions have substituted for bowling, Elks meetings, and ice-cream socials. The consequence, says Putnam, is a growing distrust of one another and a decline in the effectiveness of those governmental services dependent upon the mutual cooperation of citizens.²² Inasmuch as schools and families must work closely together if children are to learn most efficaciously, Putnam's findings raise particularly serious implications for the state of American education.

Not much is known, however, about the potential of public and private schooling for the formation of social capital—even Coleman's own study of public and private schools failed to provide direct information on the amount of social capital in the two educational sectors. Nor is it altogether clear whether social capital is generated more by private or public institutions. On the one hand, it is possible that neighborhood public schools stimulate conversations among parents who meet one another at local school events, community meetings held in local school buildings, and in the course of daily shopping and neighborhood walks. Private schools that serve different groups within a community may fragment and isolate citizens from one another. This seems to be the position taken by Princeton theorist Amy Gutmann, who has argued that "public, not private, schooling is...the primary means by which citizens can morally educate future citizens."²³

All these considerations suggest that community engagement occurs more regularly among those who send their children to the same public school as their neighbors. And perhaps that was once the case in small towns where public schools were both educational organizations and institutions of community integration. On the other hand, any such claims for public schools located in large, central cities have a quaint, romantic tinge. Many factors in today's big cities undermine the public schools' capacity to generate social capital. To maintain privacy and to guard against crime, public schools are not allowed to share lists of family names and addresses. Public school families in the inner city may attend school activities less often, in part because teacher union contracts often sharply limit the amount of time public schools are open to the public. Adult access to school

buildings is limited by metal detectors, locked doors, and stern warnings against engaging in suspicious behavior. Concerns about crime and violence make streets unsafe for unguarded neighborhood encounters. Also, many public school children are bused to school outside their neighborhood in response to school desegregation orders. In sum, potential violence, regulatory constraints, and contractual obligations may restrict community discourse and the formation of social capital in publicly controlled settings.

Meanwhile, the private sector would seem to have some very specific advantages. The very fact that parents are choosing their child's school provides an incentive to search out other parents to learn more about what is happening in alternative educational settings.²⁴ Once a choice has been made, a sense of shared experience exists among those who have made a similar choice. Even those who choose somewhat distinctive cars, whether a Subaru or a Corvette, seem to develop a sense of community when spotting one another on the road.

Private schools give parents plenty of opportunities to contact one another. For one thing, it is easier for private schools to distribute lists of phone numbers and addresses, making it easier for parents to contact one another. Phone lists are readily justified by the private school need to ask parents to call one another to enlist each other's participation in candy sales, newspaper drives, or school auctions. Adults also may find it easier to wander in and out of private than public school buildings. On one occasion I was startled when I was allowed to hunt for the principal's office by wandering unhindered down the hallways of a private school in the heart of an inner city. It turned out the principal's "office" was in the hallway itself, a good place to keep an eye on everyone, he said.

Private schools cannot afford the elaborate bus services that transport public school children. As a result, private school families may need to talk to one another in order to arrange ride sharing or work out safe, shared public transportation routes. Private school families may also meet each other at religious services, bingo parties, and evening school events, more easily scheduled in private schools less burdened by union contracts. All of these situations provide parents with opportunities to talk with one another as well as with school employees.

To see whether private schools actually generate more social capital, applicants for scholarships from Washington, D.C.'s public and private schools were asked a number of questions about their relationships with other parents and with their community. Responses to these questions indicate that Coleman's hypothesis may well be correct. For one thing, parents with children already in private schools were more likely to attend school activities. Also, parents of private school applicants were much more likely to discuss school affairs with one another. Nearly a third of the parents of Washington's public school applicants "seldom or never" discussed school affairs with other parents, whereas only about 15 percent of private school parents reported an equivalent paucity of such conversations. Finally, families of applicants from private schools were more likely to report that they felt part of their community, saying it is more than just a place to live. Approximately three-fourths of the parents of private school applicants reported this feeling, as compared to two-thirds of public school applicants. Private school parents were also more likely to know the parents of their children's friends. In sum, parental responses to questions about civic engagement indicate that more social capital may be formed within the private than the public educational sector.²⁵

School Mobility Rates

Student retention within any one school is a major problem in low-income, central-city communities. According to the U. S. census, residential mobility rates for low-income minorities are very high. For central-city, female-headed households with children between the ages of six and seventeen, the annual residential mobility rate is 30 percent for African-Americans and 35 percent for Latinos. Not every change in residence dictates a change in school attendance. But in Milwaukee's public elementary schools, nearly 20 percent leave even before the end of the school year in June.²⁶ Come the following fall, 35 percent of the students are no longer in attendance at the same public elementary school they attended one year ago.

School Choice and Retention Rates. School mobility is less when parents are given a choice of school. All but 23 percent of the Milwaukee choice students returned to the same elementary school the following fall (as compared to 35 percent in Milwaukee's low-income public schools). Within the school year itself, the percentage leaving

choice elementary schools was as little as 4 percent in 1993 and just 6 percent in 1994 (much lower than the near 20 percent changing from one low-income public elementary school to another).²⁷ In Milwaukee's privately funded program, turnover rates were similar: 6 percent within the school year, 14 percent from one year to the next.

The Cleveland choice schools also did quite well in retaining their students in the first year of the program.²⁸ Only 7 percent of all scholarship families reported not attending the same school for the entire year. Among recipients from public schools the percentage was 10 percent. This mobility rate is approximately the same as the within-the-school-year mobility rate in the Milwaukee elementary school choice program and about half the mobility rate in Milwaukee public elementary schools.

The most important reason recipients new to choice schools gave for changing schools mid-year, given by 3.3 percent, was admission to their preferred private school. Some of these changes may have been due to the fact that full establishment of the voucher program was delayed by the challenge to its constitutionality legal suit, so that some recipients did not receive their scholarships until after the school year had begun. If so, this cause of school mobility should attenuate over time. Another one percent of the students changed schools because they had been admitted to a preferred public school; perhaps Cleveland public schools had given a magnet school opportunity to these families. Another 0.8 percent moved during the course of the year. And 0.8 percent moved for transportation reasons.

All of these reasons for changing schools are understandable and some can be expected to attenuate as the program becomes more established. But a total of nearly 2 percent of the parents said they changed schools because of the "quality" the school, administrative problems, school closure or change, and one-half of one percent of the families said expulsion, disability, or behavior problems had led to a school change, signs that some private schools were not working well for some families.

Parents were also asked whether they planned on sending their child to the same school next year. A positive response was given by 81 percent of scholarships recipients from public schools. If actual choices are consistent with these plans, the mobility rate in Cleveland from one year to the next is approximately the same as in the Milwau-

kee choice program.

Choice critics have suggested that private schools may routinely expel or not readmit students for a second year, if they are not keeping pace with their peers. Defenders of private schools say they use their authority to deny readmission sparingly. To ascertain whether low-income parents were encountering difficulties in obtaining readmission for a second year, those changing schools were asked the reason for the change. Less than one-half of one percent of recipients from public schools said their child could not be readmitted to the private school in which they had been enrolled. In other words, while refusal to be readmitted is not unknown, neither has it been practiced to any significant degree.

Parents instead gave a wide range of other reasons for planning to move their child to another school in the fall of 1997. Six percent gave quite practical reasons, such as the family's moving from the area or the child's change in grade level (necessitating a school change). Another one and one-half percent found another private school they preferred, and one-half percent found a preferable public school. Either transportation difficulties or financial costs posed an obstacle for another 2.4 percent. But 6.5 percent of all recipients from public schools were leaving because they were not satisfied with the quality of the school or were disappointed in the way in which the CSTP program operated. For a small but still important fraction of scholarship recipients, the program, at least in its first year, was not a success. Choice critics may see this as a sign of program failure, because not all families' expectations were fulfilled. However, school choice supporters may interpret this as evidence that choice allows a parent to make a move when things do not seem to be working out.

Scholarship usage. But if retention does not seem to be any more of a problem for private than for public schools (indeed, it seems less of one), can low-income voucher recipients find admission to a private school in the first place? Some answers to this question are available from the New York City scholarship program.²⁹ Students were given scholarships in May of 1977, which could be used the following September. Despite the fact that the scholarships were made available after many private schools had already admitted students for the following year, 75 percent of those offered scholarships made use of them. Although the reasons for non-participation by the remaining

twenty-five percent have yet to be reported by the evaluation team, the demographic characteristics of users and non-users are available.

Overall, users and non-users did not differ in their average math and reading pre-test scores. Levels of current educational satisfaction and involvement were similar for those who took the scholarship and those who did not. For example, both users and non-users gave public schools a grade of C+, and both groups reported similar levels of satisfaction with the location of the school, school safety, teaching, class size, school facility, and communications regarding student progress. Both groups also reported similar levels of involvement with their child's education as well as interaction with public school officials about their child's education.

Users and non-users do differ with respect to some social and educational characteristics, sometimes in unexpected ways. On the one hand, those who took the scholarship were somewhat more likely to be African-American and less likely to be White. On the other hand, those who took the scholarship had somewhat higher incomes and were somewhat less likely to be dependent on federal subsidy programs, such as food stamps, welfare and Medicaid. Mothers of winners who accepted and made use of the scholarship are slightly better educated than non-users, but the fathers are similarly educated. Applicants who took the scholarship were somewhat more likely to come from residentially stable homes and less likely to come from homes where someone speaks English. Those who took the scholarship were less likely to have been in a special education program.

The findings from the New York survey tend to confirm evidence from other studies of participation in central-city school voucher programs. When the programs are restricted to those of low income, the programs succeed in recruiting a decidedly disadvantaged population. However, there is a modest tendency to recruit the more socially integrated segment of that population.³⁰

Learning in Choice Schools

These positive results would mean little, perhaps, if students did not learn more in choice schools. Since controversy over this question has raged for more than a quarter of a century, it is best to place recent findings in historical context.

Early studies. The first large scale study to show that students

learn more in private high schools was conducted by a research team headed by the distinguished University of Chicago sociologist, James Coleman.³¹ A decade later another national study showing similarly positive effects was carried out by John Chubb and Terry Moe at the Brookings Institution.³²

Choice critics attacked both studies for not adequately correcting for “selection effects,” an issue that has become central to the current debate. Says former Wisconsin State school superintendent and arch-choice critic Herbert Grover, “Do private school children outperform children in public schools? It’s hard to imagine that they wouldn’t, given the initial advantages they enjoy from their parents.”³³ Both the Coleman and the Chubb-Moe studies anticipated this argument by taking into account family characteristics such as education and income. But critics say that no amount of statistical tinkering can ever fully correct for the selection effect: Families who pay to send their child to private school are almost certainly more involved in and concerned about their child’s education, even after adjusting for demographic characteristics.³⁴ Even the Coleman research team admitted, the “difference between parents, by its very nature, is not something on which students in public and private schools can be equated” in a statistical analysis.³⁵

New research strategies. School choice experiments are providing researchers with new opportunities to circumvent this selection problem. For one thing, they are limited to inner-city children from low-income families. More importantly, to ensure fairness, scholarship winners are sometimes chosen by lottery, giving these programs the potential of becoming a classic randomized experiment of the kind found in the best medical research.

The advantage of a randomized experiment for researchers derives from its intrinsic simplicity. When a lottery is used to pick scholarship winners, the two groups of students are similar except for the fact that the names of one group were drawn from the hat. When one works with information from a classic randomized experiment, one can in fact reasonably assume that students from public and private schools can be “equated.” If children from the winning group do better than the remainder, one can reasonably conclude that it was the school, not the family, that made the difference.

Unfortunately, most school choice experiments conducted thus

far have not conformed to a classic randomized experiment. The privately funded programs in Indianapolis, San Antonio and Milwaukee all admitted students on a first-come, first-served basis. Such admission procedures have a fairness of their own and they are easy to administer. It is also the case that test score results from these experiments are mainly positive. For example, the scores of students participating in the school choice program in San Antonio increased between 1991–92 and 1993–94, while those of the public school comparison group fell.

Cleveland results. Students also seem to be learning in Cleveland choice schools. In the summer of 1997 my colleagues and I reported significant test score gains in reading and math for 263 students who attended two newly established choice schools, the Hope schools, which serve 25 percent of the choice students previously in public schools.³⁶ These score findings were subsequently challenged on two grounds: 1) the gains observed during the 1996–97 school year could be expected to fade away over the summer break and 2) another evaluation by Indiana University's School of Education found no programmatic effects on the test scores of 94 third grade choice students.

To test the summer-fade theory, we obtained test score data from the students returning to the Hope schools in the fall of 1997. Although the test score gains did slip somewhat, students in grades one through three still gained in their first year an estimated 8.6 national percentile rank (NPR) points in math, and 5.7 percentile points in reading, gains that were statistically significant.

The Indiana University evaluation suffers from a number of limitations:

1. The study analyzed only third grade test scores; no information is available for students in kindergarten, first or second grades.

2. To control for student achievement prior to the beginning of the scholarship program, the evaluation used implausible second grade scores collected by the Cleveland Public Schools (CPS) before the beginning of the choice experiment when students were still in public school. These dubious second grade scores tell us that students from central-city, low-income, largely one-parent families were performing in second grade, on average, at approximately the national average, obtaining, for example, a 51.6 normal curve equivalent (NCE) percent-

tile score on the vocabulary test. Yet in an independently proctored test administered one year later, the same students scored, on average, 39.6 NCE points in reading. Clearly, the second grade test scores were inflated. Not even the harshest critics of big-city schools claim that inner-city students lose ground this fast.

3. The evaluation excluded Hope school students from the evaluation, despite the availability of comparable test score data.

4. The Indiana research team used inappropriate statistics that have been shown to underestimate program effects.

After Indiana University released the data from its evaluation, my colleagues and I addressed some of these deficiencies by 1) incorporating the Hope school test results into the analysis, 2) using more appropriate statistical techniques, and 3) reporting results based on analyses that both include and exclude the doubtful second grade data supplied by the Cleveland Public Schools. When these corrections are made and the implausible second grade test scores are removed from the regression analysis, choice school effects are positive in all subject domains. Scholarship students score 4.1 NCE points higher in language, 4.7 points higher in science, 2.5 points higher in reading, 2.5 points higher in social studies, and 0.56 points higher in math. All but the math results are statistically significant at the .1 level.

If the dubious second grade test scores are included in the analysis, results remain positive in all domains except math. The magnitude of the effects is not as great. Even so, the choice school effects in language arts are 2.3 NCE points and in science, 2.7 points, effects that are statistically significant.

All findings from Cleveland may be contaminated by selection effects. Choice students may be particularly disadvantaged. After all, why would parents remove their child from public schools if their son or daughter were doing well? Or they may be particularly disadvantaged. Perhaps highly motivated parents want their children in private school, even if students are learning in their current school.

Milwaukee experiment. Only in Milwaukee are data available from a randomized experiment.³⁷ The original evaluation of the Milwaukee choice program reported no systematic achievement effects of enrollment in a private school.³⁸ But this evaluation did not carefully analyze the data from the randomized experiment but instead compared students from low-income families with public school

students from more advantaged backgrounds, leaving open the possibility that unobserved background characteristics could account for these negative findings.

In 1996, the data became available on the World Wide Web. When Greene, Du, and I examined these data, we found that enrollment in the program had only limited positive effects during the first two years a student was in the program. But choice students made larger gains in years three and four, as much as one quarter of a standard deviation in reading and one third of a standard deviation in mathematics.³⁹

That the improved performance does not become substantial until the third and fourth years is quite consistent with a common sense understanding of the educational process. Choice schools are not magic bullets that transform children overnight. It takes time to adjust to a new teaching and learning environment. The disruption of switching schools and adjusting to new routines and expectations may hinder improvement in test scores in the first year or two of being in a choice school. Educational benefits accumulate and multiply with the passage of time. As Indianapolis choice parent Barbara Lewis explains the process: "I must admit there was a period of transition, culture shock you might call it. He had to get used to the discipline and the homework...But Alphonso began to learn about learning, to respect the kids around him and be respected, to learn about citizenship, discipline and doing your lessons...My son has blossomed into an honor roll student."⁴⁰

Future research. Cecilia Rouse has suggested that the Milwaukee results are not a function of school choice per se but of the smaller classes in choice schools.⁴¹ The study in question has many technical limitations, but even if its findings are corroborated by future research, they raise a new set of questions: Why do Milwaukee choice schools, with more limited resources, have smaller class sizes than public schools? Are private schools better able to find efficient ways of using limited resources? Do they provide more effective education by concentrating resources on smaller class sizes rather than paying higher teacher salaries or hiring more administrators? These are questions well worth exploring in future studies.

We also need to conduct more carefully designed randomized experiments of school choice. The data from the randomized experiment in Milwaukee are the best available, but they are still not defini-

tive. The number of participating schools was small and valuable data is missing. Higher quality information may emerge from evaluations of experiments now beginning in New York City, Dayton, and Washington, D.C. The 1,200 students participating in the New York program were chosen by lottery from the large pool of over 20,000 applicants, from which a control group is being selected. Similar lotteries were held in the spring of 1998 in Dayton and Washington. It remains to be seen whether the payoff from private schooling in these cities is as great as some anticipate.⁴²

College attendance. School choice programs are too recent to provide information on their effects on college attendance, though the PAVE program in Milwaukee reports that 75 percent of those who have graduated from high school have gone on to college.⁴³ More systematic information on the effects of attendance at a Catholic high school are contained in a recent University of Chicago analysis of the National Longitudinal Survey of Youth, conducted by the Department of Education, a survey of over 12,000 young people. Students from all racial and ethnic groups are more likely to go to college if they attended a Catholic school, but the effects are the greatest for urban minorities. The probability of graduating from college rises from 11 to 27 percent, if a such a student attends a Catholic high school.⁴⁴

The University of Chicago study confirms results from two other analyses that show positive effects for low-income and minority students of attendance at Catholic schools on high school completion and college enrollment.⁴⁵ As one researcher summarized one of these studies, it “indicates a substantial private school advantage in terms of completing high school and enrolling in college, both very important events in predicting future income and well-being. Moreover,...the effects were most pronounced for students with achievement test scores in the bottom half of the distribution.”⁴⁶

Ethnic Relations and Political Tolerance

The purpose of education is to teach more than math and reading; it is also to prepare citizens for a democratic society. According to critics, school choice will provoke the formation of schools specializing in witchcraft, Black nationalism, and the political thought of David Duke. Says former *New Republic* editor, Michael Kelly, “Public money is shared money and it is to be used for the furtherance of

shared values, in the interests of *e pluribus unum*. Charter schools and their like...take from the *pluribus* to destroy the *unum*.”⁴⁷ Only schools operated by a government agency, it is claimed, can preserve democracy. Princeton theorist Amy Gutmann puts it this way: “public, not private, schooling is the primary means by which citizens can morally educate [sic] future citizens.”⁴⁸ Or, in the words of Felix Frankfurter, writing the Supreme Court opinion in *Minersville Board of Education v. Gobitis* (1940), “We are dealing here with the formative period in the development of citizenship. Public education is one of our most cherished democratic institutions.”⁴⁹

Despite the scare tactics and the rhetorical flourishes, choice critics have failed to offer much evidence that school choice will balkanize America. No reasonable person can believe the American public would routinely turn over school dollars to extremist groups any more than it will allow airlines to fly unregulated or meat to be marketed without inspection. Only the most extreme libertarians think school choice should mean completely unregulated choice. As RAND scholar Paul Hill says, “In the long run, schools in a publicly funded choice system will be public because they’ll be regulated.”⁵⁰ But this should not mean that regulated schools are the same as government operated schools. To make that argument is to claim that government inspection of the meat processing industry constitutes an establishment of a nationwide system of collective farms.

Despite the scare tactics and the rhetorical flourishes, choice critics have failed to offer much evidence that school choice will balkanize America.

Students in private schools today are in fact less racially isolated than their public school peers. According to 1992 Department of Education data, 37 percent of private school students are in classrooms whose share of minority students is close to the national average, as compared with only 18 percent of public school students. Not only are private school students more likely to be in well-integrated classrooms, but they are less likely to be in extremely segregated ones (either more than 90 percent White or 90 percent minority). Forty-one percent of the private school students are in highly segregated classrooms, as compared to 55 percent of their public school peers.

Private school students also report more positive relationships

with students from other racial and ethnic groups. According to the same Department of Education survey, they are significantly more likely to have cross-racial friendships than are students at public schools. And students, teachers, and administrators at private schools all report fewer racial problems.

Students in private schools today are in fact less racially isolated than their public school peers.

Private school students are also more community spirited. According to the 1992 survey, students at private schools are more likely than public school students to think that it is important to help others and volunteer for community causes. They also are more likely to report that they in fact did volunteer in the past two years and to say their school expected them to do so.⁵¹

Children Remaining in Public Schools

But how about those left behind? For many critics of school choice, this is the critical question. National Education Association President Robert F. Chase says “The real test of an urban voucher system is whether it can accommodate all who want to take advantage of it, while not simultaneously destroying the public schools by siphoning away their funding as well as their talented students and teachers.”⁵² Similarly, the American Federation of Teachers, in its critique of the Cleveland scholarship program, says that “instead of being distracted by promises to ‘save’ a handful of students, policymakers could be improving the achievement of all of our youngsters.”⁵³

In making these arguments, choice critics often assume that 1) the more able children from more privileged families will be the first to leave public schools, 2) children learn mainly from their peers, and 3) public schools will not respond to the challenge posed by choice. None of these assumptions is well supported by available data.

Who goes to choice schools? First, there is little reason to expect the best and the brightest to flee the public schools to take advantage of inner-city choice programs. For one thing, most big city school systems have their own programs—magnet schools, gifted classes, and honor’s tracks—that siphon off the best into specialized educational programs. Also, parents can be expected not to change their child’s school, unless they have doubts about his or her progress. In Milwaukee, for example, parents who signed up for choice schools were more

likely to say the school had been in contact with them, probably because their child was having difficulties.⁵⁴ Student test score data also indicate that choice applicants are less than the cream of the crop. The percentage of applicants to New York City's choice program performing at grade level was only 26 percent in reading and 18 percent in mathematics, far below the 55 percent reported for all New York City elementary students reported by the New York City school system.⁵⁵ However, in the first-come, first-served programs in Indianapolis and San Antonio, school choice applicants may have been above the norm for the city as a whole.⁵⁶

Peer groups effects. Even so, to claim that "those left behind" suffer as a result depends on the strange assumption that children learn not from teachers but from other children. This idea can be traced back to a 1966 school desegregation study, in which it was found that most school factors (e.g., per pupil expenditures, class size, teacher salary, and the number of books in the school library) had little measurable effect on student achievement.⁵⁷ However, the socio-economic background of other children in the school did have a detectable effect on achievement, a tantalizing fact that was over interpreted to mean that children learned mainly from their peers. However, in a comprehensive review of the peer group literature, sociologists Christopher Jencks and Susan Mayer found these effects to be small and inconsistent from one study to the next. They offer an intriguing explanation: peer group effects could be substantial but offsetting, they say. On the one hand, students thrive by picking up facts, ideas, and phrases from their more capable associates. On the other hand, they get discouraged when they cannot keep up. The two factors, working in opposite directions, may have roughly equivalent educational effects.⁵⁸

Jencks and Mayer may be right, but the matter deserves still further consideration. One of James Coleman's first studies noticed that, in private schools, group leaders were academics, while in public schools the popular students were sports stars and cheerleaders.⁵⁹ As Cornell professor John Bishop has put it, "popularity depends first and foremost on being good in sports. Being smart is OK, but being studious...increases the chances of being picked on."⁶⁰ To explain the difference between public and private schools, Coleman pointed out that, in both types of schools, the most popular students were those

who brought honor to the whole school. In private schools, the whole school benefits from high academic performance, because academic achievement enhances the reputation of the school with potential customers. In public schools, it is often the sports program, more than the academic performance of a few that brings credit to the school.

If Coleman and Bishop are correct, then peer group effects may in fact help explain the greater learning that takes place in private school. It is not so much that private school students are more capable; it is that the more intellectually capable students carry more influence in this setting and “nerds” are subject to less harassment. The problem faced by those “left behind” in the public schools is not the lack of capable peers but the fact that academic study has in most inner-city public schools negative cache.

The systemic impact of vouchers and scholarships that enhance parental school choice has been a matter of intense public and academic debate. Some have argued that school choice will segment and stratify the country’s educational system, with the best and the brightest students attending private schools, while public schools are left with a particularly unmotivated and disadvantaged population.

Will public schools meet the challenge? Choice supporters claim that a choice-based system will motivate the public schools to respond vigorously to new competitors, producing an across-the-board upsurge in the U. S. education. Hoxby has found that students learn more, if they live in metropolitan areas where public schools are subject to greater competitive pressures, both from private schools and other public school systems.⁶¹ She also finds that in competitive contexts public schools are less costly and give greater emphasis to academic achievement. In a study of inter-district choice in Massachusetts, Armour, and Peiser found that when school districts lost students to neighboring districts, they developed partially successful strategies to attract students back, stemming future losses.⁶² And in Albany, the school board responded vigorously in 1997 to a privately funded scholarship program that offered scholarships to all students at a particular school.

Yet all these bits of information are still fragmentary and incomplete. The Albany case is at this point little more than a telling anecdote. Armour and Peiser’s evidence comes from just a few school districts. And Hoxby’s studies, though fascinating and important,

depend upon complex econometric analyses which require strong theoretical assumptions.

The San Antonio experiment. The scholarship program that has begun in the Edgewood Independent School District (EISD) in San Antonio provides an opportunity for assessing the impact of school choice of those remaining in public schools. The Edgewood voucher program, sponsored by the CEO-America foundation, is offering scholarships to all low-income students in the school district. If students attend private schools within the Edgewood school district or newly established schools outside the district, but within the San Antonio metropolitan area, elementary students will receive scholarships worth \$3,600; high school students will receive scholarships worth \$4,000. If students attend already established schools outside the Edgewood school district, students will receive scholarships that are equivalent to the tuition at the school during the 1997–98 school year or the above amounts, whichever is less. The program is projected to continue for ten years or until a publicly funded program is established. Students accepting scholarships are guaranteed scholarships throughout their elementary and high school years.

Edgewood schools serve an economically disadvantaged, predominantly Latino population. Ninety-three percent of the students attending schools in Edgewood in 1996–97 were considered economically disadvantaged by the Texas Department of Education. Ninety-six percent were Hispanic, two percent were African-American 1.8 percent were White, with the remainder Asian, Pacific Islander, or Native American. Students with limited English proficiency constituted 24.3 percent of the population.

Edgewood had 14,180 students in 1996–97. The students are distributed quite uniformly across the first ten years of schooling, grades kindergarten through ninth. However, the numbers of students in high school tails off dramatically. Apparently, the high school dropout rate is a serious problem within the Edgewood school district.

Edgewood is highly dependent upon state aid. As a result, any school choice program that attracts large numbers of students away from the public schools to choice schools will result in a sharp decline in state aid—as long as state aid formulas remain conditional on the number of students enrolled in the public schools. The total revenue budgeted for the district amounted to \$83,978,251, or \$5,852 per

pupil. Eight per cent of the money is from local tax sources, 82 percent comes from the state, 6.2 percent comes from the federal government, and another 2.1 percent comes from other local sources. Because of the high dependence of Edgewood on external funding, the public schools will be under strong financial pressure to find ways of responding to the challenge posed by the scholarship program.

Conclusions

Many studies of school choice thus far are limited to small-scale experiments. The effects of vouchers and scholarships may be quite different once they are introduced on a larger scale. The answers may be soon in coming. Now that the expansion of the Milwaukee choice program has been declared constitutional, as much as 15 percent of the Milwaukee public school population (approximately 15,000 students) may participate. How many will apply? How many will be accepted into private schools? What new schools will form? Which of the existing schools will expand?

We recommend that further large-scale experiments be undertaken. Specifically, we recommend that Congress enact legislation giving all the students living in the District of Columbia an opportunity to attend the school of their choice.

The costs of public education in the district are extremely high and the quality of the services being rendered appears to be quite inadequate. The population receiving the services is among the most needy in the nation. According to a poll taken by the *Washington Post*, a majority of the citizens living in the district and sixty percent of the city's African-Americans favor a voucher program for their schools.⁶³ Support is particularly strong among low-income respondents.

The answers to the ten questions posed in this paper do not indicate that school choice is a panacea that can resolve all of society's

It is time for some serious experimentation.

problems. But they do suggest it is time to rethink the way we organize our public educational system.

Such rethinking seems to be taking place. Arthur Levine, president of Columbia University Teachers

College, throughout his career an opponent of school voucher programs, has "reluctantly concluded" that "a limited school voucher program is now essential for the poorest Americans attending the worst public schools."⁶⁴ Or, as Urban League president Hugh Price

puts it, "If urban schools...continue to fail in the face of all we know about how to improve them, then parents will be obliged to shop elsewhere for quality education. We Urban Leaguers believe passionately in public education. But make no mistake. We love our children even more." But the final, succinct words are best left to William Raspberry: "It is time for some serious experimentation."⁶⁵

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Table 2: Characteristics of Big-City School Choice Programs for Low-Income Families

| City ^a | First School Year | Sponsor | Religious Schools Included | Grades | Initial Enrollment | 1996-97 Enrollment | Number of Schools 1996-97 | Maximum Payment 1997-98 (dollars) | Selection Method |
|-------------------|-------------------|--------------------------|----------------------------|---------|--------------------|--------------------|---------------------------|-----------------------------------|------------------|
| Milwaukee | 1990-91 | State of Wisconsin | No | PreK-12 | 341 | 1,606 | 20 | 4,700 | Lottery |
| Indianapolis | 1991-92 | ECCT ^b | Yes | 1-8 | 746 | 1,014 | 70 | 800 | First-come |
| Milwaukee | 1992-93 | PAVE ^c | Yes | K-12 | 2,089 | 4,465 | 97 | 1,000/elem. 1,500/high | First-come |
| San Antonio | 1992-93 | CEO ^d | Yes | 1-8 | 930 | 995 | 49 | One-half Tuition | First-come |
| Cleveland | 1996-97 | State of Ohio | Yes | K-3 | 1,196 | 4,000 ^j | 55 | 2,500 | Lottery |
| New York City | 1997-98 | SCSF ^e | Yes | 1-5 | 1,200 | 1,700 ⁱ | 250 | 1,400 | Lottery |
| Washington, DC | 1998-99 | WSF ^f | Yes | K-12 | 1,000 | 1,000 ⁱ | n.a. | 1,700 | Lottery |
| Dayton | 1998-99 | PACE ^g | Yes | K-12 | 650 | 650 ⁱ | n.a. | 1,200 | Lottery |
| San Antonio | 1998-99 | CEO/Horizon ^h | Yes | K-12 | 700 | 700 ⁱ | n.a. | 3,600/elem. 4,000/high | Unlimited |

n.a. Not available.

^a Programs having more than 900 students.^d Children's Educational Opportunity.^g Parents Advancing Choice in Education.^b Educational Choice Charitable Trust.^e School Choice Scholarships Foundation.^h Children's Educational Opportunity/Horizon.^c Partners Advancing Values in Education.^f Washington Scholarship Fund.ⁱ 1998-99

Source: Information obtained from program operators by author.

Notes for Implications of School Choice Experiments for Urban Education

¹ Though the fourth graders trailed students in Japan, Korea, the Netherlands, and the Czech Republic, they did better than students in England, Norway, and New Zealand. "U.S. 4th Graders Score Well in Math and Science Study," *Education Week*, June 18, 1997, p. 22. The U.S. eighth graders clearly outscored only seven countries—Lithuania, Cyprus, Portugal, Iran, Kuwait, Columbia, and South Africa—none of them usually thought to be U.S. peers. "U.S. Students Rank about Average in 41-Nation Math, Science Study," *Education Week*, November 27, 1996, p. 32. United States National Research Center, "TIMMS High School Results Released," Michigan State University, College of Education, Report 8, April 1998.

² Paul E. Barton and Richard J. Coley, "Growth in School: Achievement Gains from the Fourth to the Eighth Grade," Policy Information Center, Research Division, Educational Testing Service, Princeton, New Jersey, May 1998.

³ Amy Stuart Wells, "African-American Students' View of School Choice," in Bruce Fuller and Richard Elmer, eds., *Who Chooses? Who Loses? Culture, Institutions, and the Unequal Effects of School Choice* (New York: Teachers College, 1996) p. 47.

⁴ Rachel Dayette, "Selection into Voucher Programs: How do Applicants Differ from the Eligible Population?" Paper prepared for Program on Education Policy and Governance, Harvard University, forthcoming. Information is drawn from the Integrated Public Use Microdata Series data set of the U.S. Census, which has been created at the University of Minnesota.

⁵ Carnegie Foundation for the Advancement of Teaching, *School Choice: A Special Report Princeton* (New Jersey: Carnegie Foundation for the advancement of Teaching, 1992), p. 13.

⁶ Caroline M. Hoxby, "Analyzing School Choice Reforms Using America's Traditional Forms of Parental Choice," in Paul E. Peterson and Bryan C. Hassel, *Learning from School Choice* (Brookings, 1998), p. 144.

⁷ Carol Ascher, Norm Fruchter, and Robert Berne, *Hard Lessons: Public Schools and Privatization* (New York: Twentieth Century Fund Press, 1996), pp. 40–41.

⁸ Dan Murphy, F. Howard Nelson and Bella Rosenberg, "The Cleveland Voucher Program: Who Chooses? Who Gets Chosen? Who Pays?" (New York: American Federation of Teachers, 1997), p. 10.

⁹ Nicholas Lemann, "A False Panacea," *Atlantic* (January 1991), p. 104, as quoted in Abigail Thernstrom, *School Choice in Massachusetts* (Boston: Pioneer Institute for Public Policy Research, 1991), p. 40.

¹⁰ Jay P. Greene, William G. Howell, and Paul E. Peterson, "Lessons from the Cleveland Scholarship Program," in Paul E. Peterson and Bryan C. Hassel, *Learning from School Choice* (Brookings, 1998), pp. 263–65.

¹¹ Paul E. Peterson, Jay P. Greene, William G. Howell, and William McCready, "Initial Findings from an Evaluation of School Choice Programs in Washington, DC." Occasional Paper, Harvard University, John F. Kennedy School of Government, Taubman Center on State and Local Government, Program on Education Policy and Governance, September 1998.

¹² Jacques Steinberg, "Students Chosen for Grants to Attend Private Schools," *New York Times*, May 13, 1997, B3.

¹³ Improving Educational Opportunities for Low-Income Children Hearings before the Senate Committee on Labor and Human Resources, 105 Cong., 1 Sess. (Government Printing Office, 1997), p. 10.

¹⁴ Paul E. Peterson, "School Choice: A Report Card," in Peterson and Hassel, 1998, p. 18.

¹⁵ Lowell C. Rose and Alec M. Gallup, "The 30th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes toward the Public Schools," <http://www.kiva.net/pdkintl/kappan/kp9809-1.htm>.

¹⁶ Peterson, Greene and Howell, "Initial Findings from Washington," p. 18.

¹⁷ These results constitute a half a standard deviation difference on the satisfaction scale and are significant at the .001 level. Full results are presented in Jay P. Greene, William Howell, and Paul E. Peterson, "Lessons from the Cleveland Scholarship Program," in Peterson and Hassel, eds. *Learning from School Choice*, Table 14–7.

¹⁸ Murphy et al., p. ii.

¹⁹ These results are reported in detail in Greene, Howell, and Peterson, Table 14.6.

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²¹ Anthony S. Bryk, Valerie E. Lee, and Peter B. Holland, *Catholic Schools and the Common Good* (Harvard University Press, 1993).

²² Robert Putnam, "The Prosperous Community: Social Capital and Public Life," *American Prospect*, 13: 1993, pp. 35–42; Robert Putnam, "Bowling Alone: Democracy in America at Century's End," Alex Hadenius, ed., *Democracy's Victory and Crisis* (New York: Cambridge University Press, 1997), pp. 27–70. For commentary and criticism of Putnam's thesis, see the symposium in the *American Prospect*, March–April, 1996: 17–28; Michael Schudson, "What if Civic Life Didn't Die?" 17–20; Theda Skocpol, "Unraveling From Above," 20–25; Robert D. Putnam, "Robert Putnam Responds,"

26–28; Richard M. Valelly, “Couch-Potato Democracy?” 25–26; Robert D. Putnam, “Robert Putnam Responds,” 26–28.

²³ Amy Gutmann, *Democratic Education* (Princeton University Press, 1987), p. 70.

²⁴ In Mark Schneider, Paul Teske, Melissa Marschall, Michael Mintrom, and Christine Roch, “Institutional Arrangements and the Creation of Social Capital: The Effects of School choice,” *American Political Science Review* 91 (1977): 82–93, the authors find that, within the public sector, social capital increases when school choice programs are established.

²⁵ Peterson, Howell and Greene, “Initial Findings from Washington,” pp. 15–16.

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²⁷ Paul E. Peterson, “A Critique of the Witte Evaluation of Milwaukee’s School Choice Program,” Occasional Paper 95–2, Harvard University, Center for American Political Studies, February 1995, pp. 29–36. See also Paul E. Peterson, “The Milwaukee School Choice Plan: Ten Comments on the Witte Reply,” Harvard University, Center for American Political Studies, Occasional Paper 95–3 (March 1995).

²⁸ Greene, Howell and Peterson, “Lessons From Cleveland,” pp.366–69.

²⁹ Paul E. Peterson and others, “Initial Findings from the Evaluation of the New York School Choice Scholarships Program,” Occasional Paper, Harvard University, John F. Kennedy School of Government, Taubman Center on State and Local Government, Program on Education Policy and Governance, December 1997.

³⁰ Peterson, “School Choice: A Report Card,” in Peterson and Hassel, eds., *Learning from School Choice*, ch. 1.

³¹ James S. Coleman, Thomas Hoffer, and Sally Kilgore, *High School Achievement* (New York: Basic Books, 1982); James S. Coleman, and Thomas Hoffer, *Public and Private Schools: The Impact of Communities* (New York: Basic Books, 1987).

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³⁴ Arthur S. Goldberger and Glen G. Cain, “The Causal Analysis of Cognitive Outcomes in the Coleman, Hoffer, and Kilgore Report,” *Sociology*

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³⁷ The initial evaluation of the Milwaukee program was conducted by a Wisconsin research team which has issued the following reports: John F. Witte, John F. “Achievement Effects of the Milwaukee Voucher Program.” Paper presented at the American Economics Association Annual Meeting, New Orleans, January 1997; John F. Witte, “First Year Report: Milwaukee Parental Choice Program.” Department of Political Science and the Robert M. La Follette Institute of Public Affairs, University of Wisconsin-Madison (November 1991); John F. Witte, Andrea B. Bailey, and Christopher A. Thorn, “Second Year Report: Milwaukee Parental Choice Program.” Department of Political Science and the Robert M. La Follette Institute of Public Affairs, University of Wisconsin-Madison (December 1992); John F. Witte, Andrea B. Bailey, and Christopher A. Thorn, “Third Year Report: Milwaukee Parental Choice Program.” Department of Political Science and the Robert M. La Follette Institute of Public Affairs, University of Wisconsin-Madison (December 1993); John F. Witte, Christopher A. Thorn, Kim M. Pritchard, and Michele Claibourn. “Fourth Year Report: Milwaukee Parental Choice Program.” Department of Political Science and the Robert M. La Follette Institute of Public Affairs, University of Wisconsin-Madison (December 1994); John F. Witte, Troy D. Sterr, and Christopher A. Thorn, “Fifth Year Report: Milwaukee Parental Choice Program.” Department of Political Science and the Robert M. La Follette Institute of Public Affairs, University of Wisconsin-Madison (December 1995).

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³⁸ Witte 1991; Witte, Bailey, and Thorn 1992; Witte, Bailey, and Thorn 1993; Witte, Thorn, Pritchard, and Claiborn 1994; Witte, Sterr, and Thorn 1995; Witte 1997.

³⁹ The findings summarized in this section are presented in full in Jay P. Greene, Paul E. Peterson, and William G. Howell, "School Choice in Milwaukee: A Randomized Experiment," in Peterson and Hassel, eds. *Learning from School Choice*, ch. 13.

⁴⁰ Barbara Lewis, Prepared Remarks for testimony before the Senate Committee on Labor and Human Resources, "Improving Educational Opportunities for Low-Income children," July 29, 1997.

⁴¹ Cecilia Elena Rouse, "Schools and Student Achievement: More Evidence from the Milwaukee Parental choice program," Proceedings of a Conference on Excellence in Education, *Education Policy Review*, Federal Reserve Bank of New York, March 1998, vol. 4, no. 1.

⁴² David Myers at Mathematica and I plan are to follow both test and control groups in New York over the next four years. The University of Dayton is undertaking a similar study in Dayton, and Northern Illinois University is undertaking a study in Washington, DC.

⁴³ Dan McKinley, "Memorandum for the Board of Directors of Partners Advancing Values in Education," Partners Advancing Values in Education, Milwaukee, Wisconsin, August 25, 1997.

⁴⁴ Derek Neal, "The Effects of Catholic Secondary Schooling on Educational Achievement" (Harris School of Public Policy, University of Chicago, and National Bureau for Economic Research, 1996), p. 26.

⁴⁵ William N. Evans and Robert M. Schwab, "Who Benefits from Private Education? Evidence from Quantile Regressions" (Department of Economics, University of Maryland, 1993); David Siglio and Joe Stone, "School Choice and Student Performance: Are Private Schools Really Better?" (University of Wisconsin Institute for Research on Poverty, 1977).

⁴⁶ John F. Witte, "School Choice and Student Performance," in Helen F. Ladd, ed., *Holding Schools Accountable: Performance-Based Reform in Education* (Washington, DC: Brookings, 1996), p. 167.

⁴⁷ Michael Kelly, "Dangerous Minds," *New Republic*, December 30, 1996.

⁴⁸ Amy Gutmann, *Democratic Education* (Princeton: Princeton University Press, 1987), p. 70.

⁴⁹ *Minersville Board of Education v. Gobitis*, 310 U.S. 598 (1940).

⁵⁰ Paul Hill, *Reinventing Public Education* (Chicago: University of Chicago Press, 1997), p. 98.

⁵¹ These findings and others are reported in Jay P. Greene, "Private Schools and Civic Education," in Paul E. Peterson and Bryan Hassel, eds., *Learning from School Choice* (Brookings, 1998).

⁵² Robert F. Chase, "Save Urban Schools by Bleeding Them?" *Brookings*, quarterly newsletter from the Brookings Institution, Washington, DC, vol. 8, no. 3 (Summer 1998), p. 6.

⁵³ Murphy et al., p. iv.

⁵⁴ Witte, "First Year Report," and Peterson, "A Critique of the Witte Evaluation."

⁵⁵ Peterson and others, "Initial Findings from New York."

⁵⁶ R. Kenneth Godwin, Frank R. Kemerer, and Valerie J. Martinez, "Comparing Public Choice and Private Voucher Programs in San Antonio," in Peterson and Hassel, *Learning from School Choice*, pp. 275–306; David J. Weinschrott and Sally B. Kilgore, "Evidence from the Indianapolis Voucher Program," in Peterson and Hassel, eds., *School Choice*, pp. 307–334.

⁵⁷ James S. Coleman and others, *Equality of Educational Opportunity* (U.S. Department of Health, Education and Welfare, Office of Education, 1966).

⁵⁸ Christopher Jencks and Susan E. Mayer, "The Social Consequences of Growing Up in a Poor Neighborhood," in *Inner-city Poverty in the United States*, edited by Laurence E. Lynn, Jr. and Michael G. H. McCreary (Washington: National Academy Press, 1990); Susan E. Mayer, "How Much Does a High School's Racial and Socioeconomic Mix Affect Graduation and Teenage Fertility Rates?" in Christopher Jencks and Paul E. Peterson, *The Urban Underclass* (Washington, DC: Brookings, 1991), 321–41.

⁵⁹ James S. Coleman and others, *Equality of Educational Opportunity* (U.S. Department of Health, Education and Welfare, Office of Education, 1966).

⁶⁰ "Nerd Harassment," in Paul E. Peterson and Susan Mayer, eds., *How Schools Make a Difference* (Brookings, 1999).

⁶¹ Caroline Minter Hoxby, "Analyzing School Choice Reforms: Using America's Traditional Forms of Parental Choice," in Paul E. Peterson and Bryan Hassel, eds., *Learning from School Choice* (Brookings, 1998).

⁶² David J. Armour and Brett M. Peiser, in Peterson and Hassel, eds., *Learning from School Choice*, ch. 7.

⁶³ Sari, Horwitz, "Poll finds Backing for DC School Vouchers: Blacks Support Idea More than Whites," *Washington Post*, May 23, 1998, p. F1.

⁶⁴ Arthur Levine, "Why I'm Reluctantly Backing Vouchers," *Wall Street Journal*, June 15, 1998, p. A28.

⁶⁵ William Raspberry, "A Reluctant Convert to School Choice," *Washington Post*, May 20, 1997, as reprinted in Thomas B. Fordham Foundation, *Selected Readings on School Reform*, vol. 1, no. 2 (Summer 1997), p. 13.

Symposium Participant Responses to the Presentation: Implications of School Choice Experiments for Urban Education

Participants were asked to reflect on the fact that the research findings indicate that academic quality and successes of Catholic schools strongly motivate many parents (85%) to choose Catholic schools. The religious dimension of the school is a high priority for only a minority (35%) and ranks 4th on the list of motivations. The participant responses to questions about the implications these findings have for Catholic school participation in various funded programs are summarized below:

- These studies will be important in the public political debates and in court arguments if and when choice initiatives are litigated.
- It will be important to know what type of information is needed to justify investment (private or government) in our schools. We will need to be able to present a broad range of research information to demonstrate the effectiveness of Catholic schools in providing a holistic education for students that ultimately benefits the common good.
- It reminds us of the need to clarify what we expect from incoming students and parents.
- Be sure we have the mission, atmosphere, administrators, and teachers to assure our Catholic ethos. Those using Catholic schools consider academics the top priority, but the students benefit heavily from the religious atmosphere.
- We must be up to the challenge of developing programs and methods to help assimilate our non-Catholic students into our schools.
- Non-Catholic parents view religious education as a parent's role, but they believe it is helpful to have a school environment that supports a faith dimension.
- There is a "spiritual safety issue," i.e., parents feel safe in a religious environment that provides an atmosphere of welcome and acceptance.
- We will be challenged to communicate mission and Catholic identity effectively, especially given situations where there are high quality public alternatives.

- We exist to impart gospel values of Catholic education; we need to be clear about who we are—our history, our religious heritage.
- We should market our product based on the tenets of social justice and advocate for choice as a fair share of the resources of society.
- We should attempt to find out if the religious dimension motivation factor changes after students are in school for a period of years. Does this factor move higher on the list of what motivates parents to select a school?
- Do religious practices and beliefs of students of all faiths grow stronger because of their experience in a Catholic school?
- There is some concern about funded programs causing an increase of non-Catholics in the school and how that might change the Catholic identify of the school.
- It would be interesting to see what proportion of Catholic parents named the religious dimension as a high priority in their choice of Catholic schools.

Panel Presentations: Privately Funded Scholarship Programs

Two panel presentations were offered that presented the perspectives of different types of people engaged in the parental choice in education movement. Delegates heard from six panelists who offered reflections based on the experiences they have had from several different perspectives: philanthropist, administrator, or parental recipient of privately funded programs. Highlights of the presentations are printed below.

J. Patrick Rooney, Educational Choice Charitable Trust

The Educational Choice Charitable Trust, sponsored by the Golden Rule Insurance Company, started out with 500 children and expanded as other firms and individuals joined us. In Indianapolis today, there are 1,700 children that are attending a non-government school with scholarships that we're providing.

Nonetheless, what we are doing and what all the private programs are doing is not enough. Next year, with all the private scholarship programs combined there will be about 50,000 children in the United States that will be attending a non-government school with the help of private endowments. But there are many, many more children that

has contributed nearly \$4 million to the program, enabling 3,800 center-city grade school students from low-income families to receive tuition assistance to attend the private school of their choice. There are now more than 41 cities with 13,000 children in privately funded educational choice programs, all based upon the model that Mr. Rooney started.

Virginia Gilder, A Better Choice

I was pleased when asked to participate in this symposium because it gives me a chance to thank the Catholic school community for the essential part they play in private scholarship programs. I didn't realize how complicated it would be to get a program off the ground, but you know how to smoothly place children in choice schools. I am grateful to the Roman Catholic Diocese of Albany and Superintendent Sr. Mary Jane Herb, for without them we would not have been able to place the number of students we did at a reasonable cost.

In creating the ABC program I wanted to target one school because kids singly leaving different inner-city schools didn't get a lot of attention from the government schools. The total population of the Giffin School in Albany was 450 and I was prepared to pay for all 450 to leave. We never thought that a total exodus was a reasonable possibility, but the fact that just over 100 left was a big enough percentage that it got noticed by lots of people.

We received major media attention in June, 1997 in the *Forbes* magazine focus on "Voucher Kids" that highlighted the Albany program which was to start the following September. We had announced the program six months before the *Forbes* story but it received little media coverage; the Albany paper gave it a little paragraph quoting the teacher's union about my sabotaging the public school system.

The *Forbes'* cover story led to greater attention in other news pieces, including the *New York Times*. Without such major news stories, my program would certainly have been a benefit to these 100 individuals, but it would not have been an example that has proved to be a help in furthering the whole choice movement. I'm enormously pleased at this development; this really did start to wake up the establishment.

Where am I now? I don't consider myself an activist, but because of all of this, I'm happy to participate when people want me to talk

are left behind. We need to do something for everybody.

Political activity on behalf of educational choice is becoming increasingly important and gaining momentum. Several state legislatures are considering variations of voucher or tax credit proposals and the prognostication is that several will pass.

However, a significant problem facing the choice movement surfaced during the last 20 years, as exemplified in the last election in Colorado. When a choice proposition on the ballot, Amendment 17, was defeated, the Hill Research Consultants that analyzed what happened in that initiative determined that partisanship was the single most important factor that killed it. The public perceived that this was a Republican initiative and the Democrats voted against it.

We should convert the Democrats, and do so by going to the Democratic leadership with the message: "Remember your roots." The Democrats want to convince the American people that the Democratic Party is the compassionate party, the party that cares. But what do they care about today? It seems that they care about the money that they get from the teacher's unions. So, we should remind them about the people back home and we should move, aggressively, on the matter of educational choice with the Democratic Party. We need to remind them that this is a non-partisan issue.

In converting the Democrats, we also need to convert the leadership of NAACP, and we have to activate the Hispanic/Latino vote. We need to enlist minorities in many ways because it is they who are profoundly affected by this. This is not only a political movement but also an emotional movement, one involving all our children, Catholic and non-Catholic alike.

Many people hold the misconception that a 501(c)(3) nonprofit foundation may not be involved in political activity, but this is untrue; with expert advice, anyone can engage in grassroots activism, and that is a big help in advancing school choice politically.

Let me tell you where I am going from here. My company and I will continue to support students. I believe that we, and others, must do much more to support the politics of school choice and this is where our new efforts will be focused.

J. Patrick Rooney is the founder of the Educational Choice Charitable Trust in Indianapolis. Financed by the Golden Rule Insurance Company, the trust

about these issues. Over the two years since this first started, I've become much more informed about the education debate and I want to continue to participate because we've got some pressing issues to resolve.

Private scholarships are not the answer. I'm very concerned that the movement is still very confined to inner-city schools and minorities. I don't want the suburbs to feel left out of the equation. I think private scholarships are good for the movement, setting an example, but there is not enough private money to compete with the amount of tax dollars available in the public sector.

I have parted company with a number of groups whose focus is on public school reform. I have no problem with having excellent public schools, but I think there are many parents who want educational philosophies that include religion and should not be denied this because of their economic circumstances. Ultimately, my commitment is to 100% universal choice of any type of school, as long as it has whatever basic accreditation is needed to be legal.

Virginia Gilder is a private investor, philanthropist, and political activist with special interests in educational innovation, the visual arts, and historic preservation. She is chairman of the Empire Foundation for Policy Research in Albany, New York and a member of the board of the Children's Educational Opportunity. Ms. Gilder is a graduate of Columbia University and a longtime New York resident.

Sr. Margaret Ryan, Aquinas High School

I serve as principal in a school which participates in privately funded scholarship programs. We have a student population of 811 young women and endeavor to be a community of faith and learning in the Catholic tradition in all that we do. Our strong academic program is supported by an extensive after school program of over 40 activities.

Seeking to be true to its mission, the school always strives to respond to families in need of financial assistance. Approximately 45% of our students receive financial assistance generated from four main sources: the Inner-City Scholarship Fund, which operates in the Archdiocese of New York; the archdiocesan development program; the school's development program; and the Student Sponsored Partner-

ship, a privately funded scholarship program which serves 80–85 students each year.

In the privately funded scholarship program, students are directed to us by the program. Generally they are from public schools and from single parent welfare families. We have the opportunity to review the applications of students referred to us and also to invite potential students to take entrance or placement exams. Last year we had 25 applications forwarded to us and we were able to take the maximum, 20 of those students.

Many times public school teachers will take a leading role in directing students to the privately sponsored program and assist with the completion of the applications. Teachers are instrumental in encouraging students to participate in the Student Sponsored Partnership program because of their concern about what is happening to the students in their own high schools and their desire to see the student succeed. These teachers attend our school events and students' graduations.

Students in this privately funded program are required to enroll in a two-week summer program that assists in their orientation to their new school. Once school starts in September, they are expected to fold into the general school population and are not separated in any way. In addition to the regular orientation program for all new students and their parents, there is an evening set aside for an initial meeting so that we may establish comfortable relationships between the parents, the students, and the sponsors.

Sponsors are generally accomplished adults who can assist with the guidance of students. They monitor students' academic work and offer encouragement. They provide students with the opportunity to interact with other socio-economic groups, which is something students are particularly interested in. This interaction with another socio-economic group is itself a motivating factor for students to work in high school, to plan a college career, and to be successful. Sponsors sometimes become true supporters of the school and aid a second or third student. The sponsorship program also clearly spells out that students may not ask their sponsors for any additional monies.

Parents are generally grateful to the people who have offered this opportunity for their children. They are also happy that their children will have the opportunity for a quality secondary education. The school needs to be mindful of the fact that parents remain the primary

educators of students as it works with both parents and sponsors. For example, report cards are always given to parents and students before they are mailed to sponsors and to the directors of the program.

Through my experiences of the scholarship program, I've learned that schools that wish to become involved in privately sponsored programs need to be mindful of the following two items. The schools need to be clear about their identity and their mission. They also need to realize that such programs should fold into the already functioning system, not the other way around.

In the development world, schools are told that they need funds, friends, and freshmen. Through the privately funded sponsorship program, we have found all three.

Sr. Margaret Ryan, OP, received her BA from St. Thomas Aquinas College, Sparkhill, New York and her MA from the College of St. Rose, Albany, New York.

Since her appointment as principal of Aquinas High School in 1974, the school received accreditation by the Middle States Association of Colleges and Schools and was named an Exemplary School by the U.S. Department of Education. In January 1999, U.S. News & World Report named Aquinas High School an Outstanding American High School. She has received recognition awards from the Catholic Interracial Council, the City Council of New York, the Archdiocese of New York, and NCEA's Secondary School Department.

Dan McKinley, PAVE Program

Last year, PAVE (Partners Advancing Values in Education) helped 4,400 children go to the schools of their choice. They chose among 110 schools in Milwaukee that included mostly Catholic schools, but also Lutheran, Christian, Montessori, Muslim, and Jewish schools. We allow them to choose from among the best schools. We'd like to see more good public schools as options for parents as well, but unfortunately there are only about 20 good public schools in Milwaukee, out of about 163. However, it's the parent's choice that we try to support.

In 1991, Representative Polly Williams helped guide a pilot program through the Wisconsin legislature that provided scholarships for up to 1,000 kids to attend any non-sectarian school in Milwaukee. However, there were only 11 non-sectarian schools and a lot of parents wanted other schools. During the first year, only 340 kids took part

in the voucher program. Critics were saying, “What’s the big deal about choice? You have 1,000 vouchers and 340 kids used them. Isn’t this much ado about nothing?” Looking at the situation revealed that there was a greater need than that.

In 1992, PAVE announced a private scholarship program to enable parents to choose any kind of school, including religious schools. Within the week, we distributed 7,000 applications. In the next few years we grew to where we help 4,400 children annually.

In August 1995, the Milwaukee Parental Choice Program (MPCP), a state funded program that provides tuition vouchers to low-income students attending private schools in Milwaukee, was expanded to include religious schools for the 1995/1996 school year. Approximately 3,500 students applied for MPCP aid and enrolled in schools of their choice. On August 25, 1995, responding to opponents of choice, the Wisconsin Supreme Court issued an injunction halting the expansion of the program.

PAVE’s board of directors established an emergency fund that provided half-tuition scholarships to the MPCP families affected by this injunction. What have we learned?

a) Even though we talk about justice, have raised four and a half million dollars a year and helped 4,400 kids, there are thousands more still in need. It is dishonest and unjust to presume that charity can do the work. It’s simply not right. Charity alone is inadequate to the task, and we need to develop a good public policy that benefits all families.

b) We do not use the word “social justice.” The concept is there, but the term is not something you’ll find in Catholic conversations. Charity, the term we use frequently, is more commonly found in the Bible. Charity means loving your neighbor enough that you love their children as you would love your own.

c) We’re still fighting battles every day, and the battles never end. What you must do is build a coalition, and step by step take a look at your opportunities, and take advantage of them. Use whatever means are available to persuade people to join the coalition, to build the common ground and the common bond among them. It’s like a chess game: there’s no formula; there’s no easy way to do it. You have to have the players and a good idea of where the goal is.

You need a good group just to keep pushing and looking for opportunities, and, eventually, if your cause is just and if you have

charity, you'll get where you want to go.

On June 10, 1998, the Wisconsin Supreme Court upheld the expanded MPCP "in its entirety" and further ruled that all students eligible for the MPCP in August of 1995 should continue to be eligible in the 1998–99 school year. Consequently, most PAVE students will receive MPCP vouchers in 1998–99, and management estimates that the number of students that will need PAVE scholarships in the 1998–99 school year will be reduced to less than 1,000.

Dan McKinley is the founding executive director of Partners Advancing Values in Education (PAVE), a nonprofit organization that makes freedom of educational choice possible for families in need and promotes excellence in K–12 education. PAVE was the model the Wisconsin Legislature utilized when the expanded Milwaukee Parental School Choice Program was passed in 1995.

Prior to PAVE, McKinley was the founding executive director of the Milwaukee Archdiocesan Education Foundation. McKinley has also worked for the University of Wisconsin and the University of Michigan.

Valerie Johnson, PAVE Parent

I am grateful that NCEA invited me to participate in this symposium. I don't have a lot of background degrees, and I can't tell you that I've spoken at many seminars or symposiums, but I can tell you that I am a parent, and I do believe I know what is good for my children. I've been in the fight for choice for 18 years, especially since 1995 when I became involved with the passage of choice legislation in Milwaukee.

When my child was five years old in Milwaukee, I had to think about where I was going to send her to school. In Milwaukee at the time, we had mandated busing. I didn't like the fact that I had to send my child to a school of the public school administrator's choosing, instead of letting me send her to a school in the neighborhood. At that time there was a Catholic school a half a block away from me, and I thought I had the means to choose it.

When I was younger my father saw fit to put me in Catholic school and I got a really good education, so I decided to try it for my child. Once we got into the school, I loved the sense of community. I felt my child was safe physically and spiritually. Even though we are not Catholic, they weren't trying to proselytize us, but the values taught

there were what I wanted for my children because I am a Christian.

When my husband lost his job, we no longer had the means to pay the tuition for my child to continue at the school. The mission of the Catholic school and its community made a way for us to stay there with the help of family and friends and the school. My children have never had to be pulled out of a Catholic school.

PAVE also came along at just the right time. It gave us 50 percent scholarships for my kids. We really couldn't afford all of the tuition because at that time I had five kids that were going to school. PAVE helped a lot; but without the additional help of the schools that my kids attended, we still could not have kept our children there.

Choice means hope that my children will have a great opportunity to finish their education and become people who will give back to this society. I feel that education is not a privilege, it's a right. It upsets me that we even have to hold a symposium about choice being publicly funded because, by right, our society should be giving every child a good education.

Another thing that really bothers me in this whole fight is that I may have less than a lot of other people financially, but that doesn't make me an incompetent parent. I may be a minority but I am more than capable of being able to choose for my children. There have been so many politicians and so many people trying to make decisions for me and my kids. It angers me because I am no different than someone who has a million dollars except that they may eat steak a lot more and I may eat at McDonald's. I feel that no matter what color, no matter where you live, no matter what kind of money you have in your pocket, as parents we love and want the best for our children.

I am so appreciative of you and your support of choice, and of the value and support you give us parents who know what is best for our children. It has given me a good, strong sense of hope for this society. It takes more than one person to raise children. I'm a good parent, my husband is a good father, but without help from the community, the church, and other people, we cannot do this alone. It gives me so much more to take back with me to know that there are other people around that care too.

Valerie Johnson has been actively involved in the school choice movement since 1995. She has received PAVE scholarships for her children since the beginning of the program.

Virginia Walden, D.C. Parents for School Choice

I have three children and have been very involved with school choice for the last couple of years. This is about my children, and I am here as a mother. Two of my children went through District of Columbia public schools, and, in watching them, I saw the schools start to deteriorate. By the time my third child started high school it became very clear to me that the schools were not meeting his needs at all. We had to do something to help this child.

I'm a single mother, and I've raised my three children by myself here in Washington. I certainly could not afford to send them to private schools; that was just absolutely not an option for me. I have family in Arkansas, but I knew they couldn't help me. I felt really alone and without options.

One day I was on the porch, and I was really distressed and trying to pray. A neighbor came by who had spent time with kids in our community and said, "Ms. Walden, I'm going to help." Single parents, parents who are middle to low income hear this a lot; everybody's going to help us. People will say it and never come back. But a few weeks later, this young man did come back with a commitment from several other people to provide the money for a private scholarship for my son to go any school that I chose. I chose Archbishop Carroll High School.

In September of 1997, my son started school there. People who knew him previously don't know him now. He's like a different child and my story has a happy ending. The transition was wonderful for us.

As a result of my own experiences, I got really involved in school reform issues and started spending a lot of time lobbying in Washington for education reform. I worked for an organization called Friends of Choice and Urban Schools, which is the charter school advocacy organization here in D.C. I did the parent outreach for that and spent a lot of time going around the city talking to parents about alternative education for their children.

As we were doing this, we realized that there was a greater need. So I started an organization called D.C. Parents for School Choice. I, a colleague, and 50 volunteer parents are going out and spreading the word about school choice and all kinds of alternatives for children, including religious schools, independent schools, charter schools, and

traditional public education. We're nurturing relationships among all groups.

I really appreciate the invitation from NCEA because the Catholic schools have been so supportive. We surveyed all the schools and out of the 300 schools in the Washington area to which we gave a two-page survey, the Catholic schools were the only schools that returned them without having to be asked.

We're supporting all the legislation for public vouchers because we truly believe that this is not a privilege but a right. I try to be a voice for those parents across racial, cultural, economic, social lines who don't have what I was able to have—all the options, all the opportunities. They don't have a way to find out what the options are, so D.C. Parents for School Choice is presently trying to educate them. We also are a 501 (c) (3) organization, and we do take contributions!

Virginia Fowler Walden is a graduate of Hampton Institute. She has worked in the field of adoption, as a social service administrator, as a rector, and now as a community outreach coordinator to parents and communities for the Friends of Choice in Urban Schools, Inc. in Washington, D.C. Her responsibilities include informing the Washington, D.C. community about the charter school movement and working with the newly chartered schools as they present their academic philosophy and approach to parents. Virginia Fowler Walden is the Executive Director of D.C. Parents for School Choice, Inc. A single mother of three children, she has always been involved to some extent with education issues.

Symposium Participant Responses

Participants were asked to reflect on what similarities and differences they heard the panelists present about their motivations for becoming involved in the school choice movement. Their responses follow:

Donors

- Believe in action, highly motivated to get involved
- Heard the need and responded
- Deep concern about children
- Believe in parents' choice, not government determination

- Need to go beyond private funding choices
- Private initiatives lead to public policy; private initiatives are a means to an end

Parents

- Need for systemic change—political and parent-based action
- Personal family need for better opportunities for their children
- Catholic schools are formative—support family values even if different faith
- Parents deserve to find the school that best fits needs of kids.
- Feel trapped in public schools where government makes the choice, not the parents
- Belief in rights, justice, and the ability of parents to make good choices for their children
- Dissatisfaction with public school philosophy, climate, teaching strategies, ethos

Administrators

- Concern for children and impatience with the slow pace of publicly funded assistance provoked parents to seek private vouchers
- Mission is the driving force in our schools—committed to forming value-based students who are religiously literate
- Programs affirm the religious mission of the Catholic school for Catholics and non-Catholics alike
- Catholic educators are not about forming the best private schools; rather about forming the best persons
- Private scholarships help us to better recognize the twofold mission of Catholic schools: 1) pass on faith and 2) help the poor and marginalized become children of God
- Caveat: be realistic on the cost of education; tuition does not equal total cost of education in a Catholic school

When asked to discuss how philanthropists, parents, and Catholic educators can work to promote greater educational choice that accommodates a wide diversity of students without compromising the mission of the schools as Catholic, participants responded:

- Work for publicly funded vouchers that come through the par-

ents, not a government agency; this permits the local school to follow its mission and focus.

- Lay more cards on the table and speak to our mission of faith formation and formation of society. We need to remain faithful to our mission statements.
- Explore and articulate how we will preserve the Catholic identity of the school with so many non-Catholic students and teachers.
- Explore the possibility of funding a lobbying/PR initiative toward school choice, recognizing that there might be some difficulties because there are so many people who support choice for very different reasons.
- Move the Catholic community from a reactive posture to one of taking the lead on choice. It's been difficult to get even the Catholic community itself united behind one common way of achieving and implementing choice.
- Remind the Democratic Party of their roots as the champions of the rights of poor people, especially parents who want to choose the education best for their children.
- Communicate the contributions that Catholic schools make to the common good and let our successes speak for themselves.
- Private money is great but there is not enough money and philanthropy will never address the problem adequately.
- Many Catholics who went through the system will help a school but won't get involved in the political aspect. Motivate them to do so.
- Develop arguments that have national significance while publicizing what is happening successfully in the states. Encourage and target support to those states that have a strong possibility of victory.
- Promote parental choice, don't bash public schools.
- Work closely with legislators and grass roots organizations to craft legislation that protects mission and limits regulatory demands.
- Don't accept exemptions that compromise and/or eliminate required courses (religious) and activities (retreats). Religious symbols cannot be compromised in the school setting.



CHAPTER FOUR

Publicly Funded Educational Choice Initiatives

Introduction

Publicly funded educational choice initiatives may take two forms: scholarship or voucher assistance for parents to use at the school of their choice, or tax relief for educational expenses granted as credits and deductions applied against tax liability.

White papers dealing with various aspects of publicly funded initiatives were commissioned for this symposium, and their authors presented the highlights of their research. The issue of tax policy as a means of furthering school choice was discussed by Frank Monahan, director of the office of government liaison at USCC. Ms. Nina Shokraii-Rees, a policy analyst for the Heritage Foundation, described what research is showing about school choice and the implications of various models of publicly funded choice programs that are in existence. Their prepared texts are included here in their entirety.

Two panel presentations focused on the successes, problems and practical concerns that have surfaced in securing and implementing the publicly funded programs currently operational. The panelists,

school and diocesan administrators whose schools participate in publicly funded programs, and state Catholic conference directors who were involved in the adoption of legislation providing programs or educational tax relief for parents, shared their experience. Highlights of the panel presentations and participant table conversations are presented in this chapter.

School Choice Programs—A Status Report *Nina Shokraii-Rees*

Education Week reported in January that only 40 percent of the 4th and 8th graders in urban schools had scored at basic levels in reading, math, and science on the NAEP tests.¹ According to Paul Hill of the Rand Institute, in more than 25 percent of Chicago's high schools fewer than 15 percent of students test on grade level.² School performance is much the same in other big cities, where according to Hill, the tenure of a superintendent is on average less than three years.³ Graduation rates and college entrance rates continue to fall for inner-city students, and many children graduating from urban high schools with high grade point averages leave college because they cannot do the work.⁴

Nonpublic sectarian schools participating in the scholarship program are benefited only indirectly and purely as the result of the genuinely independent and private choices of aid recipients.

Not all is bleak in the inner cities. Occasionally, some public schools defy the odds and prosper. These are schools often led by fearless superintendents willing to take on the education establishment and the status quo lobby and stick to their jobs long enough to make a difference. Or they are Catholic, private, independent, charter, or magnet schools that set a clear vision of the schools' mission and base the schools' progress on student academic outcomes. But their success rarely gets replicated in other public schools. That is why offering inner-city parents the opportunity to send their children to a school of their choice is now more urgent than ever before.

I. Introduction: The Rise of School Choice

School Choice⁵ has risen to the forefront of the education reform debate in the past decade. It's easy to see why: choice is the only reform

that places parents in charge of their children's education. While many still argue the merits of choice and its potential to improve education, an increasing number of opponents, including the likes of Arthur Levine of Teacher's College, are slowly reconsidering their position on this issue.⁶ What was once relegated to the confines of a select few "right-wing" conspirators is embraced today by such figures as Floyd Flake, a former Democratic representative from Queens, and Howard Fuller, a former superintendent of education from Milwaukee.

Indeed, choice is winning support in the population at large: the latest Phi Delta Kappa poll finds that 51 percent of the general public supports school choice.⁷ These numbers are even higher in places where a school choice program exists, and among Black and Hispanic groups (especially those with modest to low incomes and in the child-bearing years of 26–35.)⁸ Similarly, social science studies of existing choice programs reveal that students in the schools chosen by their parents excel academically compared to students whose parents were not blessed with the power to exercise such a choice.⁹ Furthermore, numerous longitudinal studies comparing public, private, and religious schools show that Catholic schools improve not only test scores and graduation rates of students, especially the poor, but also their future economic prospects—and do so at a substantially lower cost.¹⁰

This paper offers an overview of the current publicly sponsored school choice programs, analyzes their effectiveness in improving education, and provides a snapshot of potential future choice programs.

II. School Choice Programs across the Nation

The Milwaukee Parental Choice Program

Enacted by the Wisconsin state legislature with the leadership of Democratic state senator Polly Williams in 1990, this pilot project was the first means-tested school choice plan in the nation. Owing in part to the bipartisan and multiracial coalition that helped create it, the Milwaukee plan has received widespread national attention.¹¹ The plan provided low-income parents \$4,400 to send their children to the private non-sectarian school of their choice at state expense (the state's average per-pupil expenditure is around \$6,500). Because of the plan's vast appeal, the legislature voted to expand it in 1995 to include

religious schools and to increase the number of recipients from 1,500 to up to approximately 15,700 students in subsequent years. On July 26, 1995, Governor Thompson signed the expanded program into law.

The major provisions of Wisconsin's Expanded Choice Program are as follows:¹²

- Eligibility is limited to Milwaukee families with incomes at or below 175 percent of the federal poverty level. An estimated 65,000 to 70,000 children meet the income eligibility guidelines.
- Participation is limited to 15 percent of enrollment in the Milwaukee Public Schools (MPS), or about 15,700 students. (In the original program, participation was limited to 1.0 percent of MPS enrollment; this was increased to 1.5 percent in 1993.) 7,250 students participated in the first year of expansion.
- Students may attend any private K–12 school in Milwaukee, including religious schools. The program is funded by state school aid that otherwise would have gone to the MPS. Private schools participating in the program will be paid for operating costs or the state's per-pupil school aid to the MPS, whichever is less.
- As payment, the state issues a check, made payable to the school and the parent or guardian of a participating student, and mails it to the private school. The check must be endorsed by both parent and school and used by the school for expenses for that student. Private schools that choose to participate in the program must accept the funds as full payment of tuition and admit students by random selection. Schools are also subject to performance, reporting and accountability requirements.

From the fall of 1995 until June 1998, the education establishment and its allies managed to prevent Milwaukee's low-income children from taking advantage of the expanded Milwaukee choice program. The American Civil Liberties Union and Wisconsin affiliates of the National Education Association were joined by the National Association for the Advancement of Colored People in a challenge of the constitutionality of the expanded Wisconsin program in state court.¹³

The expansion of the program to include religious schools was enjoined on August 1995. When a divided Wisconsin Supreme Court voted 3–3 on the program's constitutionality in 1996, the case went to a trial court in Dane County. A trial judge there overturned the

program a year later. His decision was upheld later that year, in a 2–1 appeals court vote. Lawyers for parents and Governor Thompson appealed this decision back to the Wisconsin Supreme Court. In a historic 1998 ruling, the Court voted 4–2 to sustain all aspects of the expanded program, holding that it complied with both federal and state constitutional provisions.¹⁴ Citing a 1971 U.S. Supreme Court ruling, the Wisconsin Supreme Court majority opinion, written by Justice Donald W. Steinmetz, declared, “The simplistic argument that every form of financial aid to church-sponsored activity violates the Religion Clauses was rejected long ago.”¹⁵ Moreover, “Not one cent flows from the state to a sectarian private school under the [plan] except as a result of the necessary and intervening choices of individual parents.”¹⁶ The dissenting opinion, only a paragraph long, addressed only the Wisconsin Constitution’s religious establishment provision.¹⁷ Thus the First Amendment issue effectively was affirmed on a 4–0 win.

Opponents appealed this decision to the United States Supreme Court, which in November 1998 declined, on an 8–1 vote, to hear the case.¹⁸ This lets stand the Wisconsin Court ruling and means that any national decision on religious school choice issues by the Supreme Court might come from a number of cases in other states that are now being litigated.¹⁹

Research Findings of the Milwaukee Choice Program

John F. Witte, a professor of political science at the University of Wisconsin in Madison, conducted the first five evaluations of the Milwaukee choice program.²⁰ Professor Witte and his researchers found high levels of parent and student satisfaction, increased parental involvement at participating schools, and improved discipline and attendance. But because Witte compared the children in the choice program with the general student population of Milwaukee instead of children from similar socioeconomic backgrounds, he found no rise in academic test scores for choice students. Though researchers stated that “no firm conclusion” could be drawn from the results, nearly all the parents participating in the program reported that their children were improving academically, that their attitude toward school was improving, and that they planned to stick with the schools they had chosen.²¹

Until the fifth-year evaluation, John Witte did not release his data

for peer review. That year, a secondary analysis of Witte's data, which compared students in the choice program to those who had applied but were unable to participate in the program, showed significant improvements in academic achievement. This analysis was conducted by Paul Peterson of the John F. Kennedy School of Government and the Department of Government at Harvard University, and Jay Greene of the University of Texas at Austin. The study reveals that the reading scores of students in their third and fourth years in Milwaukee's choice program were, on average, 3 to 5 percentile points higher than those of students who were unable to get a scholarship, and their math scores were 5 to 12 percentile points higher.²² These results were so significant that the researchers conclude that, if similar success could be achieved for minority students nationwide, the gap between White and minority students' test scores could narrow by 33 to 50 percent.²³ A subsequent study by Cecilia Rouse of Princeton University also found that the Milwaukee choice program significantly increased the mathematical achievement of participating students.²⁴

The Cleveland Pilot Project Scholarship Programs

Enacted by the Ohio state legislature in 1995, the Cleveland model was the first to allow parents to send their children to a religious school of their choice.²⁵ Scholarships of up to \$2,250 could also be redeemed at neighboring public schools in addition to district private and religious schools (the state's average per-pupil expenditure is \$5,968). In the first year, 6,277 students applied for 2,000 slots, and 1,855 children were able to participate in the first year of the two-year pilot program. Since its inception, 1,000 students and one additional grade have been added to the program. As of December 17, 1998, 58 schools and 3,689 students are participating in the Cleveland scholarship program.²⁶ The plan contains the following provisions.²⁷

- Broad eligibility for any student residing in the Cleveland City district and enrolled in Kindergarten through 3rd grade—though no more than 50 percent of the recipients may be children already enrolled in private schools.
- Each year after the first, one grade level will be added to the eligibility rolls, up to and including the 8th grade. This innovative voucher program allows Cleveland's public schools to keep up to 55 percent of state aid per pupil (an average of \$5,600),

even if parents accept the maximum voucher amount (worth 45 percent of state aid, or \$2,500) to spend on private school tuition.

- Broad eligibility for any state-chartered private school, whether religiously affiliated or non-religious—although participating schools may not discriminate based on race, religion, or ethnic background and may not advocate unlawful behavior.
- Scholarship recipients are chosen by lottery, with preference given to low-income students.
- A scholarship of up to \$2,500—low-income students would receive vouchers worth 90 percent of private school tuition cost; all others would receive vouchers worth 75 percent of tuition.

Courtroom Battles

In January 1996, the American Federation of Teachers filed a lawsuit to challenge the constitutionality of the Cleveland school choice plan. The Franklin County Common Pleas Judge Lisa Sadler ruled on July 31, 1996 that the legislatively approved Cleveland plan violated neither Ohio's Constitution nor the U.S. Constitution. She noted that the religion clauses of Ohio's Constitution are no more restrictive than the First Amendment and that, because the "nonpublic sectarian schools participating in the scholarship program are benefited only indirectly and purely as the result of the genuinely independent and private choices of aid recipients," the inclusion of religious schools in a voucher program did not violate the First Amendment.²⁸

In May 1997, Ohio's Court of Appeals struck down (by a vote of 3–0) the Cleveland Pilot Project Scholarship Program, overturning Judge Sadler's decision. It determined that the program violated the religious establishment clauses of both constitutions, as well as a provision in Ohio's constitution requiring that general laws have state-wide application.²⁹ But the Ohio Supreme Court stayed that decision pending its final ruling. The case was briefed and argued and is currently pending before the Ohio Supreme Court.

Research Findings of the Cleveland Pilot Scholarship Program

A 1997 study by Jay Greene of the University of Texas at Austin, William Howell of Stanford University, and Paul Peterson of Harvard University examined two schools that opened specifically to meet the

demands of Cleveland's pilot voucher program. The study reported that students at Hope City and Hope Central Academy scored 5 percentile points higher on the reading tests and 15 percentile points higher on the math concepts sections of the April 1997 California Achievement Tests (CATs) than they did on the September 1996 tests. Given that the test scores of poor minority students living in urban areas on average fall by one or two percentage points each year they are in school, these results proved particularly significant. In the fall of 1997, the researchers shed further light on the program. They found that 63 percent of parents using the scholarships were "very satisfied" with the "academic quality" of their schools as opposed to only 30 percent of those who applied but who did not receive a voucher.³⁰ Subsequent studies by a team of Indiana University researchers reveal mixed results of the program's effectiveness.³¹ Because there isn't much baseline information on the students tested, and since the program has only been around for a few short years and contains a small sample of students, the findings are largely inconclusive.

Vermont and Maine Tuitioning Program

Since 1869, Vermont has had an educational choice system in place for students who reside in "tuition towns," towns which do not have their own public high school and which do not belong to a union high school district. Ninety of the state's 246 towns, comprising about 18 percent of the state's high school age population, are tuition towns. Tuition town students in grades 7–12 may attend either a public or approved independent school located either within or outside Vermont. The town school boards pay the tuition expenses. If the student chooses a public school, the town must pay the full tuition cost—approximately \$5,000. If the student chooses an independent school, the voters of the town school district can decide whether to pay the full cost or pay only the state average union high school tuition cost. If the latter cost is below the actual tuition charged, the parents must make up the difference. About 300 Vermont high school students take advantage of this program to attend out of state private schools.³²

For the 30 towns without elementary schools, Vermont provides for similar tuitioning by school boards to both public and independent schools. Parents of these students do not have the legal right to

have the tuition paid for an independent school of their choice, but it would be highly unusual for a school board to refuse a parent's request.³³

Until 1962, towns were allowed to pay tuition to Catholic high schools. Then the Vermont Supreme Court ruled that using public money to pay tuition at a parochial school violated the state's constitution.

In 1996, the school board of Chittenden, a tuition town, with the help of the Washington-based Institute for Justice, sought to pay the tuition of 14 students to Mt. St. Joseph Academy, a nearby Catholic high school. The state of Vermont responded by withholding state education aid payable to the town. On August 29, 1996, the town filed a lawsuit to force the state to release the aid payment. On June 27, 1997, Rutland County Superior Court Judge Alden Byron struck down the Town of Chittenden's efforts to include religious schools in its tuitioning options. An appeal was filed in Vermont's Supreme Court, which has heard the case and has yet to hand in a decision.³⁴

Similarly, for the past 200 years rural areas in Maine that lack public schools have provided aid for students who attend non-religious private schools (although religious schools were included until 1981).

On July 31, 1997, the Institute for Justice in Washington, D.C. filed a lawsuit on behalf of parents living in "tuitioning towns" in Maine who wish to send their children to a religious school. Under current law, parents can place their children in non-parochial private schools if the district in which they reside does not have a public school. The lawsuit argues that excluding religious schools violates the constitutions of both the United States and Maine, which guarantee the free exercise of religion and equal protection under the law.³⁵ Cumberland County Superior Court in Portland, which heard the case on April 10, 1998, ruled against the parents on April 24. The case was appealed to the Maine Supreme Court, which heard oral arguments in November. A decision is pending.³⁶

III. Further Social Science Evidence on Choice's Effectiveness

Choosing private/alternative schools in urban areas leads to better results because most of these schools hold every student, regardless of

background, up to the same high standard, and are held accountable for results. This is particularly true in Catholic schools. As John DiIulio, a senior fellow at the Brookings Institution, attests, “The Catholic school story is as solid as you can make a case... It’s not even close to the warning zone, when it comes to sociological credibility.”³⁷

In *Catholic Schools and the Common Good*, Anthony Bryk of the University of Chicago, Valerie Lee of the University of Michigan, and Peter Holland, Superintendent of Schools in Belmont, Massachusetts, compiled extensive empirical evidence on Catholic school organization and its effects.³⁸ Basing their findings on extensive field visits and analysis of Department of Education data, they found two of the key

ingredients to Catholic school success to be: 1) their focused curriculum and 2) high standards and an emphasis on more advanced academic courses, with 72 percent of Catholic school students studying an academic program and only 10 percent concentrating on vocational studies.³⁹ (In public schools, children are equally distributed between the two fields.⁴⁰)

So far, the research of Peterson and Greene in Milwaukee and Cleveland shows that school choice also boosts academic achievement. But even more compelling is the strong social science evidence backing the strong effect of Catholic schooling on poor children. The seminal work of the late sociologist

James Coleman of the University of Chicago offers ample evidence that Catholic schools do a much better job of teaching inner-city students, with less.⁴¹ His studies also showed that a child is more likely to attend school with a child of another race in a private school than in a public one, and that dropout rates are significantly lower in private schools than in public schools.⁴²

Recent studies confirm Coleman’s findings with an even higher degree of accuracy. A study performed by William N. Evans and Robert M. Schwab from the University of Maryland School of Economics, for instance, found that attending a Catholic high school raised the probability of finishing high school and entering college for inner-city children by seventeen percentage points.⁴³ “This is twice as large as the effect of moving from a one- to a two-parent family and two and one-half times as large as the effect of raising parents’ edu-

Choosing private/alternative schools in urban areas leads to better results because most of these schools hold every student, regardless of background, up to the same high standard, and are held accountable for results.

cation from a high school dropout to a college graduate,” they observed.⁴⁴ Evans and Schwab also noted that Catholic schools have a particularly strong effect on students with the lowest probability to graduate: inner-city Black pupils, students in urban areas, and students with low test scores.⁴⁵

Furthermore, Derek Neal, an associate professor of economics at the University of Chicago, found that African-American and Hispanic students attending urban Catholic schools were more than twice as likely to graduate from college as their counterparts in public schools.⁴⁶ He found that 27 percent of Black and Hispanic Catholic school graduates who started college went on to graduate, compared with 11 percent in urban public schools.⁴⁷ Neal’s study also showed of the probability that inner-city students graduating from high school increased from 62 percent to at least 88 percent when those students were placed in a Catholic secondary school.⁴⁸ Furthermore, when compared to their public school counterparts, minority students in urban Catholic schools can expect to earn roughly 8 percent higher wages in the future.⁴⁹

As for what choice can do for public schools, Caroline M. Hoxby, an economist at Harvard, studied the effectiveness of school choice programs and found that competition from private schools increased academic achievement at both public and Catholic schools.⁵⁰ She found that greater private school competitiveness raises the academic quality of public schools, wages, and high school graduation rates of public school students.⁵¹ She also found that public schools react to this competition by increasing the teachers’ salaries.⁵² Through choice, Hoxby concluded, both public and private, including religious, students would increase the amount of time spent in school by about two years, while their math and reading test scores would improve by about 10 percent.⁵³ She also noted a wage increase of 14 percent.⁵⁴

IV. What Comes Next

The recent Supreme Court decision to let stand the Milwaukee school choice plan, coupled with the growing popular appeal of choice and social science evidence backing, will likely speed the enactment of several choice plans in the coming years.

Already, Mayor Rudolph W. Giuliani has proposed a school choice plan for one of New York City’s community school districts, saying it

might force failing public schools to improve.⁵⁵ This proposal is particularly timely as Cardinal John J. O'Connor has repeatedly invited the city to allow him to educate the lowest performing 5 percent of its public school students.

Under the leadership of newly elected Governor Jeb Bush, a Republican and long-time school choice advocate, Florida parents have an excellent opportunity to see the next means-tested choice program in the nation enacted.

School choice enjoys broad bipartisan and multiracial support in Texas, where the legislature came close to passing choice several times in the past. Because of the state's strong charter school law, its system of holding its school districts accountable in exchange for flexibility, and the fact that it has several large private choice programs, Texas is primed for passing school choice legislation in the near future.

Last May, choice came to the forefront in Philadelphia when Cardinal Anthony Bevilacqua, Catholic Archbishop of Philadelphia, proposed a voucher plan to mayor Edward Rendell and school district superintendent David Hornbeck. The cardinal believed the voucher program would help alleviate several of the Philadelphia school district's problems, such as overcrowding and insufficient funding.⁵⁶ Complementing these efforts, in November 1998, school choice advocates in Pennsylvania proposed voucher legislation that most likely will be considered when the General Assembly reconvenes in 1999. The legislation would phase in financial support for parents below a certain income level to pay for private school tuition.⁵⁷

Governor Gary Johnson of New Mexico, a long-time choice advocate, has asked his state legislature to consider passing school choice in the upcoming legislative session.⁵⁸

Arizona Superintendent of Schools Lisa Graham Keegan has offered a choice plan that the state legislature may pass this year. The state has demonstrated its willingness to experiment with market-based education reforms when legislators approved the strongest charter school law in the nation, as well as a child-centered funding plan and an education tax credit plan for those who contribute to the state's privately funded choice program.⁵⁹ In addition, Congress likely will reconsider a voucher plan for the District of Columbia.

V. Conclusion

The true test of the effectiveness of an education reform ought to be its ability to improve academic achievement. So far the evidence shows that, where tested, choice programs boost the overall academic performance of students, especially the poor. All across the nation, choice is gathering momentum because as Howard Fuller, the former superintendent of Milwaukee public schools points out, “a school doesn’t need to be run by government in order to be public.” Americans and an increasing number of innovative education reformers are beginning to realize that engaging the private sector can expedite school reform and, more importantly, improve the overall educational achievement of students. School choice places parents in charge of selecting a good school for their children. All parents want their children to succeed academically. That is why it works!

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Notes for School Choice Programs—A Status Report

¹“Quality Counts: The Urban Challenge; Public Education in 50 States,” *Education Week*, January 8, 1998.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Since others are submitting papers discussing alternative means to promote school choice, I will not discuss the private scholarship movement and choice via tax credits/deductions in this paper. In this paper, the term “school choice” includes only choice programs that offer parents a “voucher” to select a public, private, or religious school of their choice. It is my belief that choice can have a positive effect only when public schools compete with the private sector for students, and public funds follow children to a school of their choice.

⁶ See Arthur Levine, "Why I'm Reluctantly Backing Vouchers," *The Wall Street Journal*, June 15, 1998.

⁷ Lowell C. Rose and Alec M. Gallup, "The 30th Annual Phi Delta Kappa Gallup Poll of the Public's Attitudes Toward the Public School," *Phi Delta Kappan*, September 1998, pp. 43–46.

⁸ *Ibid.*

⁹ See Paul E. Peterson, "School Choice: A Report Card," in *Learning from School Choice*, Paul E. Peterson and Bryan C. Hassel, eds., Washington: The Brookings Institution, p. 3–32, 1998. Or, Paul Peterson, "What Do the Test Scores Tell Us," *Policy Review*, January/February 1999.

¹⁰ For a complete discussion of this topic, see Nina H. Shokraii, "Why Catholic Schools Spell Success for America's Inner-City Children," *The Heritage Foundation Backgrounder*, No. 1128 (June 30, 1997).

¹¹ For a detailed discussion of the Milwaukee choice program see, for instance, Daniel McGroarty, *Break These Chains: The Battle for School Choice* (Rocklin, CA: Prima Publishing in Association with ICS Press, 1996.)

¹² Nina S. Rees and Sarah E. Youssef, "School Choice Programs: What's Happening in the States." Updated information available at <http://www.heritage.org>.

¹³ See the Institute for Justice legal updates at <http://www.IJ.org>.

¹⁴ Supreme Court of Wisconsin, Case No. 97–0270, June 10, 1998.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Mark Walsh, "Green Light for School Vouchers?" *Education Week*, November 18, 1998.

¹⁹ Institute for Justice, press release, "U.S. Supreme Court Lets Stand Wisconsin School Choice Decision," November 9, 1998. See <http://www.IJ.org>.

²⁰ John F. Witte, "Achievement Effects of the Milwaukee Voucher Program," Madison, WI: University of Wisconsin, 1997.

²¹ McGroarty, pp. 169–187.

²² Jay P. Greene and Paul E. Peterson, "The Effectiveness of School Choice in Milwaukee: A Secondary Analysis of Data from the Program's Evaluation," presented at Panel on the Political Analysis of Urban School Systems, American Political Science Association, San Francisco, California, August–September 1996.

²³ *Ibid.*

²⁴ Cecilia E. Rouse, "Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program," *Executive Summary*, Princeton University Labor Lunch and the National Bureau of Eco-

nomics Research's Program on Children Conference, December 1996.

²⁵ Rees and Youssef, *School Choice Programs* at <http://www.heritage.org>.

²⁶ Ibid.

²⁷ Ibid.

²⁸ See Institute for Justice Legal Analysis at <http://www.IJ.org>

²⁹ Ibid.

³⁰ Jay P. Greene, Paul E. Peterson, and William Howell, "An Evaluation of the Cleveland Scholarship Program," Harvard University Program in Education Policy and Governance, September 1997.

³¹ Mark Walsh. "Report Says Vouchers Yield Mixed Results," *Education Week*, December 2, 1998.

³² Rees and Youssef, *School Choice Programs* at <http://www.heritage.org>.

³³ Ibid.

³⁴ Ibid., see also Institute for Justice memorandum, "School Choice Litigation Status," January 1, 1999.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Quoted in Joe Klein, "In God They Trust," *The New Yorker*, June 16, 1997.

³⁸ A. Bryk, V. Lee, and P. Holland, *Catholic Schools and the Common Good* (Cambridge, MA: Harvard University Press, 1993).

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ For a complete discussion of this topic see Nina H. Shokraii, "Why Catholic Schools Spell Success for America's Inner-City Children," Heritage Foundation, *Background*, June 30, 1997.

⁴² See, for instance, James S. Coleman, Thomas Hoffer, and Sally Kilgore, *High School Achievement: Public, Catholic, and Private Schools Compared* (New York, NY: Basic Books, 1982).

⁴³ William N. Evans and Robert M. Schwab, "Finishing High School and Starting College: Do Catholic Schools Make a Difference," *The Quarterly Journal of Economics*, November 1995.

⁴⁴ Ibid.

⁴⁵ Ibid.

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⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Caroline M. Hoxby, "Do Private Schools Provide Competition for Public Schools?" National Bureau of Economic Research Working Paper No. 4978, 1994; and "The Effects of Private School Vouchers on Schools and Students," in Helen Ladd, ed., *Holding Schools Accountable* (Washington, DC: Brookings Institution, 1996), pp. 177–208.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Abby Goodnough, "Mayor Proposes Voucher Experiment in Single School District," *The New York Times Regional* on the Web, January 15, 1999.

⁵⁶ The Blum Center's *Educational Freedom Report*, No. 61 (July 17, 1998)

⁵⁷ Mark Walsh, "Green Light for School Vouchers?" *Education Week*, November 18, 1998.

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The Many Faces of School Choice

Frank Monahan

My task is to address the question of how tax policy can advance school choice and to make some observations on political action for school choice. I am not speaking as a legal expert or a scholar, but rather I am sharing the perspective of a person who has spent most of his career advocating for public assistance to Catholic school parents, students, and teachers during the past thirty years.

The concept of "school choice" is plain and easy to understand. The bishops explained it well in their 1995 document, *Principles for Education Reform in the United States*: "Parents have the right to choose the kind of education best suited to the needs of their children, and they should not be burdened economically in choosing a private or religious school in the exercise of this fundamental right." That belief flows from two basic principles articulated earlier in that document. Namely, "Parents are the first and foremost educators of their children," and "Parental rights are natural and inalienable and should not be limited to the economically privileged."

Unfortunately, translating the concept of school choice into public policy through our political process is very complex. Consequently, I believe it is necessary to define our terms carefully, if we are to work through these complexities and gain a better understanding of this as a public policy issue.

In the public debate, school choice is often equated, erroneously, with education vouchers. Education vouchers are only one component of school choice. In addition, not all voucher programs are created the same. For example, in recent years there has been a great deal of publicity about the education voucher programs in Milwaukee and Cleveland. In each instance, the state governments of Wisconsin and Ohio were concerned about failing urban school districts. Consequently, each authorized funding a limited number of vouchers—that is, government funded scholarships—to enable low-income parents to choose other than a public school within each of those districts. The Congress used these models to enact a similar program for the District of Columbia, which was ultimately vetoed by the President.

Translating the concept of school choice into public policy through our political process is very complex.

While similar, each of the two state programs has a unique legislative history that has impacted differently on the participation of the local Catholic schools and a unique litigation history. Likewise, while the program authorized by the Congress for the District of Columbia was modeled on the Milwaukee and Cleveland experiences, it was also different in many respects from its prototypes.

The proposed California voucher initiatives of recent years were efforts to radically reform the financing of all elementary and secondary education within that state. The voucher proposal seriously considered by the Pennsylvania legislature in the past few years was more of an effort to compensate the parents who either had already exercised their right to choose private or religious education for their children or who might do so in the future. At the same time, this Pennsylvania legislation would have created greater choice within the public school system for those who preferred to remain in government operated schools.

Congress has considered other voucher proposals in the past, which would have targeted benefits to low-income families and only

for demonstration purposes, that is, to determine the effectiveness of this mechanism to improve inner-city public education. It should be noted that, at the federal level, vouchers are frequently used as a mechanism to deliver a particular benefit. Food stamps and housing vouchers are good examples. Within education, this more directed approach has been considered by Congress—and rejected—as a means of providing remedial education services.

In any effort to pursue education voucher legislation in the U.S. Congress, one thing is important to remember. The federal government historically has been the junior partner with state and local governments in the financing of elementary and secondary public education. Therefore, it is not likely to create significant new programs of general support.

It should be clear to you by now that education vouchers offer a variety of policy options within the school choice debate. That is also true with other components of that debate—things like education assistance programs benefiting students and teachers in nonpublic schools or tax policies which assist the parents of nonpublic school students. For example, education assistance programs—whether publicly subsidized transportation, child nutrition programs such as school breakfast and lunch, or child care programs benefiting Catholic school students—all allow our schools to provide real alternatives to the public schools for those working parents who might be able to pay the tuition costs to cover the basic instructional program but not the extras. Certainly, the federally subsidized compensatory education programs allow inner-city Catholic schools to provide a choice to the families of a significant number of educationally disadvantaged children.

Legislation which would reduce the taxes of those parents who incur out of pocket educational costs can also significantly enhance school choice. This legislation could come in many different forms: tuition or educational tax credits or deductions, child tax credits, or an increase in the level of the federal deduction for dependents. Another approach would be an educational tax credit tied to specific educational need, such as supplementary remedial services provided outside of the normal curriculum. A legislative proposal debated at length and passed by the last Congress was the creation of tax-free savings accounts. Interest on those accounts would have accrued tax

free as long as the money was used to pay for elementary or secondary school costs. Unfortunately, this too was vetoed by President Clinton. These are just some of the possible ways of changing federal or state tax codes to enhance school choice.

What are the policy and political questions which must be considered in determining the best possible options for tax legislation related to school choice? You have been given a comprehensive legal analysis on school choice by the General Counsel of the Bishops' Conference. I want to emphasize one very important policy implication from the case history of the past many years. Any education-related tax legislation must insure there is a broad class of beneficiaries as the best protection against a constitutional challenge in the courts. The public benefit such as a tax credit or deduction should be made available to all citizens who incur costs in educating their children, whether in public or nonpublic, secular or sectarian institutions. If you follow this dictum, tax credits or deductions for educational expenses would be preferable to those linked only to tuition, which is not normally used as a method of financing public schools. In other words, in order to insure a constitutionally viable program, public school parents should be eligible beneficiaries. Limiting the tax benefit to tuition would not likely accomplish this.

Any education-related tax legislation must insure there is a broad class of beneficiaries as the best protection against a constitutional challenge in the courts.

Additionally, it is important to note that other policy considerations can prevent, and have prevented, our political allies from following this approach in developing legislation. For example, there are significant revenue loss implications for national or state treasuries, if the class of beneficiaries is broadened from only nonpublic school parents to all parents of school-aged children. That kind of change could result in a cost increase ten times as great as a more limited program for nonpublic school parents. Apparently, this is why, after the Supreme Court decision in Mueller, indicating the importance of a broad class of beneficiaries, the Reagan Administration would not agree to change its tax credit bill, before Congress in 1983, to include public school parents.

The issue of cost related to education tax credit legislation was particularly severe during the deficit years of the eighties and early

nineties. Hopefully, this will be mitigated in the new era of government surpluses. In addition, there are many other ways of controlling costs in the design of tax relief legislation. For example, a tax credit could be limited to the cost of tutoring which would benefit only that part of the parent community whose children have these special needs. It is increasingly common for both public and nonpublic school parents to pay for tutoring services.

Other policy considerations deal with the level of financial benefit that can be derived from any tax legislation or the categories of taxpayers who are most likely to benefit. Keep in mind that this kind of legislation essentially reduces the amount of money that government would otherwise require one to pay in taxes. Because the federal income tax is higher than that imposed by the states, there are potentially much greater benefits to be derived from a federal approach as opposed to state level programs. In fact, there are nine states that do not even have a state income tax. However, given the limited role of the federal government in financing elementary and secondary education, it is a harder political sell at the national level. Although tax relief programs can provide significant financial assistance to parents, they are likely to cover only a portion of the cost of elementary and secondary education and only after these expenses have already been paid by the individual taxpayer.

The next question is who benefits? Normally, tax deductions only benefit a relatively small percentage of taxpayers, namely, those who itemize their deductions. A very large percentage of Catholic school parents would get no benefit at all from a tax deduction because they do not itemize, i.e., they use the short form and standard deduction. Nationally 72% of federal taxpayers take the standard deduction. Furthermore, a tax deduction, as opposed to a credit, benefits those in higher income levels more than lower income taxpayers. This raises an issue of equity and fairness.

It is because of these considerations that the USCC has preferred to advocate for education tax credits rather than deductions. However, education tax credits must be “refundable” in order to avoid another serious equity issue. Unless a tax credit is refundable, it will not benefit those very low-income people such as the “working poor” who have no income tax liability. I suspect that Catholic inner-city schools are heavily populated with the children of the “working poor.” Refundability

simply means that if you are eligible for a credit but do not owe any income taxes, the government will give you a grant of money equivalent to the amount that your taxes would otherwise have been reduced. Given these considerations, the most desirable tax policy for our community to support would seem to be a refundable tax credit for educational expenses including, but not limited to, tuition.

A wholly different tax policy approach to this issue would be through the enactment of a child tax credit. This provides a tax benefit not directly related to education but based on the goal of assisting all families with alleviating the cost of raising children. This has the merit of being a very politically popular family policy which can easily garner broad-based bipartisan support in Congress and in state legislatures. In 1997, Congress approved a \$500 per child tax credit. These tax benefits may be very helpful in defraying the costs of tuition at any Catholic or other nonpublic school. The USCC supported this as sound family policy which would also provide significant assistance to Catholic school parents. Expansion of this program by increasing the level of the benefit has some real possibilities as we approach this new Congress under a Republican leadership, which is interested in enacting tax reduction legislation.

Before leaving this subject, I would like to mention a few additional factors which favor a tax policy approach to school choice. Because you are not creating a government program, but simply granting tax relief to individual citizens, it is much less likely that the legislature would feel compelled to impose any heavy regulations on the schools. The one exception would be the continued coverage of existing civil rights laws.

In advocating for this type of legislation, a strong argument can be made for tax fairness and justice for nonpublic school parents who both support the public school system with their taxes and save states significant amounts of money (billions of dollars nationally) by relieving them of the responsibility for educating their own children. Furthermore, it is noteworthy that people who choose to live in certain communities because the desirable schools are located there already get an education tax benefit from the current federal tax code. They are allowed to take a deduction for their local taxes which primarily

Unless a tax credit is refundable, it will not benefit those very low-income people such as the "working poor" who have no income tax liability.

go to the support of the public schools, thereby reducing their federal tax liability.

I have deliberately tried to emphasize the complexities surrounding the issue of school choice, because I believe they need to be sorted out if we are to advocate effectively for these policies. There is a very diverse group of people and institutions in this country who count themselves as “school choice advocates.” Except for the Catholic school community and their traditional allies in the larger nonpublic school world, none of them are responsible for the formal education of large numbers of children. They come to this issue for different reasons and motivations, some of which we may share and some of which we do not. This has been further complicated by the increasingly partisan political nature of this issue. Outside of our own community, much of the energy driving the school choice movement in this country comes from those who want radically to change or reform the public school system for philosophical or political reasons. They are only incidentally interested in assisting those parents who are now sending their children to nonpublic schools. It is important to reflect on these political realities as we consider the best methods of political advocacy for our school communities. Additionally, we should always keep in mind our broader commitment to quality education for all students, both public and nonpublic, which has been most recently addressed by the Bishops in the statement I cited earlier, *Principles for Education Reform in the United States*.

It seems to me that the first task of the nonpublic school community is to develop a consensus about the goals to be achieved. First, the objectives should be carefully defined. Is the goal to secure full public funding for nonpublic education through something like a general education voucher program? If that is the case, is the Catholic school community prepared to sacrifice significant aspects of its autonomy, if that is what might be demanded as the price of participation in such a program? Issues that immediately come to mind are control over admissions policies, flexibility in choosing curricula and teaching techniques, and limitations on discipline, dismissal policies and teacher certification. And that is certainly not an exhaustive list. Have these questions and many more like them been fully debated in the Catholic or the broader nonpublic school community?

In the Wisconsin program, parents can elect to opt their children

out of religious activities, an option which would not be accepted in other Catholic school communities. A similar provision prevented the Archdiocese of Washington from fully supporting the original District of Columbia school choice proposal debated in Congress in 1995–96. There sometimes seems to be a rather naive belief among Catholic educators that they could fully participate in a publicly financed program of choice and carry on with business as usual. On the other hand, there does not seem to be any unacceptable limitations in the Cleveland program or the one proposed in Pennsylvania. It is probably noteworthy that the Wisconsin and D.C. proposals were not initiated from the Catholic school community, while I understand there was involvement from that sector in shaping the proposals in Ohio and Pennsylvania. The one thing that history teaches us about government-funded education is that it always brings a certain level of regulation and limitation with respect to how tax dollars are used. This makes a strong argument for the pro-active involvement of the Catholic school community in the development of these proposals and a healthy wariness about support for proposals initiated outside of our community.

Finally, would such a debate within the nonpublic school community lead to a consensus around a more limited program of public assistance with fewer constraints on the operational freedoms of nonpublic schools—for example, categorical aid from state or federal governments being provided through a voucher? This might entail some regulation of the funded program, but would not impact on the basic operation of the nonpublic school. Another approach might be significant tax relief provided directly to the nonpublic school parents (at any level of government), which would entail little or no regulation.

In any case, education continues to be a top concern of the American electorate, and the school choice debate continues unabated. Unfortunately, this is so because it is a symptom of the continuing very serious problems of public education. If the goal in the current debate is the full public financing of “nonpublic” education through the use of a general educational voucher, we must keep in mind that this will only be accomplished in the context of a radical reform of the financing of all public elementary and secondary education. In that case, the Catholic school community should be prepared to engage itself fully in this broader debate on public school reform. Are we prepared

for that? Logically, the Catholic church community belongs in that broader debate anyway, since more than two-thirds of our children attend public schools.

In dealing with the political issues related to school choice, it is important to understand that the debate around this issue has a very long history. It dates back to the mid-sixties when a Democratic Congress responding to the urgings of liberal reformers enacted the first education voucher legislation which was signed into law by a Democratic President as part of his "War on Poverty" program.

A few years later, in 1972, tuition tax credit legislation was created by the Catholic school community and through the work of the Bishops' Conference which secured the support of a Republican President, Richard Nixon, together with the Democratic and Republican leadership of the House Ways and Means Committee and the eventual endorsement of the 1972 Democratic nominee for President, Senator George McGovern. In January of 1973, the stage was set for a successful effort to enact tuition tax credit legislation in that new Congress. Unfortunately, during that same time another state law was heading for the U.S. Supreme Court.

A New York statute that provided a multipurpose program of aid for nonpublic education, including tuition tax relief for parents of Catholic and other nonpublic school students, was challenged on constitutional grounds. The Court decided to hear that case in 1972 and rendered its opinion in June of 1973 in the *Nyquist* decision. The court struck down the entire program, including the tax benefits, which were available only to parents of nonpublic school students. From the *Nyquist* decision, it seemed advisable that educational aid laws should benefit a broad class of citizens, and not be limited to parents of nonpublic school students, in order to increase its chances of success before the Supreme Court. This was confirmed 10 years later in the 1983 Supreme Court decision in *Mueller*.

Between 1973 and 1983, there were two additional attempts to get Congress to enact tuition tax credit legislation. The 95th Congress came very close to enacting a law in 1978, but by 1983 the issue had become identified with the Reagan conservative social agenda, which resulted in serious erosion of moderate Democratic support. Moreover, the vote in the U.S. Senate in November of 1983 revealed that this loss of support in the center was not offset by increased support

from conservative Republicans, many of whom ultimately voted against the President's proposal.

In addition, by 1983 opposition solidified within and among the organized public school interest groups. The big unions had become increasingly influential within the Democratic Party and directly engaged in electoral politics, largely on behalf of Democratic candidates. The issue had become seriously politicized and partisan. In the same year, after the *Mueller* decision, which provided essential guidance on how to design constitutionally acceptable legislation, these opponents shifted the focus of their arguments from the constitutional issue to one of scarce resources. Taking advantage of deficit-driven politics, they have been arguing against all school choice proposals as draining resources from the public schools. (A fuller treatment of this history can be found in a paper titled "Nonpublic Schools and Public Policy," which I wrote for the NCEA's 1991 National Congress: Catholic Schools for the 21st Century).

However, the issue of "school choice" will not go away, because the problems persist within the public schools, and a viable and significant community of nonpublic schools remains intact doing an increasingly impressive job of educating all kinds of kids with fewer resources than their public school counterparts. There are many other encouraging developments which should keep up our hopes that the public policy process will eventually produce more just circumstances for our parents, students and teachers. Among these are:

- The continued strong support in public opinion for the concept of school choice. This is particularly true in the poorer African-American and other minority communities.
- The dramatic break from the Democratic leadership in Congress by certain African-American political leaders on the issue of school choice. This has had reverberations throughout both the civil rights and liberal political communities. It is very important to keep in mind that credibility in the minority community is closely tied to the record and performance of Catholic schools within the poor communities where the public school problems are the most pronounced. We should be very careful not to let this be dissipated by any unholy political alliances
- In the last eight years we have seen some real progress on several related fronts. In 1990, the U.S. Congress enacted historic leg-

isolation of federal aid for childcare services. In doing so, the Congress authorized child care vouchers which could be used to purchase child care services from church sponsored providers, even if their programs were religiously oriented. To date, no one has brought any litigation against this program.

- I have already noted the creation of two new publicly funded voucher programs in Wisconsin and Ohio. The struggle continues in Pennsylvania. Iowa has expanded its education tax credit program. New laws have been passed in Minnesota and Arizona. The Illinois legislature passed a significant education tax credit law, subsequently vetoed by the Governor, who has since retired. There is a renewed optimism for a success in Illinois in the coming year. Missouri has made significant progress and there may be renewed interest in education tax legislation in New York and New Jersey.
- In 1997, with the support of a Democratic Administration, a Republican Congress enacted a broad-based program of tuition tax credits and deductions for the costs of higher education. This is the first major education tax benefit written into the Internal Revenue code.
- After almost two decades of politics driven by concerns over the deficit, we have entered a new era of surplus politics. In addition, education continued to be the top issue of concern to the electorate in almost every major poll in the 1998 election cycle. This can only enhance the prospects for new aid to education and support for families, which could in many ways support the goals of school choice. This is also reflected in the recent statements by the new Speaker of the House, Congressman Dennis Hastert (R-IL), who has indicated that education will be a priority in the new Congress.

We must be prepared and well organized to exploit the opportunities offered in the future. A good and prophetic sign was the Bishops' commitment of almost a decade ago to the proposition that the political future of these issues lies at the grass roots level, largely in the hands of the parents. They have strongly endorsed and funded efforts to organize and educate the Catholic school community for public policy advocacy. Catholic school professional leaders like you have

played an indispensable role in supporting this effort.

We should move ahead with confidence that much more can be achieved. There are still many dioceses and states that need to develop a well-organized and educated parent constituency in support of school choice legislative and policy initiatives at the state and local levels. Those organizations that have been established need to be reenergized by new initiatives for public assistance at all levels of government. Over the years we have come a long way. As all of you educational professionals know, there are always continuous challenges to be met and new worlds to be conquered when working with children.

Frank J. Monahan is director of the Office of Government Liaison, U.S. Catholic Conference. He is responsible for the management and coordination of congressional and government relations for the National Conference of Catholic Bishops.

In the past he served as the coordinator of the bishops' campaign in support of tuition tax credit legislation, and was a U.S. Peace Corps volunteer, serving as a teacher in Nigeria, West Africa (1964–1967).

Symposium Participant Responses

Following the presentations in which Ms. Shokraii Rees described the constructs of publicly funded choice programs and Mr. Monahan discussed policy implications, participants shared their reactions and reflections. Participants were asked to discuss the following question: **If the Catholic school community is to advocate for publicly supported choice initiatives, what issues need to be debated, what objectives should be pursued, and what type of consensus needs to be formed? The responses are summarized below.**

- We need to develop a consensus around a united vision for this effort; we must articulate a vision.
- The case statement for seeking public funding should be based on civil rights issues and the principles of social justice.
- We need to explain to our own members the justice issue of choice and its relationship to church teaching. Alliances within the church are fractured and we must pursue a justice agenda to confront the subtle racism that opposes vouchers because of the targeting of low-income people.

- The most disadvantaged should be the priority for acceptance in school programs. In assessing legislative proposals, consider whether there is an option for the poor. A tax credit may be insufficient to help the poor if it is not fully refundable.
- We must figure out how to satisfy the opposing and supporting political and philosophical concerns and determine whether or not there is a large enough common ground so legislation can be passed.
- We have to work together for the improvement of education for all children in our states and across the country. We must avoid bashing the public school system. Legitimate data about Catholic school student success and achievement, when utilized, should not be flaunted in a spirit of triumphalism.
- We have demonstrated the success of school choice with private plans; now we should regroup our resources to enact structural change through informed and active grassroots legislative advocacy.
- The privately funded programs can be used to highlight the success of school choice in the short term, but long range strategies for choice must involve public funding.
- Determine whether or not there is substantial public support for school choice. Assess the financial implications of vouchers/tax credits and who will benefit.
- Make sure a voucher or tax credit is adequate to cover the per-pupil cost for a quality education. A tax credit/voucher needs to be large enough and refundable to make a significant impact on the cost. Catholic institutions should not be required to subsidize students if the voucher doesn't cover costs.
- Will vouchers or tax credits compromise the religious identity of the school? What impact will choice have on the school community—social aspects, sense of community—not just on the rights of minorities, but of others, too.
- How are we preparing the school climate for new students who will come as a result of vouchers?
- Carefully consider the tradeoffs. Is “getting the foot in the door” justification for compromising some aspects of school independence or accepting unreasonable regulation?
- How will choice impact other Catholic schools? Will we give Catholic parents the opportunity to exercise choice between

parishes and dioceses? Parents need data to make choices: how much data do we release about test scores, achievement levels, etc., not knowing how else those data might be used.

- Due to highly financed opposition groups in the political process, a political referendum for choice has not proven effective; we need to work for state legislation that does not go to a referendum on a ballot.
- Thoroughly assess opposition, downsides, future barriers that may come up after legislation is passed and what the impact on non-participating schools will be.
- Tuition tax credit may be more politically viable than vouchers; in a tax incentive program, it is the taxpayer's money to use as he/she chooses.
- Assess the Catholic school "system" capacity for accepting additional students. There are many empty buildings, but most are in the wrong place. Voucher checks must be large enough to allow for the building of new schools and expansion of our markets. Otherwise, we will be perceived as simply trying to fill seats to save our own institutions.

Panel Presentations

Publicly Funded Voucher and Charter School Programs

Two panel presentations shared insights into the implantation of the publicly funded programs in the cities of Milwaukee and Cleveland. In the first, panelists reflected the perspectives of a diocesan superintendent, Sr. Carol Anne Smith, HM; two principals, Sisters Kathleen Hein and Monica Fumo; and Ms. Sharon Schmeling, associate director of the Wisconsin Catholic Conference, who was the Conference lobbyist as the Milwaukee bill was enacted into law. Ms. Jeanne Allen, director of the Center for Education Reform, shared her experiences of the charter school movement, its impact on educational choice and some implications for Catholic schools.

A second panel featured Rev. David McCauley and Mr. Timothy McCarthy of the Minnesota and Iowa Catholic Conferences, who discussed the education tax relief programs available in their states.

Excerpts of the panelists' remarks and some participant comments follow.

Carol Anne Smith, HM
Superintendent of Schools
Diocese of Cleveland, Ohio

The Cleveland Scholarship and Tutoring Program was established in April 1995, granting eligibility to any student residing in the Cleveland City district enrolled in grades K–3 in any private school, including those religiously affiliated, and in public schools contiguous to the Cleveland district.

The scholarship maximum was \$2,500, with families receiving vouchers worth 90 percent or 75 percent of their tuition, based on family income. More than 6,000 applied for the 1,500 scholarships. Eventually, 1,994 scholarships were given, because more grants were available due to the low tuition in the Catholic Schools.

Today, of the nearly 4,000 who have the vouchers, 60 percent are in Catholic schools. Vouchers are issued in the name of the parent who signs the warrant and turns it over to the school. Interestingly, the program allowed Cleveland's public schools to keep up to 55 percent of the state aid they would have received for that child.

The most difficult issue to resolve was around the contents of the compliance form which participating schools had to submit to the Ohio Department of Education. The two points of concern were: 1) the teaching of religion to all students and 2) admissions policies that gave preference to parishioners and our own families.

While schools are required to accept a certain percentage of scholarship students, it does not interfere with admissions policies and there is no opt out of religious studies provisions. Ultimately, 34 of our schools did accept the program.

Although the vouchers are worth 90 percent of the tuition and must be subsidized by the parish, there were four reasons why schools participated: 1) our Catholic schools have served all children and all families and we saw this as a further opportunity to serve, 2) we saw the potential benefit for our own students and families, 3) we believed that participation in the program might help contribute to future programs in other areas, and 4) we saw this as an opportunity to provide for children and their families the wonderful option of Catholic education.

Lawsuits challenging the constitutionality of this plan were filed.

In the first trial, the judge ruled that the plan violates neither the Ohio nor the United States constitutions because “non-public sectarian schools participating in the scholarship programs are benefited only indirectly and purely as a result of the genuinely independent and private choice of aid recipients.”

The following year, the court of appeals struck down the original decision and determined that the program violated the religious establishment clause of both constitutions as well as the uniformity clause of the Ohio constitution. This is still with us today. However, the program was allowed to continue pending the outcome of a further appeal.

Sr. Carol Anne Smith is secretary for education and superintendent for the Diocese of Cleveland. The Secretariat for Education, under Sister Carol Anne's leadership, is responsible for overseeing the sixth largest private system of schools in the United States. A secondary school teacher and administrator, Sr. Carol Anne was principal of Magnificat High School from 1981–1988, has held a variety of administrative positions, and serves on various boards of trustees.

Kathleen Hine, SND
Principal, Metro Catholic School
Cleveland, Ohio

Metro Catholic School serves more than 600 children in pre-kindergarten through grade 8. We have two campuses, two miles from one another, and three buildings.

Our mission statement acknowledges our commitment to the city and to the poor. It is enriching for us to live with such cultural diversity, and we have found that with the voucher program, our schools better reflect the ethnic peoples of the neighborhood. Our African-American population has grown, we have been able to welcome children from Middle-Eastern families, and more recently, we see a growing number of Asian-American children among our students. As we open our doors to diverse ethnic groups, we find that our non-Catholic student population has increased by about 10 percent.

The voucher program has brought children who live at a distance from Metro and are not part of one of our supporting parishes. Their

connection to the schools appears to be not as strong as that of our parish and neighborhood families. Consequently, we find that parents of these children may not be as involved in their child's learning or as supportive of our policies as we need them to be. It is also difficult for the administration when voucher recipients don't complete their monthly payments and seem unwilling to earn tuition credit by giving service, even if they are able to do so. We haven't given up. Connecting these families to the school community is important to us, and we continue to find creative ways to do that.

Voucher recipients come to us because they want their children to receive a good education in a safe environment. We are committed to maintaining a high standard, but in order to do that we need to be able to hire and retain good teachers with a more just salary scale. We are finding that task to be increasingly difficult, because each year we lose several good teachers who need to earn more money elsewhere. This is not a problem unique to our school or our diocese; it is happening in all parts of the nation.

We may be compelled to raise tuition to reflect actual per-pupil costs. Depending on income levels, our families, including voucher recipients, may be charged per-pupil costs. Although 88 percent of our parish families live at or below the poverty level, some of our voucher recipients are not eligible for more tuition aid from the school if the voucher is not sufficient. Consequently, the state may be asked to assume the true cost of educating a child in our school. If the program is ruled constitutional in the state, we will ask lawmakers to honor a local decision to increase tuition.

Along with its blessings, the voucher program has brought its share of challenges. In addition to those I have already mentioned, the amount of paperwork for our secretaries and bookkeeper has greatly increased.

At times, we hold our breath waiting for the voucher checks to arrive. We never know when this will be, and we have to meet our costs. Also, getting parents to come and sign their checks can require more than one phone call, written reminders, and longer days to accommodate their schedules.

This year, transportation for the voucher students has run more smoothly. In the first two years of the program's existence, many of the voucher recipients came in taxicabs. Often the cabs didn't show

or were late. Parents and I spent many hours tracking them down; the children were often tardy or absent due to no fault of their own.

Sharing in Jesus' mission of bringing hope and commitment to the city and to the poor is what Metro Catholic, a family oriented school with a strong education program, is all about. We support parental choice in education, but we need to be able to do it without having to sacrifice any part of our mission. Our hope is that parents, educators, and law makers will be able to work together so that parents can choose the educational setting that best meets the educational needs of their children. We also hope that schools will be free to make decisions that truly reflect their care and concern for each child they serve.

Sr. Kathleen Hine is a member of the Sisters of Notre Dame of Chardon, Ohio. She has served for many years as a teacher, guidance counselor, and administrator in Catholic schools in Northeastern Ohio and Northern Virginia. Since 1996, she has ministered in a Catholic urban school in Cleveland, working closely with the scholarship program. Her responsibilities include the administration of a pre-K to grade 1 program, guidance programs for students of all ages, and family and parent programs.

Monica Fumo, SC
Principal, St. Joan Antida School
Milwaukee, Wisconsin

In our city, St. Joan Antida School has been a model of a multi-cultural school that works, and has worked, since 1954. We reflect the racial and economic diversity of our city. Although we serve an extremely large low-income population, we welcome and respect every young woman and her family.

Under the expanded Milwaukee plan, we accepted voucher students in 1995. On the first day of school, the Wisconsin court issued an injunction preventing the Milwaukee parental choice program (MPCP) from granting vouchers to parents to use in religious schools.

We had voucher students in our building who were happy to be there, and I was not about to turn them out. It was one of the most difficult moments I have had, choking back the tears and thinking that

I was going to have to raise hundreds of thousands of dollars in a minute to keep the girls in school.

A reporter from the *Milwaukee Sentinel Journal* interviewed a mother and daughter as they left our school greatly distressed by the injunction. He also came into the school to talk with us about it. The next morning, a picture of the distraught family and principal appeared on the front page of the *Journal*. That helped raise money through PAVE's emergency fund and allowed scholarship students to continue at the school. That experience taught me that people are generous and good when they're looking at other people in need and see a human face.

After a favorable court ruling in 1998, religious schools did become part of the Milwaukee Parental Choice Program. We have been challenged by the paperwork required of the program. Applications need to be meticulously completed, deadlines met, incredible lists to be kept, appraisals of our building's inventories to be made, financial audits to be prepared, and rules set by the Department of Public Instruction to be observed. We're dealing with all of that.

For some people, the concern is whether we will be able to remain Catholic with the mandatory opt-out provision affecting religious instruction. It has not really been a problem, and I don't expect it to be. Parents are smart people and they're going to choose your school because of who you are, what you offer.

Within the expanded choice experiences, I personally have been touched by racism and classism. I think it's an issue, but I'm not sure what can be done about it, because you need to turn people's hearts around and that isn't easy to do. This country started to do that in the 1960s with the civil rights movement, and we haven't made great progress. I see that problem in the five high schools in the city of Milwaukee who are allowed to accept choice students. It has become an issue with some families that are afraid, or question whether we want poor, low-income students coming into the schools.

My greatest challenge and worst fear regarding this is that the Catholic people and their leaders are just not going to be strong enough to say, "These are God's people, and we need to do what we have to do." I know from what I've heard here that others are starting to experience this, and we must all work to assure that all children of this country will have access to the same educational choices.

Sr. Monica Fumo is principal of St. Joan Antida (SJA) High School. She is a member of the community of the Sisters of Charity of St. Joan Antida and has served as principal of the all-girl high school near downtown Milwaukee since 1980. SJA has a student enrollment of about 400 and employs about 35 full and part-time faculty members.

Sharon Schmeling
Associate Director, Wisconsin Catholic Conference

I have to confess that it's absolutely great to be in the winner's circle. In Wisconsin, we fought the good fight and we won. Wisconsin is the first state in the nation to have a constitutionally upheld choice program that includes religious schools. I will share some of the lessons we learned lobbying for passage of that legislation.

We came to the realization that the details of the program are secondary to the strategy used to get that program passed. In Wisconsin, the strategy focused on the PAVE Program that demonstrated to legislators that low-income parents had the desire and the ability to make good choices for their children. PAVE's research on student achievement demonstrated that choice programs can improve student performance.

We were successful because there was a broad-based and diverse bipartisan coalition of supporters. This included the Chamber of Commerce, parental grassroots organizations, religious organizations, the public school superintendent, and the mayor and governor. Legislators had to answer to this diverse group.

If everyone is responsible, no one is responsible. Consequently, the need for a designated leader who can respond immediately for the coalition is imperative.

Every state that wants to pass a choice program needs to identify and exploit its unique legislative process and have a political strategy for getting the legislation passed.

It must be demonstrated that a one-size-fits-all education system is not working for many children, and that its structure is not fully responsive to parents' fundamental moral right to choose the best possible education for their children. Parental choice was one of the

only strategies that had not been tried. Legislators figured that it might work, because their earlier efforts to improve the Milwaukee public schools simply didn't work.

Early on, the coalition agreed that the message must be simple and direct and would always focus on the needs of children and the desires of parents. Every argument made, whether it was about fiscal concerns or constitutional law, was grounded in the needs of children and parents. Whenever possible, we put parents in front of the media.

In the legislative process, you must be prepared to divide and conquer the opposition. There were several education reform initiatives in the governor's budget as we advanced the MPCP legislation, and the opponents of parental choice couldn't fight all the issues at once.

Groups must be willing to make compromises. The Wisconsin Association of Non-public Schools gave up its desire for a state-wide choice program, the Milwaukee Archdiocese gave up the desire to include parents of moderate income, politicians gave up their ability to take full credit for the initiative and shared credit across party lines, and our bishop accepted the religious activity opt-out provision.

Substantial amounts of money must be available at the outset to pay the coalition leader, fund studies of effectiveness of choice, organize parent rallies and meetings, pay for faxes and mailings, and employ lawyers and lobbyists. There must be willingness, commitment, and financial resources to take on a legal challenge after the law is passed. Getting the law passed is really just the beginning; the opposition does not go away. Aside from the costs and efforts of the legal battle, the opposition is going to continue to oppose the program in the court of public opinion.

What are the challenges and issues for the future? Obviously, one is the opt-out provision, and I'm working on a paper right now that discusses the implications of the opt-out provision in light of church teaching. As much as this provision seems anathema to us, I think the Vatican II documents on religious freedom and Christian education, when read together, appear to support such an approach.

Another challenge is attacking the status quo, and the whole issue of whether or not the public schools are serving children. The vast majority of Catholic school children are in public schools, and the Bishops are not interested in bashing the public schools.

Finally, I think we need to deal with the issue of racism in our schools and among our school parents, principals, and pastors. We need to own that, we need to name it, and we need to begin talking about it.

Sharon Schmeling is associate director of the Wisconsin Catholic Conference. Before joining the Wisconsin Catholic Conference, Sharon spent 9 years as an award-winning newspaper reporter covering crime, police, courts, religion, and education for The Milwaukee Journal, The Capital Times in Madison, WI, and The Morning Call in suburban Philadelphia, PA.

**Winning the Parental Choice Bowl in Wisconsin:
An Excerpt from Bucky Badger's Playbook
Sharon L. Schmeling**

1. There must be an existing parental choice program providing alternatives to current public education opportunities.
2. There must be a broad-based, diverse, bipartisan coalition of supporters.
3. The coalition must have a leader.
4. The coalition must have a clear political strategy for getting legislation passed.
5. It must be demonstrated that a one-size-fits-all system of public education is not working for many children and its structure is not fully responsive to parents' fundamental moral right to choose the best possible education for their children.
6. The movement's message must be simple and direct: it must be focused on the needs of children and the wishes of parents.
7. Legislative leaders must be prepared to divide and conquer the opposition.
8. Within the parental choice coalition, each interest group must be willing to compromise.
9. Substantial amounts of money must be available at the outset.
10. There must be willingness, commitment, and finances to take on the responsibilities of a legal challenge and the implementation of a choice program AFTER the law is passed.

Jeanne Allen
President, Center for Education Reform
Washington, D.C.

The Center for Education Reform advocates for better learning opportunities for all children. Our fundamental mission is to put the best learning opportunities before our children, whether it be vouchers, charters, etc. The name of the movement is not the main issue; it is not the vehicle so much as it is the principle. To that end, we supported the Cleveland and Milwaukee initiatives in a variety of ways, including filing amicus briefs in the legal battles.

I am also engaged in choice issues personally as the mother of four children in a Catholic school. Like most parents, we care most about our children, not the system or particular school. We have a great deal of allegiance, commitment and investiture in our community, but we're willing to leave if our needs are not being met—and I believe that these views are shared by most parents.

Today, much more data about schools is available than ever before, but it is still not enough. Generally, we don't know what choices are available and what the schools are doing for and to our children.

Many parents want choices and many want public education. They don't want to send their kids to religious schools or the non-denominational schools or they're committed to public education. They want options among all possible choices of schooling.

I believe that charter schools are the result of growing demand for better educational systems and that parents want more than a one-size-fits-all plan. Since 1991, more than 1,100 charter schools have been started. Nine percent of kids who attend charter schools come from private schools. It is a significant number and should be a wake-up call for private education. It may be that children who attend private schools aren't necessarily there because parents are committed to private education but because public schools don't make the grade, and they will return when the public school surpasses the private school.

The success of charter schools contains lessons for all of us. There is a tremendous amount of energy, determination, and diversity throughout the country being driven by charter schools. Parents, educators, and politicians are cooperating to create charter schools

that are phenomenal, and they are bearing fruit, not only for the children in those schools, but also for the concept of choice in general.

Charter schools are giving parents and educators a sense of freedom. They are borne of fresh ideas, unbounded by previous conventions and programs. They attempt to be responsive to their constituents and are finding some of the best curriculum, programs, and partnerships in the nation. The very exercise that I often implore the administrators at my Catholic school to do—to throw out all conventional wisdom, all programs in your head, and start anew to meet needs—is what charter school people around the country are doing.

Today, 35 states and the District of Columbia have charter schools. More than 250,000 children are in charter schools and that's going to double over the next couple of years. Like other choice movements, charter schools are not without their political opponents. Daily, we hear of struggles against the school boards' new rules, law suits by the unions, or public school principals calling charter school parents and asking, "Do you realize your kids are going to an all-White charter school?" Despite all that, there are strong allies and friends supporting the charter school movement.

In those states that allow a wide variety of organizations to operate charter schools, there are religious institutions and religious schools looking to partner with charter schools or to convert to charter schools themselves. We are in the era of there's no "one-size-fits-all" approach, and that is a very healthy climate. I know that some of you supporters of vouchers for private education look on charter schools with suspicion and believe they are competition for students. I do not think that the two issues of vouchers and charter schools are mutually exclusive. They are very complimentary, and in some states you're not going to see vouchers, but you might just see charters, or vice-versa. Competition is good for education and vouchers, charter schools and a variety of efforts at the same time will raise the quality of education across the board.

I urge you to look at these things in concert and to not disregard charters because they are not the vehicles you have used to advance choice. Charters have come on the scene and they are motivating many public schools to improve. I think that Catholic education, as well as other private education, needs to look at that model and learn from it.

*Jeanne Allen is president of the Center for Education Reform (CER), an independent, national, nonprofit advocacy organization providing support and guidance to individuals nationwide who are working to bring fundamental reforms to their schools. A recognized authority on education reform issues, Allen is consulted regularly by legislators, education officials, state and national leaders, and the media, to report on the reform movement and analyze its progress throughout the country. She has testified before legislative committees, hosted town meetings, and worked with school officials on current reform efforts. She is the author of *The School Reform Handbook: How to improve Your Schools*, and editor of *The Standards Primer: A Resource for Accelerating the Pace of Reform* Published by *The Education Leaders Council*.*

Timothy McCarthy
Executive Director, Iowa Catholic Conference

In Iowa, the tax credit is now our biggest state funded education program. In addition, we have obtained auxiliary services: fiber optics classrooms in all our high schools, textbooks, and transportation for students. This points to our presence in the legislature and our ability, when these programs need to be adjusted, to move quickly to bring about a positive outcome.

We have found that one of the difficulties to overcome in the tax credit issue is to explain it to those people who are eligible. They don't get that check the day they walk into the school at the beginning of the year; they get it as a refund in April or May. Many in Iowa are still unaware that they can claim a \$250 per child refund!

The Iowa tax credit is modeled on the first tax credit law in Minnesota that was approved by the Supreme Court of the United States in 1983 in *Mueller vs. Allen*. In addition to the credit, Iowa was the first state to pass a tax deduction.

While we were in the legislative process, we had to accept an income cap of \$45,000. However, we were able to get a combination of deductions for those who itemized and a credit for those who took a standard deduction. The maximum deduction at that time was \$50. Currently, we are working on a campaign by the Catholic Bishops of Iowa to go for a goal of a refundable credit for up to \$500 for grade

school children and \$1,000 for high school children.

In 1996, we were able to change the law to remove the income cap, change it to a credit for all, and raise the maximum to \$100. What's noteworthy is that the increases in '96 and again in '98 have not been attacked in court. It seems that the constitutionality of this issue is pretty well settled.

In order to succeed, you have to get everybody agreeing on your issue and working together. You must get bishops, superintendents of schools, school personnel and your parents involved. In Iowa, where we have many caucuses, the education association and their teachers are always on the platform committees. Our Catholic school people don't even bother to go to the meetings. We have to get our school faculty actively involved as well.

The theme of the Iowa Catholic Conference is Involvement for Justice. We want our people involved and working together on a variety of justice issues. Advancing parental choice in education is a goal that we can all work together to achieve.

Tim McCarthy is the executive director of the Iowa Catholic Conference. He is a registered lobbyist in the Iowa Legislature and has been involved in matters affecting the church in education, social concerns, prolife, and institutional matters. He was assistant county attorney and solicitor general in Iowa. He is a graduate of Marquette University and the College of Law at the University of Iowa.

Rev. David McCauley
Executive Director, Minnesota Catholic Conference

Minnesota allows a refundable tax credit of \$1,000 per child with a \$2,000 per family limit for certain educational expenses. The tax credit may not be used for tuition, but there are a number of other education related expenses to which it does apply. The tax credit is limited to those with a household income not exceeding \$33,500 annually and is available to all parents, whether their children are in public schools or in nonpublic schools.

One of the limitations of our program is the income level limit of \$33,500. We're going to address it in the present legislative session,

seeking to raise that income level with a graduated scale as folks near the upper end of the limit.

The tax credit is for expenses already paid. One of the other changes we're going to try to make this year is to have the credit applied to expenses incurred, so that if somebody enrolls in school in September and they are presented a bill for "x" number of dollars for educational expenses, they would be able to use that bill in claiming their tax credit, even though they have not completed all the payments at the time of filing.

While the credit can't be used against tuition, it can be used for tutoring, enrichment programs, academic summer camp, transportation costs paid to others to transport to and from school, textbooks, normal instructional material, personal home computer, hardware and software. That wide range of eligible expenses was one of the instrumental factors in getting this particular tax credit through the legislature.

Since the 1970s, we have had an education tax deduction in Minnesota. Over the years, the tax deduction was increased from \$650 per year to \$1,625 for parents with children in grades K–6, and from \$1,000 to \$2,500 annually for parents with children in grades 7–12. There is no limit or maximum deduction in terms of number of children. That's the part of the plan that was addressed specifically to middle-class families, which differs from the way the law is structured for the poor. People are able to receive both the tax credit and the deduction.

In order to appease those who are in opposition to the education tax credit, the legislature passed an additional \$1,000 a year working tax credit for the poor, which can be used against school tuition.

One of the difficulties that we're experiencing is getting the word out that the tax credit is available. Many people are not aware of the intricacies of tax credit, tax deduction, filing, and so on. However, we do know that if the tax credit program is not utilized, it will lead our opponents to try to eliminate it altogether.

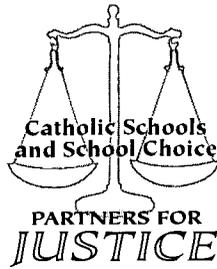
In Minnesota, the passage of the tax credit bill led to the creation of private scholarship funds as well. These programs began with the hope of getting some money to families so that they could cover their expenses from September until they received their income tax returns. In addition, further help has come, since there has been quite a bit of

activity on the private scholarship front in Minnesota since the passage of the bill.

When I came on the scene with the Minnesota Catholic Conference in 1995, we were in the midst of a real battle for vouchers. Governor Carlson was very much involved in that, but he so rigorously campaigned against the public school system across the state that many people were alienated. One of our tasks was to move him away from that issue and convert him to the tax credit. He wasn't real excited about it initially, but he was gracious enough to do it, and I think it was one of the reasons we were able to get the credit that we did.

This year, we hope to raise the maximum annual income to \$45,000. We're reasonably confident that we're going to be able to do that. Although Governor Jessie Ventura has come out repeatedly against the vouchers, he wants to raise the limits on the tax credit legislation.

Father David McCauley is the executive director of the Minnesota Catholic Conference and public policy liaison to other faith communities. He has served in a variety of ministries in the dioceses of Grand Forks, Jamestown, and Fargo, North Dakota. He has been an associate pastor, pastor, high school and hospital chaplain, and campus minister.



CHAPTER 5
*Legal History of
Vouchers—A Federal
Constitutional Review*

Mark E. Chopko

There is a tendency in American society to recycle everything, especially styles and ideas: “What is old is new again.” Most often the reality of this tendency is materialized in matters of fashion and taste. Skirt lengths and tie widths change. Tastes change. Witness the cigar craze of the 1990s—after cigars had all but vanished from the American scene by the 1970s. Cycles are also seen in politics and political movements. There is a certain ebb and flow to American life, even in such relational things as the nature of the interaction between public institutions.¹ One such interaction is the subject of this discussion: the relationship between religion and government. These two public institutions each have their own specific place in this society. Yet, they share much in common, especially interests promoting the public welfare in matters such as health care, social services, and education.

It is not such a bad thing, this cyclical ebb and flow in American political life. Our institutions are made up of people. People and

systems are dynamic. The dynamism in our lives reflects our theory of political systems. Our Constitution stakes the American people to goals with few details as to how to achieve those goals and tolerates a certain range of give and take between the institutions of government, non-governmental institutions, and the people whom they serve.² Whether the Constitution prevails, as indeed it has for more than two centuries, continues to be tested by the lived expectations of people, measured by the values set forth in that document. The results reached by our constitutional institutions, the Congress and the Supreme Court in particular, must reflect the real needs of real people at the present time, as they did in the past, and must in the future.

In the relationships between religion and government, our Constitution gives few signposts as to how to regulate these interactions. The framers wrote religion clauses in our First Amendment, which provide that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”³ Into these sixteen words, our framers poured several centuries of their own experiences about what was good and what was bad about religion and government, but they left their interpretation and application to the courts. Most of our current constitutional interpretation of the religion clauses is scarcely more than fifty years old. Only since the 1940s has the U.S. Supreme Court been systematically involved in explaining and interpreting this text.⁴ Even so, the Court’s jurisprudence has gone through periods of fluctuation, a period of relative isolation and separatism, a period allowing for more interaction, and then another period of relative separationism.⁵ The Court is sensitive to its constitutional duty but yet seems to struggle, as indeed we all do, with the appropriate relationship between religion and government. The Supreme Court is also sensitive to the view that there is no unified vision that pervades its jurisprudence. Indeed, after more than two centuries, including significant developments in the last fifty years, the Supreme Court is still struggling to demarcate constitutional territory according to reliable and authentic boundaries.⁶ On this landscape, one must proceed with caution in evaluating an important public policy question of whether the state may provide vouchers or certificates to parents to allow parents to pay the cost of their children’s education.

For purposes of our discussion, as well as for the larger public policy debate, the Constitution seems to be relevant only when reli-

gious schools are involved in a choice or voucher program. The stumbling block is a pair of 1973 Supreme Court decisions, *Committee for Public Education v. Nyquist*⁷ and *Sloan v. Lemon*,⁸ both invalidating public assistance programs directed at parents who had already enrolled their children in private religious schools. Critics of educational choice often argue that any voucher or certificate program is just another device through which religious schools seek public funding.⁹ This view persists despite the fact that, in the late 1990s, the political reality is far different than it was in the 1960s and 1970s when the first education assistance programs were litigated. Although the constitutional text and mandate are the same, the reality is that private industry and leading economic theorists have both pointed out the shortcomings in public education, which they believe would be mitigated by expanding the range of competition between schools through certificate or voucher programs.¹⁰ Although the idea of vouchers or certificates has been under consideration for several decades, the involvement of private economic and industrial entities as their champions is new. The old has become new again.

Although the idea of vouchers or certificates has been under consideration for several decades, the involvement of private economic and industrial entities as their champions is new.

It is the premise of this paper that voucher or certificate programs for parental choice can be constitutional. Not every program may be constitutional and the precise parameters of facts and circumstances will vary case by case. However, enabling parents to exercise this kind of choice is not presumptively unconstitutional. The ultimate result, which is facts and circumstances dependent, will rely more on actual design than on hypothetical or anticipated implementation. It already seems well established that the Supreme Court will validate, in a proper case,¹¹ a program which is broadly-based, neutrally-available to all parents without regard to religious affiliation of a broad range of schools, that supports education, and creates no incentive for or against religious schools. This paper will review the federal constitutional dimensions of the current debate.¹² In the end, this paper concludes that the constitutional debate about whether voucher programs exists as a means of subsidy for religion is a red herring. It is an interesting and diverting issue, but one which distracts the body politic from the larger more important public policy questions which must be faced

as one considers a voucher or certificate program, including, ultimately, whether education will be strengthened through such a program in an individual situation. This article concludes that they can be.

Constitutional Considerations

Whether the Supreme Court applies as the benchmark precedent the “*Lemon*” test¹³ or the lessons of history, the Court seems ready to confirm that programs allowing parents to choose a school, including a religious school, that is best suited for their child will be constitutionally valid if that program is broad, defined without reference to religion, generally available to all parents, and creates no incentives for or against religious schools. The validity of the program will be assessed on the basis of its design and not on whether and to what extent parents actually use the program or even whether those who use it actually choose religious schools. It is simply not contrary to constitutional text or Supreme Court interpretation of that text to preclude the participation of religious schools in a broadly-based educational program that maximizes individual parental choices. That an individual parent might choose a religious school, when the program is broad, freely available, and creates no incentive to choose such a school, is not unconstitutional under the U. S. Constitution.

A. Background

The Supreme Court did not address the portion of the federal religion clauses relevant to our discussion, the prohibition on “respecting an establishment of religion” for most of our constitutional history.¹⁴ In 1947, in *Everson v. Board of Education*, the Court offered its first construction of the clause involving religious schools, ruling by a 5–4 margin that the provision of bus transportation to parents whose children attended religious schools was not unconstitutional.¹⁵ Providing direct public financial support for religion was proscribed, the Court opined, but that prohibition did not extend to broadly available programs offering bus transportation, which was ruled as assistance to parents to aid in their own parental duties.¹⁶ By contrast, in 1948, in *McCollum v. Board of Education*,¹⁷ the Supreme Court ruled that a program by which religious education was provided on the premises of public schools was unconstitutional. The difference in

program and approaches is fairly evident. The Court is concerned about providing religious instruction at public expense. That is different from providing parents with the means that they need in order to make realistic educational decisions.¹⁸

In the 1950s and 1960s, the Court was the scene of struggles about ridding the public schools of all religious influences. In 1953, the American Council on Education warned that this approach would ultimately undermine religion as an important spiritual and social force in the United States, teaching students, ultimately, that religion has nothing to do with important questions of daily life.¹⁹ However, the separation of religion from the public schools in the 1960s did not end the debate about the proper relationships between government and religion.²⁰ Litigation continued systematically aimed at invalidating all programs of governmental assistance to private religiously affiliated schools and their students, with mixed results.²¹

As the Court struggled to define the proper relationship between religion and government, in a particular case regarding property tax exemption for religious institutions, the Court focused on the principle that the establishment clause language was designed to avoid: “sponsorship, financial support, and active involvement of the sovereign in religion.”²² This regime did not mandate a hermetic separation between religion and government, avoiding all interactions between the two, but rather was pragmatic. Each interaction would have to be evaluated on its own merits. The Court was not prepared to say that being religious presumptively disqualified an individual or an institution from participating in public programs. That would smack of religious bigotry. Rather, the court explained through a series of cases that it could not support religiously affiliated education because it found the schools “pervasively sectarian.”²³ In this way, the Court asserted that it was impossible to separate the religious function from the secular educational functions in religiously affiliated primary and secondary schools. Although not every school would be so disqualified, and the Court avoided saying the religious motivation was the problem, it was willing to presume that

It is simply not contrary to constitutional text or Supreme Court interpretation of Lemon to preclude the participation of religious schools in a broadly-based educational program that maximizes individual parental choices.

most primary and secondary education is conducted in a religious setting that had, as a coequal purpose, the religious formation of the student, which evidently included proselytization during mathematics, American history, and English.

Although the labeling of religiously affiliated primary and secondary schools as “pervasively sectarian” struck many as the same kind of bigotry the Court presumably tried to avoid,²⁴ the label and the precedent stuck. The Court tried to avoid any assistance which would provide direct and substantial support for the religious mission of schools. At the same time, the Court recognized that aiding secular studies, to the extent that they could be separated from the religious functions, was constitutionally valid. Thus, the provision of publicly selected and funded textbooks for secular subjects in private schools could be provided.²⁵ Such books could even include atlases, but globes could not be constitutionally provided.²⁶ By the late 1990s, the Court had generated a substantial body of case law which distinguished direct aid (unconstitutional)²⁷ from indirect aid (constitutional) even when it took place in and around religiously affiliated primary and secondary schools or in scholarship or tax assistance programs. An evaluation of these cases provides the stepping-stone for the conclusion about the potential constitutionality of voucher programs that offer parents a range of educational choice which includes religious schools.

B. Relevant Supreme Court Precedent

Since it began to adjudicate in this area of law in 1947, the Supreme Court decided that direct state assistance to religiously affiliated schools was unconstitutional where it had the substantial effect of direct aid to the religious mission of the schools. Striking down programs designed to supplement teacher salaries and provide direct cash grants to schools from state legislatures as unconstitutional, the Court found that there was no way to assure that state assistance remained exclusively in secular education without substantial and detrimental state oversight of religious schools. Conceding that the state might be able to have legitimate interests in supporting secular education, the Court found that secular education components in primary and secondary schools were inextricably intertwined with religious components such that direct aid was unconstitutional.²⁸ It

had the “primary effect” of directly and substantially assisting the religious mission of the schools.²⁹ Undeterred, state legislatures resumed the process of attempting to provide public assistance to religiously affiliated schools. In 1973, the next such case reached the Supreme Court which, by a 6–3 margin, ruled that assistance channeled through the parents to the religious schools was unconstitutional. Reviewing a New York program (*Committee for Public Education v. Nyquist*)³⁰ and a Pennsylvania program (*Sloan v. Lemon*),³¹ the Court believed these programs to be legislative subterfuges in which public money was “laundered” indirectly through parents, aid that had been constitutionally forbidden in the 1971 decision.³²

It is important to note what the Court held and what it did not hold. Looking to the legislative purpose, for example, in *Nyquist*, the Court found that the legislature had a valid “secular purpose” for providing educational assistance to parents of children attending elementary or secondary nonpublic schools,³³ the vast majority of which were religiously affiliated.³⁴ The New York legislature had found, for example, that its program was supporting pluralistic educational choices, the right to select among alternative educational systems, and the need to insulate public school finances from the flood of nonpublic school students should the nonpublic schools fail.³⁵ In other words, the legislature recognized that parents of children attending nonpublic schools, the vast majority of which were religiously affiliated, saved the rest of the taxpaying public a substantial tax burden by footing their educational expenses themselves (in addition to paying for public schools through taxes). By relieving parents of part of the financial burden of attending nonpublic schools, the state believed that it was saving itself resources.

Looking to the effect of such assistance, the Court found that “the controlling question here, then, is whether the fact that the grants are delivered to parents rather than the schools is of such significance as to compel a contrary result.”³⁶ The Court concluded it was not. The Court found that the legislative action was targeted to provide parents with unlimited and unrestricted assistance to attend religious schools. Although drafted for parents whose children attended “nonpublic schools,” the law could not avoid the fact that most of the nonpublic schools were religiously affiliated.³⁷ Thus the Court concluded that “the effect of the aid is unmistakably to provide desired

financial support for nonpublic sectarian institutions.”³⁸ Following closely on the heels of the 1971 direct aid decisions, the Court had little hesitancy in striking down the programs as unconstitutional. In *Nyquist*, the Court emphasized that “if the grants are offered as an incentive to parents to send their children sectarian schools,” the establishment clause is violated.³⁹ It did not matter for constitutional

The Court is more concerned about design of the program and the broad intent of those who frame it rather than with the actual implementation of the program.

purposes that the state programs only subsidized a portion of the day or that an argument could be made that the state assistance could reasonably be statistically assumed only to account for the portion of the education dollars spent on secular subjects.⁴⁰

Nonetheless, the Court reserved an important question for future decision. It found that it “need not decide whether the significantly religious character of the statute’s beneficiaries might differentiate the present cases from a case involving some form of public assistance (e.g., scholarships) made available generally without regard to the sectarian-nonsectarian, or public-nonpublic, nature of the institution benefited.”⁴¹ That important reservation is the critical distinction of *Nyquist* from later cases following allocating benefits to a class of potential recipients far broader than the situation presented in 1973.⁴² From this case, one takes the lesson that the Court is more concerned about design of the program and the broad intent of those who frame it rather than concern itself with the actual implementation of the program.⁴³

In 1983, in *Mueller v. Allen*, the Supreme Court reviewed a Minnesota tax deduction program for educational expenses, available to parents of both public and nonpublic school children. The program allowed parents to take deductions for educational expenses capped at a statutorily set dollar amount.⁴⁴ In *Mueller*, the Court rejected an establishment clause challenge, even though perhaps ninety percent of the actual financial benefit of the implementation program went to parents whose children attended religious schools. The Court noted that the statute permitted “all parents” to deduct their children’s expenses whether those children attended public or nonpublic schools.⁴⁵ It was also important that, under the Minnesota program supported by the broad state taxing authority, the tax benefits were utilized by individual taxpayers themselves as they saw fit.⁴⁶ The Court was

moving away from *Nyquist*. Citing footnote 38 in *Nyquist*, *Mueller* emphasized the breadth and availability of the deduction, based on actual expenditures, subject to verification through the tax system.⁴⁷ The Court recognized that “financial assistance provided to parents ultimately has an economic effect comparable to that of aid given directly to the schools attended by their children.”⁴⁸ But the money is expended by the parents, not by the state, through “numerous private choices of individual parents.”⁴⁹

Three years later in *Witters v. Washington Department of Services for the Blind*,⁵⁰ the Court emphasized the new branch of its establishment clause jurisprudence. The state of Washington provided a broad scholarship program to all post-secondary students contingent only on the facts that (1) they were disabled and (2) that the aid would be spent at an accredited educational institution. Mr. Witters chose to spend his educational assistance at the Inland Empire Bible College in order to become a minister. The state courts ruled that the provision of this aid was unconstitutional on federal grounds thus precipitating the Supreme Court review.

It was plain to the Supreme Court that the legislative program under review had a valid purpose, to assist disabled citizens.⁵¹ The Court evaluated what it called the “more difficult” primary effect issue, by beginning that it is “well settled that the establishment clause is not violated every time money previously in the possession of a state is conveyed to a religious institution.”⁵² This remarkable conclusion, made without citation of authority,⁵³ allowed the Court to construct alternative situations: one where a state employee donates his entire payment to a religious charity and one where state assistance is channeled directly to a religious institution. The former situation, the Court easily concluded, was proper in that the money flowed to the religious institution because of a genuinely independent choice of the recipient. The Court assumed that the constitutionality of that situation was simply beyond question.⁵⁴ In resolving the primary effect issue, the Court decided whether the allocation of scholarship money was more closely tied to this unquestionably constitutional situation or simply was a grant of cash assistance to a religious school. The Court concluded it was like the former.

Central to the Court’s inquiry was the fact that the assistance was paid directly to the student who transmits it to the educational insti-

tution of his or her choice. “Any aid provided under Washington’s program that ultimately flows to religious institutions does so only as a result the genuinely independent and private choices of aid recipients.”⁵⁵ There was no way in which the Court was prepared to conclude that the aid was “skewed towards religion.”⁵⁶ It was likewise “not one of the ingenuous plans for channeling state aid to sectarian schools that periodically reach this Court.”⁵⁷ By providing a range of educational choices to grant recipients, the Court found that there was no invalid assistance to religion. The program was designed to operate on a religiously neutral basis.

Most importantly, for purposes of evaluating school voucher programs in current constitutional circumstances, the Court considered the constitutionality of the program as a whole. It did not focus on any one aspect of it, or even the number of students who were devoting their scholarships to ministry programs or other similar programs. Rather, the Court viewed the program in its entirety. It was a neutral, broadly available state program to help defray educational expenses of any disabled student, and it created no incentives to choose any one program over another, religious or not.⁵⁸

Both *Witters* and the next case in this line, *Zobrest v. Catalina Foothills School District*,⁵⁹ relied on footnote 38 in *Nyquist* to distinguish state programs targeted at providing educational assistance to parents who choose religiously affiliated schools from broad, neutral programs in which religious schools may (or may not!) be the site of aid recipients.⁶⁰ The program in *Zobrest* was the federally supported Individuals with Disabilities Education Act (IDEA),⁶¹ which provided for federally and state supported special educational assistance to qualified disabled students who were properly enrolled in accredited educational institutions. The Catalina Foothills School District told Jimmy Zobrest’s parents that it would provide the educational assistance in any educational environment except for a religiously affiliated school.⁶² The constitutional challenge followed.

The Court had little trouble upholding the constitutionality of the provision of IDEA assistance to Jimmy Zobrest. It found that the assistance was available to the disabled child “without regard to the sectarian-nonsectarian or public-nonpublic nature of the school the child attends.”⁶³ IDEA places no restrictions on the schools that parents may select. Under the facts of the case, the government would

pay the cost of educational assistance made necessary because of the special needs of the child. The IDEA program was neutral, and it was broadly available to all parents regardless of the education institution choice. It created no financial incentives to choose a religious over a public school. Any resulting educational assistance was the result of the parent's genuinely independent decisions rather than a state subsidized or encouraged one.⁶⁴

Implicitly conceding the validity of the reasoning in *Mueller* and *Witters*, the school district argued that the case was distinguishable on the grounds that a public employee would be physically present in the sectarian school.⁶⁵ The Supreme Court rejected the argument that the assistance to the *Zobrest* family was "an impermissible direct subsidy" of a religiously affiliated school. The Court noted that IDEA assistance did not subsidize the religious functions of the parochial schools. Whether that language signals that the U. S. Supreme Court will validate other kinds of similar programs (like the Milwaukee program), of course, remains to be seen. However, if the Court continues to emphasize the design of the program under *Zobrest*, the Court would sustain a broadly based voucher or certificate program in which all parents have a stake.⁶⁶

In 1997, the Court confirmed this recent series of decisions in a reversal of *Aguilar v. Felton*⁶⁷ in *Agostini v. Felton*.⁶⁸ The Elementary and Secondary Educational Act of 1965 was a cornerstone of Lyndon Johnson's Great Society Program and provided that children residing in low-income areas who were educationally deprived could qualify for remedial assistance in English and mathematics at public expense regardless of the school that their parents chose for them.⁶⁹ That program had been provided on the premises of nonpublic, including religiously affiliated, schools until 1985. In 1985, in *Aguilar*, the Court ruled 5-4 that the program was unconstitutional. In reaching this result, the Court relied on a series of unsubstantiated presumptions, not sustainable on the record, about the nature of the program and a supposed tendency of public employees to be affected by a "pervasively sectarian atmosphere" and to promote religious messages, notwithstanding the fact that they were public employees paid to teach only English and mathematics. Twelve years and many millions of dollars later,⁷⁰ the Supreme Court reconsidered the matter, acting on a motion by New York City to be relieved of the injunction entered

in 1985. By the same 5–4 margin, the Court reversed *Aguilar* and indicated that, indeed, its establishment clause outlook had changed.⁷¹

The Court flatly rejected the proposition that “any and all public aid that directly aids the educational mission of religious schools impermissibly finances religious indoctrination, even if the aid reaches such schools as a consequence of private decision making.”⁷² Rather, the Court confirmed that more recent cases undermined these assumptions. Although the Court did not depart from its doctrinal guideposts in evaluating the constitutionality of programs,⁷³ the Court noted that its “understanding” of the criteria used “to assess whether aid to religion has an impermissible affect” has certainly changed.⁷⁴ Relying on *Witters and Zobrest*, and footnote 38 in *Nyquist*, the Court noted that it did not adhere to a bright line rule that any or all “governmental aid that directly aids the educational function of religious schools is invalid.”⁷⁵ The Court found that the public assistance was made available to qualified individuals and that assistance found its way indirectly to religiously affiliated schools “only as a result of the genuinely independent and private choices of individuals.”⁷⁶

The Court concluded that the nonpublic schools in *Agostini*, like the Catholic school in *Zobrest*, would not have provided the remedial or special educational services on their own. Thus, the public services

The Court confirmed that it would continue to evaluate programs based on whether they were religion neutral, generally available to a broad class of beneficiaries, supportive of a public function, and available without incentives for or against religious schools.

did not relieve the schools of “costs they otherwise would have borne in educating their students.”⁷⁷

Nonetheless, the Court went on to note that no public funds had found their way into the financial accounts of religiously affiliated schools, comparing *Committee for Public Education v. Regan*.⁷⁸ Nor was the Court “willing to conclude the constitutionality of an aid program depends on the number of sectarian school students who happen to receive the otherwise neutral aid.”⁷⁹

What is most important for purposes of this discussion is that the Court reversed the series of presumptions relied on by the Supreme Court and lower federal and states courts to invalidate a number of state and federal educational assistance programs. The Court confirmed that it would, henceforth, rely on the record of facts and circumstances to determine whether an unconstitutional effect of

assistance to religion actually occurred from a challenged public program. The Court confirmed that it would continue to evaluate programs based on whether they were religion neutral, generally available to a broad class of beneficiaries, supportive of a public function, and available without incentives for or against religious schools.⁸⁰

C. State Decisions Diverge

In two key decisions, state courts divided over federal constitutional issues.

The Ohio legislature found that parents in the Cleveland school district were deprived of adequate educational alternatives. The Ohio legislature provided that low-income parents could choose alternative public and nonpublic schools, including religiously affiliated schools, for the educational assistance of their children. In addition, as designed, the legislature provided that parents could choose a certificate for an alternative school or choose a public school assistance program which provided tutors and other educational assistance directly to them to supplement the free public education. An equal number of scholarships and tutorial grants was to be made available.⁸¹ A state trial court judge in Franklin County, Ohio upheld the program against the constitutional challenge.⁸² An intermediate court reversed, finding that the program, as applied, was unconstitutional.⁸³

The court segmented the program into pieces and reviewed only the piece designed for parents who desired to choose alternative schools to the Cleveland Public Schools. It found that the scholarship program for alternative schools was weighted in favor of religious schools because the suburban public schools had decided not to participate in the program.⁸⁴ The court said that the legislature's program was flawed, creating a financial impact in favor of religiously affiliated schools.⁸⁵ Because the legislature could have forced suburban public schools to participate in the program and did not, the court concluded the Cleveland scholarship program did not provide a full range of educational alternatives. The court also presumed that the educational benefit would flow to religiously affiliated schools instead of parents.⁸⁶ Therefore, the court assumed that religious schools would be the primary beneficiaries in this program, ignoring the important facts and circumstances that the legislature had specifically balanced the number of parents seeking vouchers against the number of parents

selecting public school tutorial grants in the program design.⁸⁷ The case is now pending in the Ohio Supreme Court. It seems doubtful, given the strength of the U.S. Supreme Court decision in *Agostini v. Felton*, that the intermediate Ohio decision could withstand federal constitutional analysis.⁸⁸

The other key constitutional decision was reached by the Supreme Court of Wisconsin in June 1998. In *Jackson v. Benson*,⁸⁹ the court ruled that the Milwaukee parental choice was constitutional, relying in part on the fact that religiously affiliated private schools were part of the range of educational choices available to low-income Milwaukee parents. The court's decision is important not only for the result it reaches, but also for the substantial care exercised by the majority in evaluating relevant precedent, especially analyzing the facts and circumstances that would be important to any decision on further review.⁹⁰ It will be reviewed in detail.⁹¹

After restating the relevant U.S. Supreme Court cases (discussed in Part B, above), the Wisconsin Supreme Court applied the U.S. Court's criteria to the Milwaukee Parental Choice Program. The court concluded that the amended Milwaukee Parental Choice Program was constitutional. "First, eligibility for benefits under the amended [program] is determined by neutral, secular criteria that neither favor nor disfavor religion," and aid "is made available to both religious and secular beneficiaries on a non-discriminatory basis."⁹² All lower-income parents were eligible to participate in the program and were entitled to an equal share of the per-pupil public aid regardless of the school they chose to attend. Parents were therefore able to select the educational opportunities that they deemed best for their children.⁹³ "Second, under the amended [program], public aid flows to sectarian private schools only as a result of numerous private choices of the individual parents of school-age children."⁹⁴

The court rejected, as unpersuasive, the argument that most of the financial benefit of the program would flow ultimately to religiously affiliated schools. Citing *Rosenberger and Mueller*, the Wisconsin Supreme Court focused on the benefit flowing to the beneficiary, not on the money actually expended by the government, confirming the precedence of design over utilization.⁹⁵ The program was evaluated by the court "as a whole." Relying on Justice Powell's concurring opinion in *Witters*,⁹⁶ the court recognized that the parents had the

ability to choose from a broad array of educational alternatives, including “Milwaukee district schools, magnet schools, charter schools, suburban public schools, trade schools, schools developed for students with exceptional needs, and now sectarian or non-sectarian private schools.”⁹⁷

In its application in Wisconsin, that Supreme Court concluded that the relevant standards of the U.S. Supreme Court focus on design over utilization. The program provided a broadly available, neutrally defined benefit that did not create incentives for or against the attendance at religiously affiliated schools. The U.S. Supreme Court has not definitively ruled on this matter, and there is a measure of ambiguity.⁹⁸ However, as interpreted in *Jackson v. Benson*, the fact that the educational programs were not “supplemental” did not warrant a different decision.⁹⁹

In sum, the work of the Wisconsin Supreme Court confirms that indirect assistance programs such as vouchers have a valid purpose: to enhance the educational choices of parents and support parents in their most fundamental role of education. They have a valid indirect effect in that money flows to religious providers (or non-religious providers) based entirely on the independent and private choices of the parents. Using the touchstone provided by the Supreme Court in *Walz*, vouchers provide no “sponsorship, financial support, or active involvement of the sovereign in religious activity.”¹⁰⁰

D. Historical Consideration—A New Test

The Supreme Court has regularly insisted that history and experience form the only reliable guide to the interpretation and application of the establishment clause.¹⁰¹ Unfortunately, consideration of history and experience often produces as many disagreements on the Court as does the consideration of the proper test.¹⁰² Although these disagreements are not probative on the ultimate questions, they are better than simply incanting language by Thomas Jefferson or James Madison or elevating a metaphor into a constitutional talisman. Jefferson’s reference to a “wall of separation” between religion and government is one such example. As the Court said, “the concept of a wall of separation is a useful figure of speech...but the metaphor itself is not a wholly accurate description of the practical aspects of the relationship that in fact exists between church and state.”¹⁰³ Like-

wise forgotten in the disputes about the interpretation of the religion clauses is that the clauses themselves were political compromises forged by persons of different cultural, religious, and regional experiences. No one or another view in fact predominated. Although it is beyond the scope of this paper to detail the history of the drafts and negotiations that led to the wording of the religion clauses,¹⁰⁴ the process of compromise that resulted in the establishment clause seems to indicate that it was designed to prevent Congress from establishing or favoring a national religion and to prevent Congress from interfering with state policies concerning religion. The framers of the Constitution, however, “had no fear or jealousy of religion itself, nor did they wish to see us as an irreligious people...”¹⁰⁵

History and experience indicate that, although the establishment clause was intended to prohibit the preference of one religion over another, it did not forbid any assistance, regulation, or other interaction between religion and government.¹⁰⁶ The religion clauses reflect the experience of their framers that an officially preferred or nation-

History and experience indicate that, although the establishment clause was intended to prohibit the preference of one religion over another, it did not forbid any assistance, regulation, or other interaction between religion and government.

ally established religion (and actions that tend towards that result) generate religious intolerance and infringe upon religious liberty.¹⁰⁷ However, the establishment clause was not meant to drive a wedge between religion and government but to avoid relationships between the two which pose a realistic threat of impairing religious liberty.¹⁰⁸ While one of the purposes of the religious clauses is to protect personal religious liberty,¹⁰⁹ it is also well established that another was to preserve the integrity of religious and governmental institutions.¹¹⁰ The federal structure protects public and religious organizations from interfering with each other.¹¹¹ Thus, there are two principal dangers reflected in the insistence, under the establishment clause, that religion and govern-

ment be separate: the loss of political and institutional autonomy, and the loss of personal religious liberty if the two were joined.¹¹² The loss of institutional autonomy was not feared just for the consequences for personal religious liberty, but “equally feared because of its tendencies to political tyranny and subversion of civil authority.”¹¹³ It is important, therefore, that religion and government each be independent and

autonomous because they have different roles. However, they also interrelate because together they share important responsibilities with deep roots in our national traditions.

Any interpretive guide to the religion clauses would have to be properly reflective of their generative history and the values that their framers intended, while being capable of consistent application in contemporary circumstances. Elsewhere, this author has reflected on the history and the meaning of the religion clauses and attempted to outline an approach to the consistent application and interpretation of these important constitutional principles.¹¹⁴ In brief, this approach, called Intentional Values, respects that tradition and would evaluate voucher proposals in this manner. The analysis would determine whether the program itself (1) threatens the religious liberty of the persons involved in the program or (2) undermines the institutional autonomy of the organizations of government or religion which would be involved in this project.

Because of its sheer size, the government has undertaken most of the tasks historically once part of the church (like education and welfare), in a sense relegating churches (even the larger ones) to the margins. But no one would dispute that both church and state have an historical and legitimate interest in these areas that are common to our national life. Likewise, no one would seriously dispute that each approaches these aspects of the common good from different motivations: government because of its responsibility to its citizens and churches because of their self-understanding based on religious principle.

Where we contend with each other is over the drawing of lines to keep church and state separate. Most conflict is over how best to demarcate shared interests. For example, a voucher program tacitly recognizes that both governmental and religious institutions have educational missions. Both have schools directed towards providing a basic education and the skills needed for life. Allowing both to compete on equal footing by enabling each citizen, regardless of religious outlook or motivation, to select the educational program best suited to his or her child in no way undermines the autonomy of each institution. They are simply competitors, not dominators one over another. Each respects the other's roles in the society. At the same time, it would be difficult for a person who chooses to participate in

the voucher program to contend that his or her religious liberty is impaired because of the existence of the program.¹¹⁵ Indeed, each parent would be able to select the program that would be consistent with their own sense of value and purpose. By definition, religious liberty would not be impaired. Under this approach to church/state relations,¹¹⁶ vouchers are plainly constitutional.

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The views expressed in this article are of the author and not necessarily the views of the Conference or any of their member bishops. The author greatly acknowledges the assistance and support of John A. Liekweg, Esq.

Notes for Legal History of Vouchers—A Federal Constitutional Review

¹ In law, for example, as law is a human creation and is administered along broad lines, there is a cyclical quality. In December 1998, for example, Exxon and Mobil announced plans to merge to create the world's largest petroleum company. "Exxon and Mobil Announce \$80 billion Deal," N.Y. Times, A1 (Dec. 2, 1998). These companies were created when their common predecessor, Standard Oil, was "busted" in the early twentieth century by government anti-trust regulators. Although approval was not automatic, that such an endeavor could even be imagined reflects current economic and regulatory conditions.

² The purpose of the U.S. Constitution, as described in its Preamble, includes the preservation of "domestic tranquility." No one defined how specifically each difficult public question would be resolved. However, by committing the nation to a structure for governance and a legal process and then adding a list of basic liberties, the framers got us started.

³ U.S. Constitution, First Amendment.

⁴ E.g., Phillip Johnson, "Concepts and Compromise in First Amendment Religious Doctrine," 72 Cal. L. Rev. 817, 817 and n. 2 (1984).

⁵ One commentator refers to this phenomenon as a cycle of establishment and dis-establishment. Mark Silk, "A New Establishment?" Religion in

the News, p. 3 (Trinity College Program on the Media and Religion, Fall 1998).

⁶ Indeed, the Court is subject to the legitimate criticisms whether there is no test, one test, or several tests by which reviewing courts should adjudicate disputes involving religion and government. See discussion, *infra* at 13 and 100. In *Capital Square v. Pinette*, 115 S. Ct. 2440 (1995), the Court divided between Justice Scalia's plurality opinion offering a "bright line" test for public displays of religious symbols (p. 2448–49) and Justice O'Connor's concurring opinion offering multiple tests depending on the circumstance (p. 2452). The same split divided the seven justices who voted to uphold Equal Access legislation for religion clubs at public schools in *Board of Education v. Mergens*, 496 U.S. 226 (1990) (compare plurality at 250–51 with concurring opinion at 261).

⁷ 413 U.S. 756 (1973).

⁸ 413 U.S. 825 (1971).

⁹ See, e.g., Arval Morris, "Public Educational Services in Religious Schools: An Opening Wedge for Vouchers?" 122 Ed. L. Rptr. 545, 558–560 (1998) (seeing support for vouchers as a way for Catholic Bishops to bolster failed and unsupported schools); Marci Hamilton, "Power, the Establishment Clause, and Vouchers," Conn. L. Rev. (Forthcoming 1999).

¹⁰ One impetus for a new discussion about vouchers in the 1990's is the state of public education. Numerous attempts have been made to correct school finance disparities through equalization plans. One commentator has concluded that "the frequent failure of these plans to achieve their stated purpose has resulted in citizens across the country instituting lawsuits to achieve truer quality of educational funding." Christopher Pixley, "The Next Frontier in Public School Finance Reform: A Policy in Constitutional Analyses of School Choice Legislation," J. Legis. 21, 22 (1998). Frustrated by their inability to achieve funding equalization, a number of other legislative programs have moved forward to allow parents a greater range of educational opportunities allowing for enrollment across public school district lines and for a range of educational choices that now include magnet schools or charter schools, most of which are funded through public revenue. E.g., Ohio R.C. 3313.974–3313–975. In many programs the parents have been given access to the per pupil share of the state's educational budget to allow that parent the ability to spend those resources at the school of his or her choice. These programs have engendered a great deal of acrimonious debate and litigation.

¹¹ On November 9, 1998, the U.S. Supreme Court declined to hear *Jackson v. Benson*, 119 S. Ct. 466 (1998). As discussed below, this author

believes that the refusal to hear the case reflects a judgment that such programs are not, per se, unconstitutional. *Infra* note 91.

¹² The paper reviews federal constitutional law only, but state law plays an important role in the evaluation of certificate programs. Frank Kemerer, “The Constitutional Dimension of School Vouchers,” 3 *Tex. F. on C.L. & C.R.* 137 (1998) (reviewing state law issues). It has been argued that state laws that would act to restrain parental choice along religious lines violate the Free Exercise Clause. Joseph Viteritti, “Blaines’ Wake: School Choice, The First Amendment, and State Constitutional Law,” 21 *Harv. J. L. & Pub. Poly* 657, 660–61 (1998). This proposition is being tested in Massachusetts courts.

¹³ In *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971), the Court ruled that for a law to pass muster under the establishment clause, it must (1) have a secular purpose, (2) neither advance nor inhibit religion as its primary effect, and (3) avoid excessive entanglements between religion and governmental authority. The test evolved from a secular “purpose and effect” rubric in *Walz v. Tax Commission*, 397 U.S. 664, 674 (1970), and was thought to unify the Court’s treatment of these issues. It has long been criticized by members of the Court and by commentators, including this author. Mark Chopko, “Religious Access to Public Programs and Governmental Funding,” 60 *Geo. Wash. L. Rev.* 645, 654–60 (1992). The Court at times appeared to steer in different directions, using history, for example, in *Marsh v. Chambers*, 463 U.S. 783 (1983), or minimizing its importance, *Lynch v. Donnelly*, 465 U.S. 668 (1984). The Court modified but retained the test in *Agostini v. Felton*, 117 S. Ct. 1997, 2016 (1997). Although this author has strongly urged reformulation of a test, see *infra* discussion at notes 113–114, the paper will apply the traditional analysis to voucher programs. See also, discussion at note 33, *infra*.

¹⁴ Text quoted, *supra* at note 3.

¹⁵ 330 U.S. 1 (1947).

¹⁶ *Id.* at 16–17.

¹⁷ *McCullum v. Board of Education*, 333 U.S. 203 (1948). Compare *Zorach v. Clauson*, 343 U.S. 306 (1952) (upholding released time for off-premise religious education).

¹⁸ Indeed, the majority notes in *Everson* that some parents might be forced to remove their children from religious schools if they were excluded from bus transportation. 330 U.S. at 17–18.

¹⁹ In 1953, in “The Function of the Public Schools in Dealing with Religion,” the Council said (at p.6): “to be silent about religion may be, in effect, to make the public school an antireligious factor in the community.

Silence creates impression in the minds of the young that religion is unimportant and has nothing to contribute to the solution of the perennial and ultimate problems of human life.” In 1998, the First Freedom Center at Vanderbilt University assists state school authorities and local school boards to restore religious ideas and culture in public schools in a constitutionally sensitive manner. Charles Haynes and Oliver Thomas, *Finding Common Ground* (1996).

²⁰ *School District of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (school Bible reading). See also *Torcaso v. Watkins*, 367 U.S. 488 (1961) (oath taking).

²¹ Compare *Board of Education v. Allen*, 392 U.S. 236 (1968) with *Lemon v. Kurtzman*, *supra*.

²² *Walz v. Tax Commission*, 397 U.S. at 668.

²³ See *Lemon v. Kurtzman*, 402 U.S. at 616–21. The first use of “pervasively sectarian” by the Court is in *Hunt v. McNair*, 413 U.S. 734, 743 (1973), distinguishing the colleges in *Tilton v. Richardson*, 402 U.S. 672 (1971), from the case law in *Lemon*. Religiously affiliated colleges are not found “pervasively sectarian” by the U.S. Supreme Court because of the different educational mission, academic freedom of the faculty and age of the student population. See notes 29 and 80, *infra*. It is first used in the primary-secondary context in *Wolman v. Walter*, 433 U.S. 229, 246 (1977).

²⁴ Richard Barr, “The Supreme Court’s Discriminatory Use of the Term ‘Sectarian,’” VI J.L. & Politics 449 (1990).

²⁵ *Board of Education v. Allen*, *supra*.

²⁶ Compare *Wolman v. Walter*, 433 U.S. 229 (1977). Numerous other examples of the inconsistent and erratic results reached in the Court’s efforts to distinguish unconstitutional aid from valid assistance persist. The results, many commentators think, are more explainable by the doctrinal confusion in the Court’s own jurisprudence rather than by the Court’s pragmatic line-drawing exercises.

²⁷ This is not to suggest that all direct aid to religiously affiliated elementary and secondary schools is unconstitutional. For example, aid to alleviate health problems (asbestos abatement) or nutritional concerns (school lunch) would likely survive a constitutional challenge. See *Committee for Public Education v. Regan*, 444 U.S. 646 (1979).

²⁸ *Lemon*, 402 U.S. at 618–19.

²⁹ By contrast, in 1971 in *Tilton v. Richardson*, 403 U.S. 672 (1971), the Supreme Court decided that, because colleges and universities were not pervasively sectarian, federal and state cash grants’ providing of construction assistance to such educational institutions was not unconstitutional. The

Court found that it was possible, in those circumstances, to aid the secular educational mission of the institution without aiding the religious mission.

³⁰ 413 U.S. 756 (1973).

³¹ 413 U.S. 825 (1973).

³² *Nyquist*, 413 U.S. at 785.

³³ *Id.* at 773–74 (finding secular purpose). In all of the aid programs, the Court found a valid “secular purpose” to strengthen education generally in most instances, but invalidated the programs as having the “primary effect” of aiding religion or creating “excessive entanglement” with religion. This paper will focus on “effects,” especially in light of the reformulation of the *Lemon* test in *Agostini v. Felton*.

³⁴ *Id.* at 768.

³⁵ *Id.* at 764–65.

³⁶ *Id.* at 780–81.

³⁷ *Id.* at 783.

³⁸ *Id.* The Court rejected arguments aimed at defending parents’ rights to educate their children and arguments based on a “reimbursement” theory. *Id.* at 786, 788.

³⁹ *Nyquist*, 413 U.S. at 786.

⁴⁰ *Id.* at 787. The Court in *Nyquist* also rejected a Free Exercise argument based on the fact that the invalidation of the funding scheme made it more difficult for poor parents to send their children to nonpublic schools. 413 U.S. at 788. Plainly the Court recognizes the impact of its rulings on poor parents. See *Everson*, 330 U.S. at 17–18.

⁴¹ *Nyquist*, 413 U.S. at 780, n. 38.

⁴² In a pair of decisions in 1985, *Grand Rapids v. Ball*, 473 U.S. 373, and *Aguilar v. Felton*, 473 U.S. 402, the Supreme Court invalidated programs designed to provide remedial education at public expense on the premises of religiously affiliated schools. The Court made clear that the establishment clause prohibited “forms of aid that provide direct and substantial advancement of the sectarian enterprise.” *Grand Rapids v. Ball*, 473 U.S. at 393–395. The Court there noted that where no meaningful distinction could be made between aid to the student and aid to the school, the aid would be unconstitutional.

⁴³ *Nyquist*, 413 U.S. at 788. This supposition is later confirmed in *Aguilar v. Felton*, 117 S. Ct. 1997, 2013 (1997).

⁴⁴ *Mueller v. Allen*, 463 U.S. 388 (1983).

⁴⁵ *Id.* at 398. The Court provided emphasis to the word “all.”

⁴⁶ *Id.* at 399. Thus, *Mueller* is distinguished from *Nyquist* in that the *Muller* legislative format was drafted without regard to whether the parents

themselves chose nonpublic schools or public schools for their children.

⁴⁷ *Id.* at 398.

⁴⁸ *Id.* at 399.

⁴⁹ *Id.* In 1987, Iowa passed a limited tax deduction/tax credit providing limited benefits to all parents. Its validity withstood constitutional challenge. *Luthens v. Bair*, 788 F. Supp. 1032 (S.D. Ia. 1992). An Arizona statute providing a tax benefit to those who make donations to charitable foundations that provide scholarships to private education was upheld on federal constitutional grounds in *Kotterman v. Killian*, P. 2d (Ariz. Jan. 26, 1999) (no. CV-97-0412-SA).

⁵⁰ 474 U.S. 481 (1986).

⁵¹ 474 U.S. at 486.

⁵² *Id.*

⁵³ For example, the Court could have cited *Committee for Public Education v. Regan*, *supra*. The Court also was restricting its view to federal constitutional issues. On remand, the Washington Supreme Court invalidated the scholarship on state constitutional grounds and the U.S. Supreme Court declined to review that decision. 112 Wash. 2d 363, 771 P. 2d 1119, cert. denied, 493 U.S. 850 (1989). Justice White dissented, urging the Court to review “important federal questions regarding the free exercise rights of citizens who participate in state aid programs.” 493 U.S. 901 (1989).

⁵⁴ *Id.* at 487.

⁵⁵ 474 U.S. at 488. In footnote 4 at that point, the Court distinguishes *Grand Rapids v. Ball*. In that case, the Court concluded that there was no meaningful distinction between aid to the student and aid to the school, a point not applicable to scholarship programs.

⁵⁶ *Id.*

⁵⁷ *Id.*, quoting *Nyquist*, 413 U.S. at 785.

⁵⁸ Justice Powell, joined by Chief Justice Burger and Justice Rehnquist, concurred specially to note the importance of *Mueller v. Allen*, *supra*, for purposes of the Courts analyses, and reviewed the Minnesota program as a whole. 474 U.S. at 492. By contrast, the Ohio Court of Appeals in *Simmon-Harris v. Goff*, 1197 WL 217583 (Ohio App.), reviewed the Cleveland, Ohio Pilot Scholarship Program in pieces. Slip op. at *8. Segmenting the program on review, rather than viewing it as a whole, skewed the Court toward a finding of invalidity.

⁵⁹ 509 U.S. 1 (1993).

⁶⁰ *Id.* at 10; *Witters*, 474 U.S. at 487.

⁶¹ 20 U.S.C. Section 1400, et. seq.

⁶² 963 F. 2d 1190, 1192 (9th Cir. 1992).

⁶³ *Zobrest*, 509 U.S. at 10 (internal quotation marks omitted), but the reference back is plainly to *Nyquist*, footnote 38.

⁶⁴ *Id.*

⁶⁵ *Zobrest*, 509 U.S. at 11.

⁶⁶ In *Rosenberger v. Board of Rectors of the University of Virginia*, 115 S. Ct. 2510 (1995), the Supreme Court upheld the payment of state student fees to a religiously motivated evangelistic student group. There, the student group enjoyed equal access to state facilities on a par with other clubs. However, the student fee was not allowed to pay for religiously motivated proselytizing literature. The University of Virginia seemed willing to provide assistance to religiously motivated student organizations so long as they did not actually engage in religious activity. The Court found that the refusal to allow student fees to be used for this purpose amounted to discrimination against religiously motivated students. That the Court has been willing to insist on the broad neutral contours of a program and insist that the program not discriminate against students who choose to spend their activity fees for religiously motivated evangelistic activity, strengthens the conclusion that the Court is more concerned about being even handed and fair, than about picking one or another viewpoint, especially a nonreligious one.

⁶⁷ 473 U.S. 402 (1985).

⁶⁸ 117 S. Ct. 1997 (1997).

⁶⁹ See 20 U.S.C. 3804, et. seq., S. Rep. No. 146, 89th Cong., 1st Sess. 4, 12 (1965).

⁷⁰ *Aguilar* created major logistical and educational problems in delivering services to school children. Fewer children received poorer services, despite the infusion of federal assistance to defray structural expenses (like mobile classrooms). The movement of children exacerbated educational deficiencies. The Congress spent over \$180 million on alternatives to on premise education to serve a reduced caseload.

⁷¹ All of the potential detriment was well known in 1985. *Aguilar*, 473 U.S. at 531 (O'Connor, J., dissenting). But the equities did not move the Court to reconsideration; it was the change in the law and only that. *Agostini*, 117 S. Ct. at 2005, 2007.

⁷² 117 S. Ct. at 2010.

⁷³ As discussed, *supra* note 13 and *infra* note 100, the Court modified its *Lemon* test rather than abandon it in favor of other formulations.

⁷⁴ 117 S. Ct. at 2010. See note 100, *infra*.

⁷⁵ *Id.* at 2011.

⁷⁶ *Id.* at 2012 (internal footnotes and citations omitted).

⁷⁷ *Id.* at 2013.

⁷⁸ 444 U.S. 646, 657, 659 (1979), upholding a program giving direct cash reimbursements to religious schools for performing state mandated tasks, discussed in *Agostini*, 117 S. Ct. at 2013. See also note 27, supra.

⁷⁹ *Agostini*, 117 S. Ct. at 2013. There the Court quoted from *Mueller v. Allen*, 463 U.S. at 401: “We would be loath to adopt a rule grounding the constitutionality of a facially neutral law on annual reports reciting the extent to which various classes of private citizens claimed benefits under the law.”

⁸⁰ In a recent Fourth Circuit decision, Columbia Union College successfully challenged an adverse decision by the Maryland Board of Public Works which refused financial aid grants on the grounds that Columbia Union was “pervasively sectarian.” 159 F.3d 151 (4th Cir. 1998). Columbia Union was entitled to a trial to determine whether some unconstitutional assistance actually occurred. Thus, the lower courts are beginning to understand that the important constitutional questions raised in these circumstances need to be evaluated first and foremost on the basis of a record of what actually occurred rather than supposition of what might occur.

⁸¹ R.C. 3313.975 and 33313.978 (B).

⁸² *Gatton v. Goff*, 1996 WL 466499 (Ohio Comm. P1. July 31, 1996).

⁸³ *Simmons-Harris v. Goff*, 1997 WL 217583 (Ohio App. 1997).

⁸⁴ *Slip op.* at *6, *7. The court believed that these parents, without public schools to choose from, were compelled to pick private schools which were largely religious in affiliation.

⁸⁵ *Id.* at *9.

⁸⁶ *Slip op.* at *10.

⁸⁷ R.C. 3313.978 (B).

⁸⁸ For example, the U. S. Supreme Court views the program as a whole, not in any one or another part. See generally *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (criticizing lower court for viewing religious display in isolation); *Wolman v. Walter*, 433 U.S. at 238 n. 6 (refusing to segment review of textbook program). Viewing the program in Ohio as a whole, it is plain that the legislature took great pains to balance the public and private benefits available under the program. Likewise, the legislature was concerned about satisfying itself that the education was chosen without any incentives for or against religious schools. The program was broad, available to all parents, and provided on a religiously neutral basis. Moreover, the court applied a two factor analysis to determine primary effect analysis that has been modified in *Agostini*. Compare *slip op.* at *4 with *Agostini*, 117 S. Ct. at 2016.

⁸⁹ 218 Wis. 2d 835, 578 N.W. 2d 602 (1998).

⁹⁰ The case reached the Wisconsin Supreme Court through a tortuous

procedural route. The matter was first filed in a state trial court in 1995. By statute, the state filed an action in the Wisconsin Supreme Court to declare the Milwaukee program constitutional. The Court divided 3–3 and the matter was remanded to a trial court for decision. *State v. Jackson*, 199 Wis. 2d 714, 546 N.W. 2d 140 (1996). The trial court declared the program unconstitutional under the state constitution only, and that decision was affirmed on a 2–1 vote in the intermediate appellate court. *Jackson v. Benson*, 570 N.W. 2d 407 (Wis. App. 1997). The Wisconsin Supreme Court validated the program on both state and federal grounds, but only the federal constitutional issues will be reviewed here.

⁹¹ The U.S. Supreme Court declined a petition for writ of certiorari on November 9, 1998. 119 S. Ct. 466. Only one justice, Justice Breyer, dissented from the denial of the petition. Under the Supreme Court rules, it takes four affirmative votes of justices to review a decision. Although the denial of a petition has no substantive legal effect, it leaves many to speculate as to the precise nature of the Court's unwillingness to take up this important constitutional decision.

The voucher issue is precisely the kind of decision that many thought that the Court would accept for plenary consideration, especially in that the opponents and proponents of the decision urged the Court to take it up. Perhaps the Court was concerned that it should allow the experiment in state voucher programs to continue to build a record of real experience on which to evaluate these programs. The Court has indicated its willingness to tolerate a range of state experimentation in other areas such as termination of medical treatment. *Washington v. Glucksberg*, 117 S. Ct. 2258, 2275 (1997); *Cruzan v. Director*, 497 U.S. 261, 292 (1990) (O'Connor, J., concurring).

This author believes it more likely to conclude the Court believed that the Milwaukee Parental Choice program was not presumptively unconstitutional. If such a certificate or voucher involving religiously affiliated schools was unconstitutional, and under no set of circumstances could the Court conceive of the validity of such a program, the Court should have granted the petition, reversed the decision of the Wisconsin Supreme Court, and made plain its constitutional conclusion so as not to encourage other state legislatures to continue their experimentation in this area. The Court does recognize its responsibility to avoid a waste of public resources in unconstitutional experiments. Indeed, one could say that much of the close scrutiny of aid to education cases and abortion cases in the 1970s was attributable to the Court's refusal to allow states to waste its resources in what is considered unconstitutional adventures.

⁹² *Jackson v. Benson*, 578 N.W. 2d at 617, (para. 42), quoting *Agostini*, 117

S. Ct. at 2014.

⁹³ *Jackson v. Benson*, 578 N.W. 2d at 617, (para. 43), citing *Davis v. Grover*, 480 N.W. 2d 460 (1992).

⁹⁴ *Jackson v. Benson*, 578 N.W. 2d at 618 (para. 45). State assistance was made payable directly to the parents but on a restricted basis whereby they could only endorse the checks to the selected schools. The only way in which money would flow to a school is by the individual decision of the parent and not on any other basis.

⁹⁵ *Jackson v. Benson*, 578 N.W. 2d at 619 n. 17 (para.47).

⁹⁶ In *Witters*, Justice Powell relied extensively on *Mueller v. Allen* in analyzing the Washington program. 474 U.S. at 492 (Powell, J., concurring). There, he criticized the state supreme court's focus as too narrow, as in conflict "with common sense and established precedent [citing *Walz* and *Everson*]."

⁹⁷ *Jackson*, 578 N.W. 2d at 618, n. 16 (para. 43).

⁹⁸ For example, in *Agostini*, the Court notes favorably that the Title I program supplements, but does not supplant, the regular curriculum. 117 S. Ct. at 2012, 2013. That language may simply be cumulative to its favorable constitutional decision, and it does not dictate a contrary result.

⁹⁹ A memorandum by the Congressional Research Service of the Library of Congress in "Education Vouchers: The Constitutional Standard" confirms this analysis. Report #97-50 A (January 2, 1997). This report, issued prior to the decision in *Agostini v. Felton*, concludes that "secular use restrictions," which have a limiting implication like the language left unevaluated from *Agostini* (note 98), "are not constitutionally necessary in indirect assistance programs." CRS Report, page 6, n. 23.

¹⁰⁰ Although *Aguilar* is dead, *Lemon* is not. *Walz*, 397 U.S. at 668. The constitutional analysis, under *Lemon v. Kurtzman* as amended in *Agostini v. Felton*, looks to a two-part analysis to determine the validity of the program. The test was made less restrictive. *Porta v. Klagholz*, 19 F. Supp. 2d 290, 302 (D.N.J. 1998). In *Agostini* the Court indicated that the criteria used in determining primary effect are three: whether it results in government indoctrination of religion, the program defines recipients by reference to religion, or creates an excessive entanglement in that the states are imposing burdens on religious institutions. A parental choice program would seem easily to pass these constitutional hurdles. Although the Court seems deeply divided about the proper test to apply, it seems that under the current test held by a majority of the Court, vouchers are constitutional.

¹⁰¹ E.g., *Lynch v. Donnelly*, 465 U.S. at 673-76.

¹⁰² Compare Justice Souter's opinion in *Agostini*, 117 S. Ct. at 2020 et

seq. with Chief Justice Rehnquist's opinion in *Wallace v. Jaffree*, 472 U.S. 85, 91 et seq. (1984).

¹⁰³ *Lynch*, 465 U.S. at 673.

¹⁰⁴ See Chester J. Antieau, *Freedom From Federal Establishment: Formation and Early History of the First Amendment Religion Clauses* (1964). The copyright to this text was held by the National Catholic Welfare Conference and research assistance was contributed by George Reed of the Conference's legal staff. It is cited and relied on by the U.S. Supreme Court. E.g., *Walz*, 397 U.S. at 668.

¹⁰⁵ S. Rep. No. 376, 32nd Cong. 2nd Sess. 4 (1853) (Appointment and Compensation of Legislative Chaplains). See also *Zorach v. Clauson*, 343 U.S. 313 (1952).

¹⁰⁶ The examples are well known. The framers of the religion clauses in the First Congress allowed state involvement with religion, including payment for chaplains (*Marsh v. Chambers*, 463 U.S. 783, 788 (1983)), the Thanksgiving Holiday (*id.* at 788), and the inclusion of churches in land grants in the Northwest Territories. See *Wallace v. Jaffree*, 472 U.S. at 100 (Rehnquist, J., dissenting).

¹⁰⁷ See, e.g., *Abington Township*, 374 U.S. at 228 (Douglas J., concurring); *Torcaso v. Watkins*, 367 U.S. at 490.

¹⁰⁸ See, e.g., *Lynch*, 465 U.S. at 683.

¹⁰⁹ I Anson Stokes, *Church and State in the United States*, 556 (1950).

¹¹⁰ See *Abington Township*, 374 U.S. at 222.

¹¹¹ Government neutrality in matters of religion prevents powerful sects from fusing government and religious functions, and protects the freedom of religious observance from state compulsion, *Everson*, 330 U.S. at 15.

¹¹² *Lynch*, 465 U.S. at 687–88 (O'Connor, J. concurring).

¹¹³ *McGowan v. Maryland*, 366 U.S. 420, 430 (1961).

¹¹⁴ Mark E. Chopko, *Intentional Values and to the Public Interest—A Plea for Consistency in Church-State Relations*, 39 DePaul L. Rev. 1143, 1163 (1990).

¹¹⁵ Whether we would allow a third party to object—who didn't participate and who had no personal stake—is debatable. Arguments based on religious liberty in this area often reflect concerns unrelated to the actual participants. Chopko, "Religious Access," *supra* note 13.

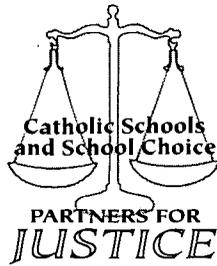
¹¹⁶ USCC continues to contend for this test to be used by the court. See Brief Amicus Curiae in *Agostini v. Felton*, pp. 14–25.

Symposium Participant Responses

Mr. Chopko indicated ways in which legislation may be written to withstand constitutional challenges. In doing so, he raised some public policy concerns.

Participants were asked to discuss what factors they thought should be considered when deciding if participation in a voucher program or another publicly funded program is desirable for a particular institution. A summation of the questions raised and factors which participants considered significant follows.

- Will those responsible for education systems be required to revamp their programs in order to attract government funding or government funded students?
- What degree of control by the state will be required?
- Is there a way for the school to opt out of the program if the state regulations or controls are not working for the Catholic school?
- What kinds of regulations come with the funding, and how are they to be implemented?
- Be careful when coalitions are being built: What is the common ground among participants? With whom will the school be associated?
- Determine whether the provisions of the program are consistent with maintaining the mission of the school.
- Acceptance of public funds should always be optional for a school.
- Carefully assess the institutional issues related to personnel, supervision, curriculum and admissions processes and determine how the regulations of the public program would affect them.
- No program has everything; we have to be satisfied with less than perfect.
- Thoroughly assess any proposal; the devil is in the details, where meaning comes from. Differentiate between abstract agreements and actual legislative and regulatory aspects of implementation.
- Make sure the voucher is adequate to cover the per-pupil cost for a quality education.



CHAPTER 6

Charting Future Directions

Panel Presentations

At the closing session of the symposium, executive directors of the NCEA elementary, secondary, and chief administrator departments and the secretary for education at the United States Catholic Conference offered their reflections on the symposium and future directions they envisioned. Their remarks are summarized below.

Monsignor Thomas J. McDade

Secretary for Education, United States Catholic Conference

Almost ten years ago we witnessed the tearing down of the Berlin Wall. I can still remember President Reagan standing in West Berlin asking Mr. Gorbachev to “tear down this wall.” It happened so incredibly fast, and it snowballed. Likewise, I believe it is not a matter of “if” the wall of opposition to school choice is going to fall, it is a matter of when—and that when is now. My private conversations with opponents of school choice in government, the unions, and other organizations convinces me that they, too, believe it is a matter of when, not if.

I believe in school choice as a fundamental right for parents. I believe school choice is a justice issue of true freedom that allows *Pierce vs. the Society of Sisters* and *Brown vs. the Board Education* to reach fulfillment.

While I believe in a fully-funded voucher for all parents at all economic levels, I have concerns, because not every piece of school choice legislation is a good one. The United States Catholic Conference has two basic principles it uses to evaluate school choice legislation: 1) it cannot contain provisions that would compromise Catholic identity and 2) it cannot compromise on civil rights.

I am torn by the urgency of children, especially poor children, trapped in substandard elementary and secondary schools, and I am concerned about the disinterestedness of our own people who are in good suburban public school districts who are not directly impacted and fear that school choice will cause higher taxes. I am concerned about the subtle, and not so subtle, racism of our people who do not want “those people” in our schools. Likewise, there are pastors in suburbs who do not want to stir the waters and believe other issues in their parish are more important. This is a pastoral issue requiring ongoing catechesis.

I would like Catholics to approach parental choice from the perspective of Catholic culture and teaching as a social justice issue rooted in the Gospel, in Eucharistic theology, and in liberty and justice for all.

I believe we can create the opportunities for parental choice to happen if we tear down the walls that isolate the poor, tear down the walls that block those with affluence and clout from accepting a responsibility to the poor and disenfranchised, and tear down the walls that create a mentality that public schools are the only truly American schools. When we tear down these walls, we will become truly free, parental choice will happen, education will improve, and America will benefit.

Lourdes Sheehan, RSM

Executive Director, NCEA Department of Chief Administrators of Catholic Education

My observations are colored by, and reflect, my experiences at this symposium:

The best-kept secret in the church is local autonomy. Parental choice will happen at the state and diocesan levels. While there is a role at the national level, there will not be a lot of action nationally.

In this cause, persuasion will not be accomplished by persuasive arguments, but by faith in Jesus Christ. Together we must act into new ways of thinking, but too often we think our way into new ways of acting.

We can learn from the civil rights movement. Southerners were not persuaded by arguments of humanity and religion; they were changed by people like Rosa Parks and Martin Luther King, Jr. We have all the arguments that we need; we must foster a vision and conviction that will change persons and attitudes.

We need greater clarity about why we want to work for choice as a justice issue, and we must develop a common understanding and language to express it.

We must find a way to promote choice without demeaning public education; we are not well served by making comparisons between both sectors.

While Catholic schools are able to educate students for less money, we need to improve on offering salaries and benefits that are just for those who work in the schools. If we are advocating that parents are to have full choice, we need to open up schools across parish boundaries and deal with the implications of that for all schools.

Michael J. Guerra

Executive Director, NCEA Department of Secondary Schools

There is a powerful and important choice movement in the nation. We are partners, but are we wise partners? The answer to that question is larger than our institutional interests.

If we reflect back on previous Supreme Court decisions, the issue was framed as “parochial” and reflected the status of our efforts in the past. Now the momentum has changed; we support the right of all parents to choose any type of school, including religious schools. Now our arguments must reflect a passion for parents and kids, and we must be partners, perhaps junior partners, in the cause—and we must be perceived as good partners.

How should we be partners? We must begin by affirming the justice of the issue and the rights of parents and kids. We must take

the moral high ground for parents and kids. We should not abandon our institutional interests, but don't so focus on them that they trump parents and kids. There are four categories of institutional interests that are related to choice issues: Catholic identity, external expectations, admissions, and finances.

What can and should NCEA do at the national level when most of the political action is at the state level? NCEA can:

- Expand the conversation, increase the breadth and depth, make the conversation larger (include more school heads), and draw the Catholic social justice community into the conversation;
- Explore the complicated questions, share information and wisdom, and determine how information relates to good outcomes;
- Encourage one another in determining what is permissible, possible, and desirable; and
- Put a personal face on the movement, stressing stories of families and students.

Robert J. Kealey

Executive Director, NCEA Department of Elementary Schools

The theme of the Catholic marketing campaign during Catholic Schools Week in 1999 was *Catholic Schools: Faith for a Brighter Future*. It reminds us that Catholic schools exist for and with people. In keeping with Catholic Schools Week, three themes emerge from this symposium:

1. Partners for Justice for Children. We must continually remind ourselves and others that that choice is about children; we must keep the focus on the children out there, and the choice movement must be about working for those children. The NCEA activities of Catholic Schools Week 1999 brought more than 100 students to Capitol Hill to involve them in the political process and to put a face on Catholic education to those legislators they met. We need to personalize Catholic education at the state level as well. The focus must be on civil rights for all students. Educational choice is a civil rights issue and a justice issue, an American issue concerned with improving the educational lot of all children.
2. Partners for Justice for Parents. We need to partner with and educate all parents to the choice issue; especially we need to

educate our own Catholic school parents to the nuances of this issue and how it can benefit them. In the 1998 Phi Delta Kappa Annual Survey on Schooling, only 75% of private school parents favored school choice. We need to learn why that is so and work to overcome the real or perceived obstacles to full parental support on this issue.

3. **Partners for Justice for Educational Excellence.** Many fear that accepting public money may impact Catholic identity and the curriculum of our schools. We need to successfully address that issue with Catholics and the larger public, assuring them of the safeguards of constitutional protection. If any legislation would cause the government to interfere in the internal operations of a school, it would not survive constitutional challenges.

During the recent papal visit, the Pope remarked that Catholic schools are of priceless value because they fulfill the dual purposes of spiritual development and academic excellence. If we maintain the quality of our schools, we will not be threatened by charter schools, home schooling, or reformed public schools.

As Jesus blessed the little children, he admonished the adults not to hinder the children from coming to him. Let the inspiration for continued efforts in the parental choice in education movement be: do not hinder the children.

Participant Reflections on the Symposium

Symposium participants were asked to reflect on the experience of the four days and to offer observations, questions, and directions to NCEA about where the conversations may continue and what efforts the association should undertake to move the parental choice agenda forward. The participants offered the following:

Observations

- We'll never get to full and fair parental choice with private philanthropy—it is a short-term means to an end.
- Privately funded programs demonstrate the demand for publicly funded programs and should be marketed in public relations strategy to move the publicly choice agenda forward.
- Private programs have the advantage of not being subject to

legal challenges and of having fewer strings attached than publicly funded programs.

- Private programs allow for coalitions to be formed around successful efforts.
- Successful public and private initiatives have the potential for improving public schools.
- In some areas, charter schools are hurting the local Catholic school and are seen as unwelcome competition.
- Several dioceses would be willing to reopen and use closed buildings if a voucher program would help families attend. In inner cities, schools are a surplus; there is a shortage in the suburbs.
- It appears that the buildings and the capital assets are not there. We would need a large-enough voucher to cover expansion and construction of new buildings.
- Providing just salaries for teachers and affordable tuition are big concerns.

Questions

- Is raising money the issue? If we raise enough, can we do more? What about the lack of space in current schools?
- Do we want to expand our schools to include all who would apply if given a voucher? Where is the intersection of need and mission? How do we define need within the mission?
- Should the Catholic church accept the responsibility of educating all of America's children?
- Who are we inviting to be part of the conversation? Are school boards included?
- What is being done for lottery applicants who did not receive a voucher and remain in the public schools?
- Can we articulate a vision that will foster effective alliances to work for choice?

Directions

- The challenge is to seek voucher assistance at a level of the actual cost of tuition. We need to study the relationship of how much the tuition voucher covers in relation to the true cost of the education and how the difference is/can be made up.

- In advocacy efforts, we must make sure any voucher is adequate to cover the per-pupil cost for a quality education, including the needed capital improvements of inner-city buildings.
- Try to avoid selling any more unused buildings; stewardship should mandate us to lease them instead.
- Investigate public bond financing of new construction and renovations to expand capacity.
- We need a commitment to provide capacity to accommodate needs.
- There is a need for further research about what active Catholics think about choice and what they are willing to do to support it.
- Attitudinal changes are needed regarding school choice in the Catholic community. Racism is a problem and we need to work at it.
- We need to broaden the audience to include other supporters in an ecumenical dimension.
- Seek to collaborate with, and motivate, the leadership of the African-American community about school choice efforts.
- Don't focus just on Catholic schools; empower parents to make a choice and try to affect change in education all across the nation; filling the schools is not the issue.
- We have demonstrated the success of school choice with private plans. Now we should regroup our resources to enact structural change through informed and active grassroots legislative advocacy.
- Develop an inside game with lobbyists and an outside game with grassroots; provide more passionate and determined outreach to grassroots.
- While focus is at the state levels, NCEA should provide the field with motivational efforts—personal stories of the success and failures from the field need to be shared.
- NCEA can become a clearinghouse for information about school choice movements nationwide. NCEA should develop and disseminate material helpful in understanding, promoting, and selling school choice. Highly successful legislative techniques like Bucky Badger's Playbook (page 133) and sample successful legislation should be made available.

Concluding Remarks

Leonard F. DeFiore
NCEA President

In addition to reviewing the status of school choice in its many national manifestations during this conference, we focused on identifying the major challenges in obtaining and implementing programs of school choice. A major goal of the conference is for the participants, upon returning to their states and dioceses, to disseminate what they learned to their colleagues and, with them, to develop plans for advancing the cause of parental choice locally.

NCEA will follow up directly in two ways. First, we will distribute the materials and proceedings of the conference in a variety of ways: print, video, electronic formats, and through presentations at the convention and regional conferences. The NCEA staff will coordinate our efforts with others, especially the office for Catholic School Parent Associations of the United States Catholic Conference, the Knights of Columbus, and the Council for American Private Education.

During these days of the symposium, it has become clear that we need to frame the issue properly. Above all, school choice is a justice issue. Currently, the affluent have school choice, either by their ability to buy a home in a preferred public school district or by paying tuition to a private school. What is needed is a mechanism to provide this same opportunity for the middle class, the working poor, and others. That mechanism is a government funded program of school choice. Some deem it the last civil rights issue.

Further, our concern is with the education of all children. We believe that school choice will make it possible for parents to choose the school that best suits their children and will provide the impetus for the improvement of under-performing public schools. As we heard here, an example of this phenomenon occurred in Albany, New York, when philanthropist Virginia Gilder offered a tuition scholarship to every student at an under-performing public school. Not only did more than 100 students accept her generosity, but the public school district also responded to this competition by launching a number of major improvements in the school, thereby assisting those who chose not to leave. I believe this is called a “Win-Win” situation!

Yet, the ultimate success of this conference depends not on what happened here in Washington during these four days but, rather, on

how well we follow up—first, by informing our membership and others about school choice and, second, by achieving the success of the plans we develop and implement to bring about school choice for all.

As I said in my remarks at the conference, “What could be better, educationally, than families that choose schools because they meet their children’s needs and schools that have children in them because they want to be there? What could be more democratic? What could be more American?”

Appendix

Parental Choice in Education: A Statement by the National Catholic Educational Association

The fundamental theory of liberty upon which all government in this Union reposes excluded any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the 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. (*Pierce v. Society of Sisters*, 1925)

Catholic educators support the right of parents to choose schools for their children. This fundamental liberty—the belief that “the child is not the mere creature of the state”—was upheld by the *Pierce* decision.

Today millions of American exercise the right to choose schools. This freedom, however, depends on their ability to pay tuition to a private school or to live in neighborhoods where the public school system meets the needs of their children.

While NCEA endorses educational choice for all Americans, it has a special concern for the children of the poor. These children are our children, too. Priority should be given to assistance for low and middle-income families, enabling them to increase educational options for their children.

The commitment of Catholic educators to economically disadvantaged children is reflected by the fact that almost 50 percent of Catholic schools are located in urban, inner-city and rural areas serving children from low-income families, and almost 25 percent of the enrollment is comprised of minority students.

NCEA further believes:

- that any campaign to improve American schools must include a commitment to educational choice;
- choice programs must respect civil rights laws;
- educational choice can promote academic excellence by fostering basic reforms and creating a competitive climate, responsive to parental concerns and leading to improved student performance;
- parental control will exact more accountability from educators *and* increase their local autonomy and flexibility;
- any publicly funded educational choice program must include private and religiously affiliated schools; and
- the First Amendment does not prohibit aid to parents and families, even those who select religiously affiliated schools.

If children are not the mere creatures of the state, they are entitled to attend schools which will help them develop their full potential—regardless of race, creed or the ability to pay.

Approved by the NCEA Board of Directors
April 21, 1992



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