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School Choice

An Overview of the Issues

Since the 1980's school choice, which allows parents increased freedom to choose which schools their children attend, has become an increasingly popular but also contentious issue of educational reform. School choice has inspired intense argument from parents, educators and politicians on either end of the political spectrum. The debate, however, is far from a black and white matter and involves theoretical issues, legal challenges, pragmatic concerns for educational output and complex issues that vary with the form and type of choices.

The rationale behind school choice is that the public, governmental control of education has provided unsatisfactory results and has given parents insufficient control of their children's education. School choice is based on a private-market model, which assumes that free educational markets based on competition would lead to both increased freedom for parents and better results from our schools. In this model privatization and competition will stimulate improvement and control costs of education as schools vie for students and the resources that follow them. In theory, standards would be raised as schools were forced to prove their competence and superiority. Those schools that cannot keep up and attract students will be forced to either improve or close down, while schools that perform well will be rewarded by increased enrollment. Proponents claim that the unnecessary bureaucratic control, that diminishes public school efficiency, would be cut down with school choice.

Much of the reasoning underlying school choice is the claim that allowing parents to choose schools that affirm their private values, beliefs or religion, would promote diversity. School choice proponents claim that requiring children to attend public schools does not adequately support the multiplicity and the strength of moral and religious beliefs of America parents. Thus, parents should be able to affirm their values and religion through their choice of schools. Privatization, it is claimed, would give parents greater freedom in shaping the private beliefs and character of their children. Proponents claim that this freedom is especially important for low-income parents, who are often forced to send their children to the under-funded, inferior and under-performing and often unsafe, public schools in their underprivileged neighborhoods.

The opposition to school choice argues that such programs are not only unconstitutional but will have negative implications to the state and quality of the American education system. The constitutional issues will be discussed in a subsequent section of the report. It is important to note that, however, that a major source of contention is whether school choice that allows parents to use vouchers to send their children to private parochial schools constitutes a breach of the separation of church and state. Opponents argue that the use of public funds to support religious schools would cause an establishment of religion.

A major source of opposition is the belief that school choice will lead to increased social, racial and economic stratification. This argument maintains that students who are either self-motivated, or who have ambitious parents with the time and commitment to researching and pursuing choices, will be more prone to use the vouchers. As these students move to private, parochial or charter schools, they will take with them funds that might have otherwise gone towards resources and support of public schools. The argument is that the students left behind in the public schools will suffer greatly. Opponents claim that these will be the students whose parents are typically not able or willing to be active in their children's education- - the very students in need of the most help and the most resources, such as minorities and those living in poverty.

Opponents also assert that the regulations in place to assure the accountability of private, parochial or charter schools, are insufficient. For example, opponents of school choice often allege that choice programs do not adequately ensure that choice schools do not adopt discriminatory acceptance practices. The argument is that because private schools are unaccountable to the public the use of public funds to support is unwise.

Those that dispute the efficacy of school choice advise greater support and innovation in the improvement of our current, public education system.

The school choice debate is often presented as a yes/no question, in which choice either exists or does not exist. In reality, however, school choice exists on a continuum, and the programs being proposed vary between employment of complete privatization to minor choice options. Depending on the form and structure of the school choice program, parents will be given varying degrees of autonomy in choosing their children's education. Because of the wide array of choice options, it is difficult to make generalizations about the efficacy of programs in various situations. The following maps show the programs that have been implemented by the states demonstrate the variability of choice programs.

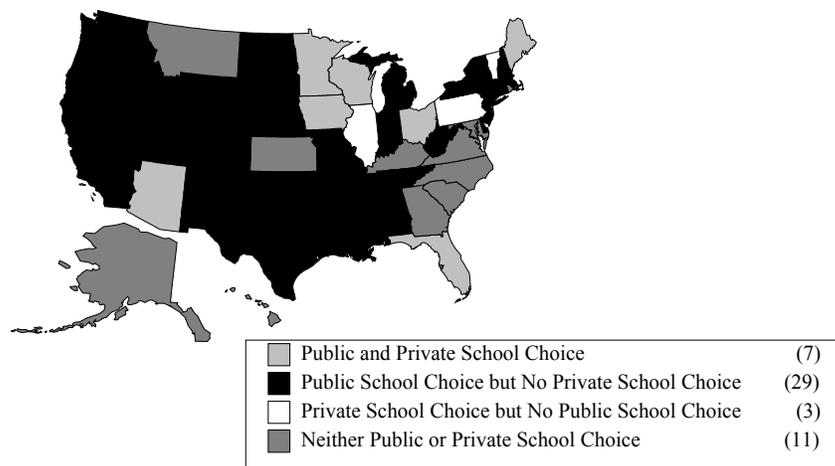


Figure 1: Public and Private School Choice in the States

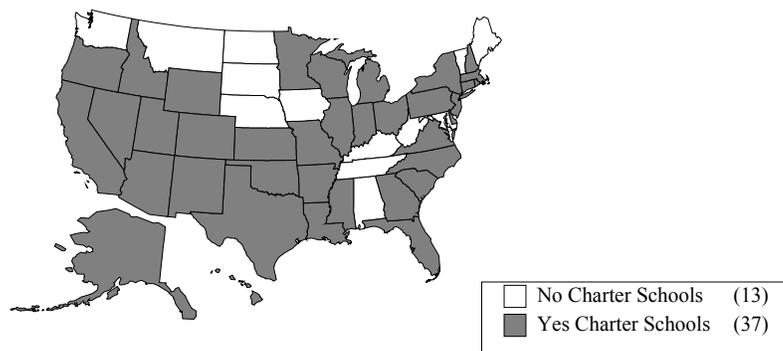


Figure 2: Charter Schools in the States

Legal Analysis

The United States Supreme Court has been addressing the constitutionality of educational assistance to private, religious schools since the early 1920's. Initially, the Court made rulings based on whether the program violated the equal protection clause of the Fourteenth Amendment. In the 1940's, the Supreme Court incorporated First Amendment rights and began basing their decisions on whether a statute violated the establishment clause or inhibited the free exercise of religion. In the 1970's, the Burger Court established the *Lemon* criterion, which states that a program must 1) have a secular legislative purpose, 2) its principle or primary effect must be one that neither advances nor inhibits religion, and 3) the statute must not foster "an excessive government entanglement with religion." The *Lemon* standard of review remains the primary tool for evaluating the constitutionality of programs, but in the last two decades, the Court has become more accommodating to the protection of the free exercise clause over the establishment clause. The last five decisions, *Mueller v. Allen* (1983), *Witters v. Washington Department of Social Services* (1986), *Zobrest v. Catalina Foothills School District* (1993), *Agostini v. Felton* (1997), and *Mitchell v. Helms* (2000) have established the modern jurisprudence where the Court has upheld educational assistance programs so long as they allocate aid indirectly and are neutrally applied.

Since 1998 there have been a number of significant State decisions pertaining to school choice programs. In June of 1998, in *Jackson v. Benson*, the Wisconsin Supreme Court ruled that the Milwaukee Parental Choice Program did not violate the establishment clause of the First Amendment and was therefore, constitutional. The program permitted low-income families to use a portion of their public school funds to pay tuition for participating private secular and non-secular schools. The United States Supreme Court chose not to review the case.

In 1998, Maine implemented a program whereby student who lived in rural school districts without a public school system would be provided tuition to attend a private or public school but the State would not reimburse students for tuition to religious schools. In *Bagley v. Raymond School Dept.*, both the state trial court and the Maine Supreme Court ruled that the program was constitutional and in May 1999, the First Circuit Court of Appeals upheld the decision. The program was challenged on the grounds that the specific exclusion of religious schools was a violation of the right to free exercise of religion clause of the First Amendment as well as the equal protection guarantee in the Fourteenth Amendment. The United States Supreme Court denied review of the decisions.

In June 1999, the Vermont Supreme Court ruled in *Chittenden Town School Dist. v. Vermont Dept. of Education*, that a Vermont program which provided tuition for students in rural districts that did not have a public school to attend a public or private school violated the Vermont Constitution because the

program specifically excluded religious schools. The Court did not address if the program jeopardized parents' First Amendment right to free exercise of religion and therefore, the United States Supreme Court declined to review the case.

In *Bush v. Holmes*, Florida's First District Appellate Court ruled that the Opportunity Scholarship Program which authorized the State to pay tuition for students to attend private schools did not violate the Florida Constitution. The circuit court which had ruled against the program had argued that Article IX of the Florida Constitution forbid the State from providing education outside "the system of free public schools." The Appellate Court disagreed and ruled that Article IX did not prohibit using state funds to subsidize private school education, when necessary. The Court argued that in fact, Article IX requires that students receive a "high quality education" and the program facilitates that goal by moving students out of poorly performing schools. Once again, the Supreme Court did not agree to review the case.

Although the United States Supreme Court has a long and complex jurisprudence regarding the constitutionality of aid to religious organizations, there is no High Court decision directly addressing the constitutionality of state school choice programs such as school vouchers. On September 25, 2001, the United States Supreme Court agreed to hear *Simmons-Harris v. Zelman*. The Court has recently begun hearing the oral arguments and a decision should be issued during the summer of 2002. The case will review whether the Ohio Pilot Project Scholarship program violates the establishment clause. The program offers tuition vouchers to private and public schools; however, of the 56 schools that agreed to participate in the program, all were private and 46 were religiously affiliated. In 1996, the state court deemed the program constitutional but the state appeals court reversed the decision in 1997 ruling that the program violated the establishment clause. The Ohio Supreme Court overturned the appellate courts decision and held that the program was constitutional. The U.S. District Court argued that the program was unconstitutional based on the establishment clause and in December 2000, in a 2-1 ruling the Sixth Circuit Court of Appeals upheld the U.S. District Court's opinion. The Sixth Circuit Court cited the United States Supreme Court's rejection of a similar tuition reimbursement program in the *Committee for Public Education and Religious Liberty (CPERL) v. Nyquist* (1973) as the precedent for the decision. The United States Supreme Court decision will likely draw from the accommodationist precedent set by *Mueller v. Allen* (1983), *Witters v. Washington Department of Social Services* (1986), *Zobrest v. Catalina Foothills School District* (1993), *Agostini v. Felton* (1997), and *Mitchell v. Helms* (2000).

Research on the Effectiveness of School Choice Programs

The research that has been done on the effectiveness of school choice programs is inconclusive. The majority of the research has been done on the Cleveland and Milwaukee programs. There have been two major reports on the Cleveland program, one by Harvard's Program on Education Policy and Governance (PEPG) and the other by Indiana University. The Milwaukee program has been scrutinized by Harvard's PEPG, the Department of Statistics, the University of Houston's Center for Public Policy, and an independent researcher at Princeton University. There is little continuity between the reports because the research organizations have used different methods to analyze the data and control for family background and student ability. In addition to the methodological divergence, the researchers are often charged with producing biased data relative to their position on the issue.

Consistent Findings

There have been generally consistent findings with regard to family income, parental satisfaction, parental education, parental marital status and family size, race and ethnicity, and attrition and mobility of voucher users.

Family Income: There have been studies that have been done in Milwaukee, Cleveland, and New York City. The findings have shown that the voucher programs are targeted at low-income families. The study done in Milwaukee found that the mean income for voucher recipients was \$11,300, while the regular Milwaukee mean family income was \$22,000. In Cleveland the average family income for voucher recipients was \$15,800 and the average income for other families was \$20,000. New York City had a lottery system for the voucher recipients, in order to qualify for the voucher lottery the children had to qualify for the federal free lunch program. The average family income for New York City was \$9,600. 72% of these families reported receiving welfare or social security.

Parental Satisfaction: Studies done on parental satisfaction have shown that the parents of children that received vouchers have been very satisfied. Reasons for this may be that parents were dissatisfied with their formal schools so much that any change would be better.

Parental Education: Parental education of mothers of voucher students tends to be higher than mothers of public school children, most of the time. The study done in Milwaukee showed that 56% of the mothers reported some college education, while only 40% of public school mothers reported some college education. In Cleveland 51% of the mothers of voucher receiving students reported having some college education. 30% mothers with children in public schools reported some college education. The education level in New York City was much more drastic. 54% of the lottery mothers reported having some college education while only 19% of the mothers of low-income families reported some college education.

Parental Marital Status and Family Size: Studies from all three of the cities examined found that voucher students were more likely than public school students to live in single-parent families. In Milwaukee and Cleveland it was found that the mean number of children in voucher households was slightly lower than those in public school households, but there was no information on numbers of children in the New York study.

Race and Ethnicity: The research into the race and ethnicity of the students who used vouchers in the three cities found that certain racial and ethnic backgrounds were represented at greater percentages than their numbers in the school population would predict. In Milwaukee, between 1990 and 1994, 73% of voucher students were African-American while 55% of public school students were African American. Similarly, 21% of voucher students were Hispanic while 10% of the public school population was Hispanic. The minority trend was different however for Native American and Asian students who had a greater percentage in public schools. White students represented 29% of public school students and only 5% of voucher students in Milwaukee. The data on the racial and ethnic makeup of voucher versus public school students was very similar in Cleveland. While the study in New York did not compare racial characteristics, it did report that 44% of the mothers who applied for vouchers were African-American and 47% of applicants were Hispanic.

Attrition and Mobility of Voucher Users: The data on the attrition (non-graduating students not returning to school) and mobility (students moving from one school to another within a year) rates of voucher and public school students demonstrated that attrition and mobility was essentially the same for voucher students and public school students.

Inconsistent Findings

There have been inconsistent findings with regard to student achievement and parental involvement.

Student Achievement: The research on how school voucher programs have affected student achievement is extremely controversial. The first study on the Milwaukee voucher program done by a state-approved evaluator found that students who utilized vouchers did not enjoy greater achievement than those who

remained in the public schools. A second study co-authored by Harvard University and the University of Houston found that students who were able to attend private schools for 3 to 4 years because of the Milwaukee voucher program scored higher in math than comparable public school students. The third report, authored by a researcher at Princeton University concluded that voucher students did better in math, but marked no improvement in reading test scores. The Princeton researcher also did a study comparing students in voucher programs, public school, magnet schools and specially funded public schools. The students in the specially funded public schools, which have smaller classes than the public and magnet school, also experienced an increase in math scores and outscored all public and private school students (including voucher students) in reading scores.

Similar disparity was found in studies on student achievement in the Cleveland program. The Harvard report found moderate gains in reading and large gains in math. The Indiana study, on the other hand, found no achievement difference when students came from similar demographic characteristics and comparable prior academic achievement. When background characteristics were not considered, voucher students showed marked improvement compared to public school students. Harvard reanalyzed the Indiana study and argued that even when demographics were considered, voucher students fared better.

Parental Involvement: The research into the effects of voucher programs on parental involvement has been inconclusive. In Milwaukee and New York City positive effects on parental involvement were found, while in Cleveland there was no effect on parental involvement from voucher programs. In Milwaukee, voucher parents were more likely to be involved in organizational activities such as committee work and fundraising, as well as volunteering in classrooms and field trips. The study in Cleveland found that public school parents were just as likely to be involved in their child's education and school than those parents of voucher students.

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