

# ESSAY

## How School Choice Benefits the Urban Poor

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### I. INTRODUCTION

One-fourth of all American children entering the ninth grade fail to graduate from high school.<sup>1</sup> That is bad enough, but a staggering 50% of all minority kids who enter ninth grade do not graduate.<sup>2</sup> As Colorado education philanthropist Steve Schuck has observed, “[these] are appalling statistics.”<sup>3</sup> An equally horrendous set of outcome data from the primary grades suggests that the fate of children who have suffered from the double whammy of racial discrimination and poverty often is sealed early. The 2000 National Assessment of Educational Progress found that 63% of African-American and 58% of Hispanic fourth-graders scored below a minimal “basic” level in reading.<sup>4</sup> (The failing rate for U.S. fourth-graders as a whole was 37%). Urban poverty deals many of these children a losing hand: 60% of children from homes below the poverty level, and 47% of all urban pupils, cannot read at this bare “basic” level.<sup>5</sup>

America’s urban poor have found their children to be locked into failing schools run by a government monopoly while more affluent families are able to flee to the suburbs or private schools. However, the good news is that a reform movement dedicated to the proposition

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1. Alan Katz, *Change Agent*, COLO. BUS., Aug. 1, 2001.

2. *Id.*

3. *Id.*

4. NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS, NATION’S REPORT CARD, READING 2000 MAJOR RESULTS (2001).

5. *Id.*

that all parents have a right to choose better schools for their children is yielding tentative but promising results. As will be documented in this paper, a variety of innovative programs based on school choice are enabling disadvantaged African-American children, and other disadvantaged children, to make significant gains in academic achievement, while their parents' level of satisfaction with, and involvement in, their schooling has soared. Unfortunately, national teacher unions and other Education Establishment organizations have battled at every turn to preserve the *status quo* by spending millions of dollars to mount legal challenges to any and all experiments that entail giving low-income families publicly funded scholarships (vouchers) empowering them to choose private or parochial schools.

Thus, the fate of voucher experiments now rests on the willingness of at least five members of the U.S. Supreme Court to affirm the constitutionality of publicly aiding parents in making their own unfettered selection of schools. One of the Supreme Court's final decisions of its 1999-2000 term, *Mitchell v. Helm*,<sup>6</sup> suggests the likelihood of a pro-education-freedom decision majority when a landmark case *Simmons-Harris v. Zelman*,<sup>7</sup> the Cleveland voucher case, is heard in the 2002-03 Supreme Court term. In *Mitchell*, the Supreme Court upheld by a six-to-three vote the use of federal education aid to help pay for computer software and hardware and other educational materials for use at private and parochial schools. Specifically, the Court found no establishment of religion from the simple fact that many of the schools benefiting from the aid in a Louisiana parish were religiously affiliated. Under the federal Chapter Two program, federal funds flow to state education agencies and then to local education agencies that, in turn, lend the educational materials to public and private K-12 schools for implementing "secular, neutral, and nonideological" programs.<sup>8</sup>

*Mitchell* marked the Supreme Court's sixth consecutive ruling upholding forms of aid to students in religious schools or activities. Moreover, it reversed two 1970s' precedents holding that public aid was acceptable for textbooks but not other instructional materials, because textbooks could be cleared of religious content in advance.<sup>9</sup> In

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6. 530 U.S. 793 (2000).

7. 234 F.3d 945 (6th Cir. 2000).

8. *Mitchell v. Helms*, 530 U.S. at 794.

9. See *Mitchell*, 530 U.S. at 809; *Meek v. Pettenger*, 421 U.S. 349 (1975), *overruled by Mitchell v. Helms*, 530 U.S. 793 (2000); *Wolman v. Walter*, 433 U.S. 229 (1977), *overruled by Mitchell v. Helms*, 530 U.S. 793 (2000).

general, the decision indicates that the Court, as currently constituted, might approve a voucher program that enabled parents to include religiously oriented schools among their choices. The aid would be for the individual, not the institution. However, while six Justices upheld Chapter Two aid, there was a four-to-two split on some of the particulars, which raises a few questions as to how the Justices would divide in a school-voucher case.<sup>10</sup>

The four-Justice plurality, for which Justice Clarence Thomas wrote, pursued a line of reasoning most favorable to a voucher program like Cleveland's. Cutting through the thicket of judicial interpretation of the First Amendment's bar against official "establishment" of a religion, Justice Thomas advanced the idea that government neutrality should be the sole standard.<sup>11</sup> Absent clear government intent to instill belief in a state religion, the free choices of individuals should be honored, and public funds may follow the children.<sup>12</sup> Justice Thomas wrote that "if numerous private choices, rather than the single choice of a government, determine the distribution of aid pursuant to neutral eligibility criteria, then a government cannot, or at least cannot easily, grant special favors that might lead to a religious establishment."<sup>13</sup>

However, a fifth vote obviously would be needed to sustain the use of vouchers in religious schools. Therefore the concurring opinion of Justice Sandra Day O'Connor, joined by Justice Breyer, will be dissected minutely for clues. Justice O'Connor expressed a certain unease with the plurality opinion, seeing it possibly presaging "the approval of direct monetary subsidies to religious organizations, even [though] they use the money to advance their religious objectives."<sup>14</sup>

Nevertheless, there was considerable encouragement for the voucher camp in Justice O'Connor's explicit adoption of the distinction between direct and indirect aid. Such a dichotomy had been advocated by the nation's leading litigators for freedom of choice in education—the Institute for Justice. In an *amicus* brief filed on behalf of itself, the Milton and Rose D. Friedman Foundation, and other

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10. In *Mitchell*, Justice Thomas announced the judgement of the Court and delivered an opinion in which Chief Justice Rehnquist, Justice Scalia and Justice Kennedy joined. Justice O'Connor, with whom Justice Breyer joined, concurred in the judgement. Justice Souter issued the dissenting opinion, joined by Justice Stevens and Justice Ginsburg.

11. *Id.* at 809.

12. *Id.* at 810-12.

13. *Id.* at 810.

14. *Id.* at 844.

advocates of choice, the Institute remarkably took no position on the federal program in question.<sup>15</sup> Instead it urged the Justices to distinguish carefully between *indirect* aid programs such as school vouchers, and *direct* grants to institutions, which may require greater safeguards. From an establishment-of-religion standpoint, the brief said programs like computer subsidies might be problematic.

The Court's close division and complexity of the issue placed additional importance on the outcome of the 2000 Presidential race. By the time the Supreme Court rules on school choice, President George W. Bush may have had an opportunity to nominate a new Justice to fill a vacancy, one who could be the critical swing vote. His opponent, then Vice President Al Gore, steadfastly opposed vouchers—even though remarking at a campaign stop in his Carthage, Tennessee hometown, “[i]f I was the parent of a child who went to an inner-city school that was failing . . . I might be for vouchers, too.”<sup>16</sup> In his proposed plan for reforming federal education spending, President Bush advocated use of federal vouchers of up to \$1,500 per child as an accountability tool when schools chronically fail to meet basic standards. Congress did not concur, but did agree to permit parents to use Title I money for private tutoring.

## II. THE JUDICIAL BATTLEGROUNDS

After some high-profile setbacks for parental choice late in the year 2000, teacher-union officials and their allies undertook a major advertising campaign to spread the impression that the school choice movement had collapsed like limp lasagna. To the contrary, the prospects for school choice look bright in the early years of the new century.

The losses were (1) the two-to-one ruling on December 11, 2000, by the U.S. Court of Appeals for the Sixth Circuit in Cincinnati that would strike down Ohio's four-year experiment with vouchers for low-income families in Cleveland;<sup>17</sup> and (2) the November 7, 2000 defeats by a roughly two-to-one margin of ballot initiatives calling for

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15. See Brief of Children FirstAmerica, Inc., as Amici Curiae in Support of Petitioners, *Mitchell v. Helms*, 530 U.S. 793 (2000) (No. 98-1648).

16. Frank Riggs & Robert Holland, *The Gore Dilemma: Will He Serve Teachers Unions or Upset Parents*, INVESTOR'S BUS. DAILY, Aug. 18, 2000.

17. *Simmons-Harris*, 234 F.3d at 945.

universal vouchers in California and targeted vouchers for children in failing schools in Michigan.<sup>18</sup>

In both those instances, there is ample evidence that those outcomes were just preludes to much larger battles on battlegrounds likely to be more favorable to parental choice in education. Furthermore, there have been many positive developments recently for school choice that will lay the foundation for further progress.

Headlines across the country told of a “rejection” of school vouchers on December 11, 2000, when the Sixth Circuit panel ruled two-to-one that Cleveland’s experiment allowing impoverished children to attend private schools with the aid of publicly funded vouchers violates the federal Constitution’s prohibition against excessive entanglement of church and state.<sup>19</sup> As both sides expected, the case now goes to the U.S. Supreme Court for final resolution in what could be the definitive, landmark decision on vouchers. “This decision is a disaster for every schoolchild in America, but it will be short-lived,”<sup>20</sup> said Clint Bolick, litigation director for the Washington-based Institute for Justice, which represents families in defense of school choice in Cleveland and other localities. “This is the U.S. Supreme Court test case we’ve been waiting for to remove the constitutional cloud from school choice once and for all.”<sup>21</sup> Voucher foe Barry Lynn, executive director of Americans United for the Separation of Church and State, had a remarkably similar take: The Cleveland case “sets the stage for an historic showdown. This will be the most important case about public schools and church-state separation in decades.”<sup>22</sup>

The Sixth Circuit majority upheld the August 1999 decision of U.S. District Judge Solomon Oliver, Jr., that the Cleveland voucher program is *ipso facto* unconstitutional because 80% of participating schools are affiliated with churches.<sup>23</sup> Judge Eric I. Clay wrote, “[t]he school voucher program is not neutral in that it discourages the participation by schools not funded by religious institutions, and the Cleveland program limits the schools to which parents can apply the

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18. George Clowes, *Voucher Initiatives Crushed in Michigan and California*, SCHOOL REFORM NEWS, Jan. 2001.

19. *Simmons-Harris*, 234 F.3d at 948.

20. *Institute for Justice Blasts School Choice Ruling, Vows U.S. Supreme Court Appeal* (Dec. 11, 2000), available at <http://www.childrenfirstamerica.org> [hereinafter *School Choice Ruling*].

21. *Id.*

22. *Id.*

23. *Simmons-Harris v. Zelman*, 72 F. Supp. 2d 834 (N.D. Ohio 1999).

voucher funds to those within the program.”<sup>24</sup> Judge James L. Ryan, dissenting in part, pointed out that the Ohio law permits participants several educational options besides religious schools.<sup>25</sup>

Possibly a good omen for choice advocates in the Cleveland case is that the Supreme Court voted five-to-four in November 1999 to dissolve an injunction against the voucher program that District Judge Oliver had issued.<sup>26</sup> The majority thus showed concern over the possibility of children being forced out of schools with which their families were happy, and schools that were giving them a sound education. “If this program is allowed to die, 4,000 low-income kids will be forced to leave the only good schools they’ve ever attended,”<sup>27</sup> Bolick commented. “The Supreme Court won’t allow that to happen without considering their plight.”<sup>28</sup> Although it is always risky to predict Supreme Court decisions, the Cleveland case figures to be the next big judicial battleground for school choice. With regard to the use of vouchers to attend religious schools, it could be decisive.

### III. EVIDENCE OF THE DEMAND FOR CHOICE

It is certainly fair to note that private schools vary in terms of the quality of the education they provide, and that not all private schools always deliver students a better product than neighborhood government schools. When parents are given the choice, however, they have responded with a resounding demand for more and better options.

There is no better example of this than the private vouchers offered by the Children’s Scholarship Fund founded by businessmen Ted Forstmann and John Walton. The scholarships they offered were partial scholarships for children of low-income applicants to attend the school of their choice. To be eligible, families needed to earn less than \$22,000 per year, and agree to contribute an average of \$1,000 per year toward their children’s scholarships. That is a big commitment for a low-income family to replace a product that they ostensibly already receive “free” from the government. In fact, it is such a big commitment that the philanthropists did not know what sort of a response they could expect.

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24. *Simmons-Harris*, 234 F.3d at 959.

25. *Id.* at 963.

26. *Simmons-Harris*, 528 U.S. 983 (1999).

27. *School Choice Ruling*, *supra* note 20.

28. *Id.*

The response was overwhelming—1.25 million applications for 40,000 scholarships. Demand was especially high in urban areas. In Baltimore, 44% of eligible families applied; in Washington, D.C., 33%; in New York City, 29% and in Chicago, 26%.<sup>29</sup>

In testimony before the U.S. House of Representatives' Committee on Budget, parents selected by lottery to participate in the program explained what led them to make such substantial commitments. "What the private school offers my children is smaller classrooms, one-on-one time with their teachers, and not a lot of classroom disruption or disturbance,"<sup>30</sup> one parent said. "The scholarships help ease the financial burden I was facing with paying for 3 kids to attend a private school. If I have to scrub floors, they are going to get the education they deserve."<sup>31</sup>

There are many other compelling case histories of the demand for parental choice in education. In Michigan, the Education Freedom Fund led by Dick and Betsy DeVos received over 64,000 applications for the 4,000 private scholarships they offered to low-income families in their state in partnership with the Children's Scholarship Fund.<sup>32</sup> Mr. DeVos described being stunned by the staggering response from people he described as "parents who have paid into a system that is supposed to provide their children with a decent education, but who are getting gravely short-changed."<sup>33</sup>

"If we were to invent a system today to properly educate all the children in this country to become contributing members of society,"<sup>34</sup> wrote Gisele Huff in *Education Week*, "does any thinking individual imagine we would invent the existing one?"<sup>35</sup>

According to a 1999 study by Policy Analysis for California Education, nearly one in four students nationwide already attend private, charter, or magnet alternatives to their neighborhood public school.<sup>36</sup> Recently, a *Washington Post* story reported "there are far more chil-

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29. *Fixing Our Schools from Bottom Up: Hearing Before the Committee on the Budget House of Representatives*, 106th Cong. 82 (1999) (statement of Theodore J. Forstmann, Senior Partner, Forstmann Little & Co., Co-Chairman and CEO, The Children's Scholarship Fund).

30. *Fixing Our Schools from Bottom Up: Hearing Before the Committee on the Budget House of Representatives*, 106th Cong. 88 (1999) (testimony of Ms. Vermont White).

31. *Id.*

32. Dick DeVos, Address at the Children First CEO America Founders' Conference, Grand Rapids, MI (May 17, 2000) (on file with authors).

33. *Id.*

34. Gisele Huff, *Would We Invent System We Have?*, *EDUC. WK.*, Jan. 10, 2001, at 55.

35. *Id.*

36. *Twenty-five Percent of Kids Already Attend 'Alternative' Schools, Study Finds*, *S.F. CHRON.*, Sept. 8, 1999, at A-10.

dren in parochial schools in Northern Virginia than there are desks for them.”<sup>37</sup> With such high demand for private education, shouldn’t poor families be able to avail themselves of the same options?

#### IV. GROWING EVIDENCE OF BENEFITS

As stunning as the response to those private vouchers were, perhaps the most impressive part of the Children’s Scholarship Fund is the results achieved by the students who participated. Researchers from Harvard University, Georgetown University, and the University of Wisconsin measured students’ progress in the District of Columbia, New York City, and Dayton, Ohio, and compared them with the results of students who applied for the scholarships but did not receive them. The study examined scores on the Iowa Test of Basic Skills for students in the second through eighth grades after two years.<sup>38</sup>

The researchers deemed the results of this randomized field trial “striking” for the District of Columbia, where African-Americans constituted ninety-four percent of participants.<sup>39</sup> District students who received vouchers to attend private schools outperformed their peers who remained in the public schools by nine percentile points.<sup>40</sup> The research team could not explain why voucher students from other ethnic groups showed insignificant gains, but they promised further study of that.<sup>41</sup>

Veteran *Washington Post* education writer Jay Mathews succinctly described the significance of this latest research:

The report, which compares the students’ reading and math scores on the Iowa Test of Basic Skills over the first two years of the voucher programs, is unusual. It compares public and private school students who have similar motivations and family backgrounds. This was possible because voucher awards in the three cities were made by lottery. Researchers, then, were able to compare students who won vouchers with students who did not win them but wanted them, demonstrating similar motivations.<sup>42</sup>

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37. David Cho, *Catholic Schools Out of Room: N.Va. Enrollment Boom Pressures Diocese*, WASH. POST, Mar. 20, 2001, at B1.

38. WILLIAM G. HOWELL ET AL., HARVARD KENNEDY SCHOOL OF GOVERNMENT, TEST-SCORE EFFECTS OF SCHOOL VOUCHERS IN DAYTON, OHIO, NEW YORK CITY, AND WASHINGTON, D.C.: EVIDENCE FROM RANDOMIZED FIELD TRIALS (August 2000).

39. *Id.* at 18, 30.

40. *Id.* at 37.

41. *Id.* at 34.

42. Jay Mathews, *Scores Improve for D.C. Pupils With Vouchers: New Study’s Results Add To Election Year Debate Over Education Funding*, WASH. POST, Aug. 28, 2000, at A01.

District of Columbia Public Schools' per-pupil expenditures at \$8,048 are more than one-third above the national average and among the nation's highest. As Virginia Walden of DC Parents for School Choice points out, "[t]he average math score for D.C. fourth graders is 37 points below the national average, and 21 points below the lowest scoring state."<sup>43</sup> Ms. Walden quotes the District of Columbia Financial Control Board, which issued a report in 1996 stating, "the longer students stay in the District's public school system, the less likely they are to succeed."<sup>44</sup>

## V. CHARTER SCHOOL SUCCESSES

Charter schools constituted another promising front for school-choice advocacy. In the fall of 2001, more than 2,400 charter schools in thirty-four states were serving 576,000 students, a 12% increase over the past year.<sup>45</sup> (The first public charter school opened in Minnesota in 1992). Organizers who earn a charter from school boards or other public authorities receive exemptions from many bureaucratic and union rules. In return for this leeway to innovate, they agree to be accountable for results and can have their charter terminated if they fail to deliver.

In the dynamic competitive environment of a school district with a healthy system of educational choice, including charter schools, change is imminent and improvement can become contagious. To attract students, charter schools depend on their ability to convince parents and children that they offer distinct advantages. But with the free market's competitive forces at play, public schools themselves have shown the propensity to adapt—and improve—so as to protect their shrinking share of students. So even while charter schools may initially attract students based upon competitive advantages, public, non-charter schools can be expected to battle back. Where the end result of this competition is better public education, the winners are surely the students themselves. And in order to maintain their student populations, charter schools will need not only to gain a competitive advantage. They will need to keep it.

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43. Virginia Walden, *The Case for School Choice in Washington, D.C.*, in AN EDUCATION AGENDA: LET PARENTS CHOOSE THEIR CHILDREN'S SCHOOL 98 (John C. Goodman & Fritz F. Steiger eds., 2001).

44. *Id.*

45. *Back to School*, Monthly Letter to Friends of the Center for Education Reform No. 70 (Center for Education Reform), Fall 2001, available at <http://www.edreform.com/letter/2001/01fall.htm>.

In his 1998 profile of Arizona's Mesa Unified School District, Jim Glassman offered an intriguing example of how one such model evolved.<sup>46</sup> As charter school enrollment in Mesa increased by nearly 1,900 students from 1996 to 1997, the trend had begun to cost the public schools some \$10 million in state and federal funds that followed those students to the district's twenty-three charter schools. "In fact," Glassman noted, "Mesa's charter schools have even been hiring school bus drivers away from traditional public schools, offering them 10% more pay plus a bonus."<sup>47</sup>

But the public schools' staffs did not sit idly on their hands—they got competitive. They began offering an early-kindergarten program and opened a new alternative high school. What's more, they took out print and movie theater ads to promote these changes. "There's No Better Place to Learn Than the 68 Mesa Public Schools . . . Don't Miss Out!" read one advertisement. (While charter schools are by definition public schools, the number 68 in the ad refers to only the district's non-charter public schools.)

"When we look back on the 1990s, the charter school movement may well be one of the ways we have turned around the entire public education system," then-First Lady Hillary Rodham Clinton told the National Education Association's convention in 1999.<sup>48</sup> According to Bryan Hassel's paper, published by the Democratic Leadership Council's Progressive Policy Institute, charter schools are demonstrating a diverse appeal far beyond the fears of their critics that they would become a vehicle of flight exclusively for elite, white, or wealthy student populations. According to Hassel, "Fifty-two percent of charter school students in 1997-98 were white, compared to 56% in all public schools in their states."<sup>49</sup> The paper went on to state, "about 37% of charter students were eligible for a free or reduced-price lunch, versus 38% of all public school students. Though many charter schools exist to serve students with disabilities, the overall percentage of exceptional children in charter schools was somewhat below that of public schools (8% [versus] 11%)."<sup>50</sup>

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46. James K. Glassman, *Class Acts: How Charter Schools are Revamping Public Education in Arizona and Beyond*, REASON, April 1998.

47. *Id.*

48. Ann Bradley, *NEA Runs Hot-and Cold-For Hillary Clinton*, EDUC. WK., July 14, 1999 at 12.

49. Bryan Hassel, *Charter Schools: Policy Success Story Begins to Emerge* (Aug. 1, 1999), available at <http://www.ppionline.org/ndol>.

50. *Id.*

Nationwide charter schools are bringing about some extraordinary results. For instance, a 2000 Colorado Department of Education study found that charter schools were performing at ten to sixteen percent above state averages on standardized tests, and three-fourths of charter schools were outperforming their home districts and schools with comparable demographic profiles.<sup>51</sup> In Worcester, Massachusetts, students at the Abby Kelley Foster charter elementary school, which had been operated by Advantage Schools, improved their reading, math and language scores by fifteen percentile points in the second grade, fourteen points in the third grade, nine points in the fourth grade, and ten points in the fifth grade.<sup>52</sup> And at the Vaughn Next Century Learning Center in Los Angeles, student achievement improved 330% over the school's first five years.<sup>53</sup>

## VI. PARENTAL HAPPINESS

Given the vital link between supportive parents and a well-educated child, achieving parental satisfaction with a school is in itself a significant outcome. In that respect, school choice has earned a solid "A" across the board from researchers who have approached the subject from divergent outlooks.

One of the most intriguing studies came from Professor John Witte, a University of Wisconsin political scientist whom Wisconsin Superintendent of Public Instruction Herbert Grover tapped in 1990 to evaluate the Milwaukee voucher program. Given Grover's stern opposition to choice (he argued it could "ruin public schools"), critics suspected Witte's research would be slanted against vouchers. However, in a 1999 Brookings Institution book, *Choosing Equality*, scholar Joe Viteritti observes that despite all the focus on Witte's negativism, the overall thrust of his research has been "more positive than negative."<sup>54</sup> For instance, Professor Witte found that parents of children in the choice schools far more satisfied with the quality of their children's schooling than were public-school parents. Witte also found

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51. COLORADO DEPARTMENT OF EDUCATION, COLORADO CHARTER SCHOOLS EVALUATION STUDY 1998-99 (2000) [hereinafter COLORADO EVALUATION STUDY], available at <http://www.cde.state.co.us>.

52. Press Release, Advantage Schools (Sept. 2, 1999).

53. *Charter Schools: Hearing Before the Subcommittee on Early Childhood, Youth and Families of the Committee on Education and the Workforce*, 105th Cong. (1997) (statement of Dr. Yvonne Chan, Principal, Vaughn Next Century Learning Center, San Fernando, California).

54. JOSEPH P. VITERITTI, CHOOSING EQUALITY: SCHOOL CHOICE, THE CONSTITUTION, AND CIVIL SOCIETY (Brookings Institution Press 1999).

that choice schools provided far more opportunities for parents to get involved than did the public schools.<sup>55</sup>

Only on the single issue of testing data has Witte's research been somewhat negative: He has contended that choice students perform "approximately the same" on tests as Milwaukee's public-school students. But as Viteritti notes, even that conclusion is not terribly negative, given the fact that the schools of choice operated with much lower funding than did the public schools.<sup>56</sup>

Much controversy revolved around Witte's refusals to make his raw testing data in his annual surveys available to other researchers. Eventually, Professor Paul Peterson of Harvard University was able to re-analyze the data, and he questioned the validity of Witte's comparisons. As will be discussed later, Peterson and his colleagues found Milwaukee's choice students scored higher than public-school peers from similar socioeconomic backgrounds. But despite the bitter volleys fired between research camps, it was the extent of agreement on the high level of parental satisfaction that shone through the gunsmoke.

Indeed, though foes of school choice used Witte's early research as ammunition to try to end the Milwaukee experiment, Witte has recently declared himself a supporter of vouchers targeted to urban children in need. Vouchers, charter schools, and open enrollment make sense, he told an Indianapolis audience in a March 22, 2000 speech, as means "to aid families and educators in inner-city and poor communities where education has been a struggle for several generations."<sup>57</sup> Correctly designed, he said, such approaches "can provide meaningful educational choices to families that do not have such choices."<sup>58</sup> Witte spells out his views in a new book from the Princeton University Press, *The Market Approach to Education: An Analysis of America's First Voucher Program*.<sup>59</sup>

Witte noted in Milwaukee that parental satisfaction "increased dramatically" when voucher students transferred from public to private schools.<sup>60</sup> In extensively studying parental satisfaction and involvement in private scholarship programs for low-income families in

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55. *Id.* at 113-16.

56. *Id.* at 105.

57. *Wis. Choice Evaluator Endorses Vouchers*, SCHOOL REFORM NEWS, May 2000.

58. *Id.*

59. JOHN WITTE, *THE MARKET APPROACH TO EDUCATION: AN ANALYSIS OF AMERICA'S FIRST VOUCHER PROGRAM* (2000).

60. *Wis. Choice*, *supra* note 57.

Washington, D.C., and Dayton, Ohio, Peterson and his associates also found startling positive results. After controlling for such factors as marital status, educational background, and socioeconomic factors, the researchers found that the voucher parents were—by margins of two-to-one and even up to three-to-one—more satisfied than public-school parents with such critical factors as academics, discipline, safety, and moral climate.<sup>61</sup>

Because customer satisfaction is a key measure of economic quality, these statistics constitute a powerful testimony to school choice. The results from Cleveland should speak forcefully to the consciences of those who would deny the urban poor a choice of school.

## VII. THE CLEVELAND STORY

When Harvard researcher Jay Greene and his associates studied the Cleveland voucher program, they found voucher recipients from public schools were much more satisfied with “every single aspect” of their chosen schools than non-recipient parents were with their public schools.<sup>62</sup> For instance, two-thirds were “very satisfied” with their schools’ academic quality, in contrast to fewer than 30% of public-school parents who were similarly satisfied.<sup>63</sup> The starkest differences were in the category “teaching moral values.” Among voucher recipients whose children had transferred out of public schools 71% were “very satisfied” as opposed to only 25% of non-recipients in public schools.<sup>64</sup>

A completely separate evaluation of the Cleveland program, conducted by Dr. Kim Metcalf of Indiana University under contract with the state, also found high customer satisfaction in the choice schools. On the basis of extensive interviews with parents, the Metcalf team reported:

Across the range of school elements, parents of scholarship students tend to be much more satisfied with their child’s school than other parents. These parents have a significantly higher level of overall satisfaction with their children’s schools than do public school or applicant/non-recipient parents. . . . Scholarship recipient parents

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61. Jay P. Greene et al., *The Effectiveness of School Choice in Milwaukee: A Secondary Analysis of Data From the Program’s Evaluation*, Paper Presentation Before the Panel on the Political Analysis of Urban Systems, American Political Science Association (Aug. 30, 1997).

62. JAY P. GREENE ET AL., *LESSONS FROM THE CLEVELAND SCHOLARSHIP PROGRAM in LEARNING FROM SCHOOL CHOICE* (Paul E. Peterson & Bryan C. Hassel eds., 1998).

63. *Id.*

64. *Id.*

are more satisfied with the child's teachers, more satisfied with the academic standards at the child's school, more satisfied with order and discipline, more satisfied with social activities at the school, more satisfied with the child's classmates, and more satisfied with other children at the child's school.<sup>65</sup>

Such responses clearly show that school choice is a winner as far as the choosers are concerned.

## VIII. RISING TEST SCORES

Parental satisfaction speaks well for school choice, but most analysts consider data from student achievement testing the proof of the pudding. In that regard, choice is looking better and better as the years pass. In general, it seems that a program must be in effect for two or three years before improvements in achievement for choice students start to become pronounced.

As discussed earlier, John Witte's evaluations in Milwaukee were the only ones showing that choice students performed at about the same level as regular public-school students, not higher. However, when Paul Peterson of Harvard eventually got access to the raw data, he pointed out shortcomings in how data were collected and compared.

Witte had compared the students in schools of choice to a randomly selected control group of Milwaukee public school students ("MPS").<sup>66</sup> But this resulted in an apples-to-oranges comparison of very different student populations. For instance, ninety-two percent of the choice students were black or Latino compared to just sixty-five percent of the MPS control group.<sup>67</sup> Furthermore, as the program began, only twenty-three percent of choice students were scoring above the national average in reading, compared to thirty-five percent of the public-school control group. In addition, the choice students had family incomes only half the average for MPS students.

Seeking to present a fairer comparison, Professor Peterson measured the test scores of choice students together with a control group of children who had entered the voucher lottery but had failed to win one and so remained in public schools.<sup>68</sup> The Peterson group found

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65. Kim K. Metcalf, Evaluation of the Cleveland Scholarship and Tutoring Grant Program, 1996-1999, Indiana Center for Evaluation Report to the Ohio Legislature (1999).

66. JAY P. GREENE ET AL., *supra* note 62.

67. VITERITTI, *supra* note 54.

68. *Id.*

that the results were strikingly different from Witte's when the student cohorts were comparable. Children who had been in the school-choice program for four years scored five percentage points higher in reading than their public-school peers, and a whopping twelve percentage points higher in mathematics.<sup>69</sup>

In Cleveland, test scores also brewed early controversy, but after the first three years of the voucher experiment approved by the Ohio legislature, all the research pointed in the direction of gains for students in the private or parochial schools of choice.

In the first two years, test results ping-ponged back and forth between the Peterson group, which found signs of progress, and the Metcalf group, which found no or minimal progress. Each side criticized the other's collection and interpretation of data. Peterson's team looked closely at two Hope Schools, which were nonprofit, nonsectarian institutions set up through the generosity of philanthropist David Brennan. These two schools were formed in response to the establishment of the Cleveland scholarship program and they enrolled one-fourth of all students coming over from public schools in grades K-3. The Peterson study found that Hope students made "moderate gains" in reading and math—8.6 percentile points higher on math and 5.7 points higher on reading.<sup>70</sup> But the Metcalf study found that the Hope students scored lower in all subject areas than regular Cleveland public-school students and choice students in more-established schools.<sup>71</sup>

Because of Metcalf's findings of slow or no progress for voucher students in first two years of the experiment, the two national teacher unions—strident opponents of school choice—hitched their wagons to his official study in order to condemn choice as a total failure.<sup>72</sup> When just eighteen hours before opening of the 1999-2000 school year, U.S. District Judge Solomon Oliver, Jr., ordered a suspension of Cleveland's voucher program, an order later overturned, National Education Association president Bob Chase declared that the vouchers flunked "the ultimate test of school reform"—raising achievement. The American Federation of Teachers president, Sandra Feldman, condemned vouchers as "bad law, bad policy, and bad education."

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69. *Id.*

70. *Id.*

71. Kim K. Metcalf, *supra* note 65.

72. Robert Holland, *Cleveland Vouchers Begin to Pay Dividends*, SCHOOL REFORM NEWS (Nov. 1999) available at <http://www.heartland.org/education/nov/99/cleveland.htm>.

The leaders of both unions were relying on the early Metcalf studies, but what they did not know—or care to know—was that Metcalf’s evaluation of the voucher experiment after its third full year would be released to the Ohio legislature just a week after Judge Oliver’s order—and that it would show significant gains for children in the schools of choice.<sup>73</sup>

The Indiana researchers concluded that the voucher students had begun to show statistically significant gains in two of five academic fields—language (which is the key to all future learning) and science. (In the fourth grade, voucher students’ scores on the Terra Nova were forty-five, compared to forty for public-school children). In addition, they noted that the program “effectively serves the population of families and children for which it was intended and developed. The program was designed to serve low-income students while maintaining the current racial mix of Cleveland Public Schools.”<sup>74</sup> As far as test scores are concerned, Metcalf cautioned that much remains to be learned about the long-range effects.<sup>75</sup>

Because of the lack of scientifically constructed control groups, none of the Cleveland or Milwaukee studies may prove to be the final word on the *academic* effect of choice. Because of its careful program and assessment design, the privately funded School Choice Scholarship Foundation (“SCSF”) program that began in New York in 1997 could claim that distinction. After a year’s operation, Professor Peterson in tandem with the Mathematica Policy Research group conducted the start of what will be a four-year assessment of the New York scholarships, which go to starkly poor (family income under \$10,000 *per annum*) candidates. The researchers found that participating children scored higher than a control group of peers by 2.2 percentile points in reading and two percentile points in mathematics after the initial year.<sup>76</sup>

What makes the relatively small (1,200 scholarship students in 225 participating private schools) New York program so valuable for research purposes is that it constitutes a randomized field trial such as

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73. *Id.*

74. Kim K. Metcalf, *supra* note 65.

75. *Id.*

76. Paul E. Peterson et al., *An Evaluation of the New York City School Choice Scholarship Program: The First Year*, MATHEMATICA POLICY RESEARCH INC., October 1998 [hereinafter Peterson, *NYC School Choice*].

is used in the most rigorous medical research.<sup>77</sup> Because all recipients were selected by lottery, it is possible to evaluate their progress when measured against a control group of non-recipients whose demographics are virtually identical. This was not possible with regard to private scholarships in Indianapolis, San Antonio, and Milwaukee, where the aid was first-come, first-served. In Cleveland, the public vouchers initially went by lottery, but eventually all applicants got the aid. In Milwaukee, public vouchers went by lottery only if schools were over-subscribed, and researchers were not in a position to collect data at that time.

With regard to achievement data, it is certainly fair to note that the evidence of school choice's beneficial impact is tentative and subject to revision after more years of carefully analyzed data. However, almost all signs point in the direction of academic gains for children from low-income homes (and in many cases members of racial minorities) whose families finally are given a chance to choose. And the evidence of increased parental participation in education is so overwhelming that it is no exaggeration to say—here and now, without equivocation—that school choice works.<sup>78</sup>

#### IX. THE EFFECT OF SCHOOL CHOICE ON NON-CHOOSERS—OR THOSE “LEFT BEHIND”

The effect of school choice on those students left behind in public schools is a bone of contention between friends and foes of school choice. Friends contend that school choice will unleash forces of competition that will greatly benefit students who remain in public schools. Their schools will be forced to improve or perish. Foes argue that choice will skim the “cream” of inner-city school populations, luring away the most involved families and leaving public schools with the hard-to-handle cases.

The research data on this issue are not yet firm. But there are plenty of encouraging signs from all corners of the country. In addition, the econometric models of Harvard economist Caroline M. Hoxby are worthy of note.<sup>79</sup>

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77. Paul E. Peterson, *Vouchers and Test Scores*, POLICY REVIEW (Jan./Feb. 1999) available at <http://www.policyreview.org/jan99/peteron.html>.

78. Peterson, *NYC School Choice*, *supra* note 76.

79. CAROLINE M. HOXY, *ANALYZING SCHOOL REFORMS THAT USE AMERICA'S TRADITIONAL FORMS OF SCHOOL CHOICE*, LEARNING FROM SCHOOL CHOICE (1998).

Professor Hoxby examined closely the forms of competition that have long existed in many American cities—among school districts, and between public and private schools. Interestingly, she found the following:

More public school districts in a metropolitan area yields:

1. A 17% decrease in per-pupil spending.
2. A 3 percentile-point increase in test scores.
3. A 4% increase in student wages later in life.
4. A 30% increase in parental involvement.

On the other hand, the existence of more private schools in a metro area produces:

1. No change in per-pupil spending.
2. An 8 percentile-point increase in test scores.
3. A 12% increase in student wages later in life.
4. A 12% increase in the probability of graduation.<sup>80</sup>

In short, an increase in availability of private schools generally accompanies an improvement in educational outcomes. Dr. Hoxby writes:

My best estimates of the effect of more competition from private schools . . . suggest that if private schools in an area receive sufficient resources (such as endowed income) to subsidize each student's tuition by \$1,000, the achievement of *public* school students rises. This is true whether the measure of achievement is test scores, ultimate educational attainment, or wages.<sup>81</sup>

In addition to econometric models, there is a growing mass of reports from the field that public school students—"non-choosers"—do benefit from choice. Here is but a small sampling:

In Albany, New York, philanthropist Virginia Manheimer offered scholarships worth up to 90% of private-school tuition to families whose children attended Giffen Memorial Elementary School, where achievement levels were atrociously low. More than half Giffen's pupils could not read at state-set minimum levels.<sup>82</sup> Ms. Manheimer noted that after the first year of her program, Giffen's principal was replaced, a half-dozen new teachers were hired, and the school implemented a new reading program with a track record of success. Ms. Manheimer observed, "Private money cannot compete with public dollars when it comes to educating our children. . . . We must change public education funding."<sup>83</sup>

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80. *Id.*

81. *Id.* at 148.

82. Nina Shokrai Rees, *Public Benefits of Private School Vouchers*, POLICY REVIEW (Jan.-Feb. 1999) available at <http://www.policyreview.org/jan99/rees.html>.

83. *Id.*

As a result of Ms. Manheimer's generous offer, one-fifth of Giffen's students left for private schools. But the result was not the destruction of the public school, as doomsayers predicted. Today, Giffen is turning its performance around, because of the challenge of competition.

In San Antonio, the Children's Educational Opportunity Foundation (CEO America) set the public-school establishment on its ear when in the spring of 1998 it ensured that virtually every child in the impoverished Edgewood Independent School District would be eligible for a scholarship to attend a private school or a public school in another district.<sup>84</sup> Edgewood school officials reacted angrily but they also acted—instituting open enrollment and other policies to be more responsive to parents.

In Milwaukee, public schools began offering tutors to every third-grader who had not been taught to read. The offer was made on billboards throughout the city, evidence that the challenge of choice was prompting the system to respond in positive ways and to market its wares.

In Pensacola, Florida, the first two schools affected by Governor Jeb Bush's "A-Plus" initiative to offer vouchers to patrons of schools that consistently flunk basic academic standards reacted with such steps as instituting school uniforms to improve discipline, bringing in tutors to help children improve their basic skills through a phonics-based program, and lengthening the school year from 180 days to 210. "As much as they loathe the new state policy," one journalist wrote, "staff members at both . . . Pensacola schools say they're determined to overcome the stigma and earn higher marks in the future."<sup>85</sup> Accountability linked to choice appears to be having a positive effect.<sup>86</sup>

## X. FLORIDA: A MODEL FOR SCHOOL SUCCESS

In the past year, the positive effects of vouchers in Florida have spread from Pensacola to the entire state, to the extent that the Sunshine State now deserves national attention as a demonstration of how choice and competition can enhance educational opportunities for all

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84. Mark Walsh, *Ground Zero for Vouchers*, EDUC. WK., Mar. 17, 1999 available at <http://www.edweek.org/ew/vol-18/27vouch.h18>.

85. Jessica L. Sandham, *Schools Hit By Vouchers Fight Back*, EDUC. WK., Sept. 15, 1999.

86. CAROL INNERST, *COMPETING TO WIN: HOW FLORIDA'S A+ PLAN HAS TRIGGERED PUBLIC SCHOOL REFORM* (Urban League of Greater Miami 2000) available at [http://www.edreform.com/school\\_choice/compete.htm](http://www.edreform.com/school_choice/compete.htm).

children. Even as those with a vested interest in the public education *status quo* tried to use the courts to scuttle vouchers as an option for school reform, results from Florida during the year 2000 showed that the mere existence of a voucher option may pressure public schools to shape up.

In 1999, Governor Jeb Bush, Lieutenant Governor Frank Brogan, and the Florida Legislature agreed in the “A-Plus” reform plan to make state-funded \$3,400 “Opportunity Scholarships” available to families when their public schools flunk a state evaluation twice in a four-year period. The Florida Comprehensive Achievement Test, which measures reading, writing, and math, is a major part of the assessment.

If they would rather not receive private-school vouchers, parents of children in failing schools gain the additional option of transferring their children to better-performing public schools in their home district or an adjacent district. “A-Plus” contains carrots as well as sticks: as part of back-to-back \$750 million and \$800 million increases in state education funding over the past two years, the plan provides beefed-up state assistance to failing schools while demanding more of them.

Only two schools got the dubious designation as being chronically failing in the first round, but another seventy-eight schools received their first “Fs”—and therefore teetered on the brink of seeing their patrons become voucher-eligible by this year’s testing. But when scores were released June 19, 2000, all of the schools had improved their scores enough to pass. While this result no doubt disappointed some parents and school-choice advocates who would have liked to have seen an expansion of the opportunities vouchers bring, the news overall was good.

Because of the spectre of vouchers, Florida public educators worked hard to improve their students’ acquisition of basic skills of writing, and reading, and mathematics, the three subjects tested by the state. (The criteria for giving letter grades to schools also include the percentage of eligible students tested, attendance and discipline, and extent of improvement). A February 15, 2001 study done for the Manhattan Institute by scholars from Harvard and Florida State universities found that schools in peril of failing a second time (and thereby losing students to vouchers) scored gains on test scores more

than twice as large as those achieved by other Florida schools.<sup>87</sup> The study concluded that “the threat of competition in education elicits a positive response from public schools. . . .”<sup>88</sup> Although some critics questioned whether the tests were rigorous enough if so many “chronically failing” schools could pull their scores up so quickly, few would doubt that “F”- and “D”-graded schools made significant changes in response to the challenge. “We had a focus to pass those three exams and we have done everything possible to make sure that happened,”<sup>89</sup> said Debra Williams, principal of Mary McLeod Bethune Elementary School in Jacksonville. “It was a lot of work, but it is worth it.”<sup>90</sup> In the Tampa Bay area, the principal of Polk County’s Auburndale Central Elementary, which climbed out of the cellar to a “C,” was also elated. “Not only did we work really hard,” said Gay Martin, “but we did it under the scrutiny of the entire city, county, and state.”<sup>91</sup>

Months before the release of the scores showing the widespread gains, particularly on the state’s writing test, the Institute for Justice filed statewide Freedom of Information Act requests that netted 300 documents showing how seriously school officials were taking the threat of vouchers and the specific changes they were making to raise student achievement. The Milton and Rose D. Friedman Foundation obtained copies and summarized results as follows:

In Hillsborough County, school administrators began reducing class sizes in all “D”-graded schools and increasing funds for after-school and Saturday tutoring for all schools.<sup>92</sup>

In Miami/Dade County, school officials shifted \$11 million in federal funds into low-scoring schools, with the purpose of shoring up math and reading instruction.<sup>93</sup>

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87. JAY P. GREENE, CENTER FOR CIVIC INNOVATION AT THE MANHATTAN INSTITUTE, AN EVALUATION OF THE FLORIDA A-PLUS ACCOUNTABILITY AND SCHOOL CHOICE PROGRAM (2001).

88. *Id.*

89. Laura Diamond, *All Duval ‘F’ Schools Pass PCAT*, FLA. TIMES UNION, June 20, 2000.

90. *Id.*

91. Marilyn Brown, *School Grades Elate, Confuse*, TAMPA TRIB., June 29, 2000.

92. ROBERT HOLLAND, THE MILTON AND ROSE D. FRIEDMAN FOUNDATION, GOOD NEWS FROM THE SUNSHINE STATE (April 2000). (The information herein was obtained from documents secured from Florida school districts in the spring of 2000 through a Freedom of Information request pursued by the Institute for Justice, Washington, D.C. See also INNERST, *supra* note 86, for further corroboration of trends discerned from the FOI data).

93. *Id.*

In Broward County, the school administration quickly shifted millions to reduce first-grade class sizes to the range of eighteen to twenty in low-performing schools.<sup>94</sup>

In Escambia County—the district with the first two failing schools, where the A-Plus voucher offer kicked in automatically—the public school system adopted what amounted to an emergency plan. It provided for small-group tutoring in the afternoons and on Saturdays; expanded family literacy programs, with home visitation; expanded teaching staffs; decreased non-teaching days for teachers; required parent-teacher conferences each grading period; and an extension of the school year by 30 days.<sup>95</sup>

With the support of several organizations, the Institute for Justice (which is helping defend the Florida reform against legal challenge) called on retired *Washington Times* education writer Carol Innerst to prepare a comprehensive report offering many additional insights on how public educators responded to their schools' receiving poor grades.<sup>96</sup> Among the most perceptive comments came from Brenda McShane, a parent of four children who attended Florida's first two schools designated as "chronically failing"—A.A. Dixon and Spencer Bibbs Elementary Schools in Pensacola. McShane said she knew all along that her children were not receiving an adequate education, but even though she and her husband are both employed, they could not afford private schools. "Some teachers were challenging and motivated, but didn't offer enough reinforcement,"<sup>97</sup> she said.

Then some teachers wouldn't correct paperwork. They would just say, 'Oh, they'll grow out of it,' and that it was okay to form letters upside down, to go outside margins, and to spell incorrectly. It was okay for them to do that. I tried to have them do it correctly at home. I believe some activities should be repetitious, especially if they had trouble with it. My ideas and concerns were rejected. It was rough. I felt like I was hitting my head against a brick wall.<sup>98</sup>

The change effected in the two schools by "A-Plus" has been phenomenal, but McShane wishes improvements had come long ago. "A fire is being lit now,"<sup>99</sup> she said. "Schools are assessed for what they are doing. They should have had all that 'go-get' gumption back

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94. *See id.*

95. *Id.*

96. INNERST, *supra* note 86.

97. *Id.*

98. *Id.*

99. *Id.*

then. They should have tried with all their power to meet kids' needs, and to go to parents for help."<sup>100</sup>

At A.A. Dixon, one of the secrets to dramatic increases in scores on the writing test was more writing, much more. The *St. Petersburg Times* reported that when Dixon pupils enter a classroom each morning, they see a "prompt" written on the blackboard—a question to start the children writing to explain something or to tell a story. They now spend at least an hour every day writing.<sup>101</sup> "It gets to be like breathing," Judith Ladner, the school's principal, said. "Constant writing. Every day."<sup>102</sup>

Some critics of standardized testing sought to minimize the significance of writing gains on grounds that students were excessively coached and reduced to a formula that stifled creativity. "It's pretty meaningless,"<sup>103</sup> said Monty Neill, executive director of the National Center for Fair & Open Testing, which maintains a drumbeat of criticism of tests. "There is no evidence the kids can actually write—only evidence they can follow formulaic directions. The tragedy here is that they are cheated out of work that would have really helped them write."<sup>104</sup>

But surely learning to write at a very basic level can provide the foundation for more advanced writing as children mature. Frank Till, superintendent of Broward County schools, said the results were significant because the prompts encourage structure and good grammar. "When you teach a kid how to write," he said, "you're actually teaching good writing. When you write more, you get better. It's one test in which you can really see improvement."<sup>105</sup>

Increased "time on task" in general was vital to Florida educators' hard work to pull up the grades of failing schools. Escambia County not only lengthened the school day and year, but went to a version of block scheduling that gave teachers and pupils ninety minute blocks of time in which to work exclusively on reading from kindergarten through the fifth grade. In addition, Escambia came up with innovative ways to make sure students were in class at the pre-

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100. *Id.*

101. Stephen Hegarty, *Why Are Florida Children Writing So Much Better?* ST. PETERSBURG TIMES, June 21, 2000.

102. *Id.*

103. Paul Brinkley-Rogers, *'F' Schools Success Is Questioned*, MIAMI HERALD, June 26, 2000.

104. *Id.*

105. *Id.*

scribed times. Student absenteeism is a huge problem in urban schools. It is exacerbated by extreme mobility among the urban poor, with some children moving as often as four or five times during a school year.<sup>106</sup>

To combat these woes, Escambia implemented visiting teachers, and an automated phone system to contact parents when their children were absent. In addition, the district went the extra mile, so to speak, in pupil transportation to address the problem.

Children who have moved out of this district . . . we've transported them back to Bibbs and Dixon. There are 84 children who for one reason or other moved in the course of the year and we send transportation to bring them back. Some children move three or four times. We get transportation arranged and then they move again. The extra busing is costing about \$175,000. But some of that is for the kids attending the higher-performing schools.<sup>107</sup>

Here are some other ways schools reacted to the question, “[t]hey say we’re a failing school so what do we do now?”

*Teacher training.* All of Florida’s districts with schools graded “F” or “D” instituted sweeping retraining of teachers, according to Ms. Innerst. They taught the teachers how to make better use of technology and how particularly to teach children who have failed to master the basics. In most cases, that meant shifting to direct instruction and explicit teaching, as opposed to the progressive, “child-centered” approach.<sup>108</sup>

*Reading above all.* Schools greatly stepped up their efforts to teach children to read. Among urgent changes were hiring of more reading specialists, one-on-one tutoring, junking of the failed “whole language” approach in favor of teacher-directed instruction stressing phonemic awareness and phonics, and reserving large blocks of time for reading.<sup>109</sup>

*Touch all bases.* Some schools made exceptional efforts to turn around the lives of children. For instance, in Miami-Dade County, the Lillie Carmichael Evans Elementary School started “Total Love,” which targets fourth and fifth graders and their families. In addition

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106. See INNERST, *supra* note 86.

107. *Id.*

108. See *id.* at 10.

109. *Id.*

to switching to phonics-based instruction, the school encourages parents to go back to school themselves to earn a high-school equivalency diploma. It also furnishes parents supplies for a home learning center where a child can study. From 7 p.m. to 8 p.m. each day, families are asked to “Turn on the Academic Light” so children can give their undivided attention to their studies.<sup>110</sup>

In short, Florida yields incontrovertible proof that public schools do react when confronted with the tough reality that they will lose pupils and money if they allow a pattern of failure to persist. The superintendent of Hillsborough County schools went so far as to say he would give himself a 5% pay cut if any of his schools received an “F” on the next report card. “I’ve seen principals eat worms, I’ve seen vice principals kiss pigs to get students to read a certain number of pages,”<sup>111</sup> said Hillsborough teacher Darlene Cleminson, “but I’ve never seen a superintendent put his salary on the line.”<sup>112</sup>

Howard Fuller, superintendent of Milwaukee Public Schools from 1991 to 1995 and president of the recently formed Black Alliance for Educational Options, notes that Milwaukee’s decade-old school-choice movement has generated results like Florida’s, particularly since 1998, when the Wisconsin Supreme Court upheld the expansion of the voucher program to include religious schools. During the past year alone, he noted, the Milwaukee public-school system has:

Promised in radio ads to hire private tutors if students are unable to read by the third grade. Allowed a dozen schools to go outside the reform-stifling seniority system to hire teachers. Finally responded to long-standing parental requests for more new schools offering such alternatives as the Montessori method.<sup>113</sup>

In addition, Fuller, a Distinguished Professor of Education at Marquette University, noted that the district has expanded charter schools, before- and after-school programs, and early childhood education in response to the competitive pressure of the voucher program.<sup>114</sup> Why do public educators seemingly embrace reform only after they face a serious threat to their livelihood? That is perhaps just human nature. Imagine you are a public school principal, teacher, or administrator. Like other workers who want to do a good job, you

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110. *Id.*

111. *Id.*

112. *Id.*

113. Howard Fuller, *Introduction* to *COMPETING TO WIN: HOW FLORIDA’S A+ PLAN HAS TRIGGERED PUBLIC SCHOOL REFORM* (Urban League of Greater Miami 2000).

114. INNERST, *supra* note 86.

want to do right by the kids entrusted to you. But you have fallen into a comfortable rut. It's easy to stick to the same soft programs, the same approaches year after year even though nothing much is improving. Then an outside evaluator suddenly flunks your school and decrees that your students will have a right to transfer if your school pulls another F. Your attention is captured; you are forced to re-examine your ways or face losing your customers and maybe your job.

That is the lesson of Florida's ground-breaking education reform, "A-Plus." "It was like a glass of cold water in the face,"<sup>115</sup> said Maureen Backenstoss, assistant superintendent for curriculum and instruction in the Lake County School District.

## XI. FLORIDA CASE IN THE COURTS

In the courtroom, the cause of school choice scored a significant victory October 3, 2000, when a three-judge panel of Florida's 1st District Court of Appeals ruled unanimously that District Judge L. Ralph Smith had erred in holding—without hearing the facts—that the use of vouchers as an instrument of education reform violates the state Constitution.<sup>116</sup>

Nothing in the Constitution, said the appellate court in a 20-page opinion, "clearly prohibits the Legislature from allowing the well-delineated use of public funds for private school education, particularly in circumstances where the Legislature finds such use is necessary."<sup>117</sup>

Judge Smith, who allowed "A-Plus" to continue pending an appeal, held in March 2000, that the State could not award parents vouchers for use at private schools because of the constitutional requirement that the state provide for a "uniform, efficient, safe, secure, and high quality system of free public schools." But the appellate court said the Constitution does not tie the state's educational duty to a "single specified engine, that being the public school system."<sup>118</sup>

## XII. CHOOSING INTEGRATION

There is no denying that, following the U.S. Supreme Court's historic *Brown v. Board of Education* decision of May 1954, "freedom of

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115. *Id.*

116. *Bush v. Holmes*, 767 So.2d 668 (Fla. 2000).

117. *Id.* at 675.

118. *Id.*

choice” became part of an ugly Southern strategy for blunting the impact of mandatory school desegregation.<sup>119</sup>

No doubt there were some proponents of choice who sincerely thought more lasting integration would result from voluntary transfers by black and white families than from mandatory assignments on the basis of race. Freedom of choice after all was a more moderate course than the ugly “massive resistance” that bubbled out of the Old Virginia of the 1950s. But choice in the 1960s put the burden on black parents to offer their children as battering rams against an entrenched social system many whites still favored. The courts said that wasn’t fair, and indeed it wasn’t.

So in the 1970s, mandatory busing began. The public schools have gone through that tumultuous era and the old system of officially imposed racial segregation is dead and buried. We are approaching fifty years after *Brown*. Has anyone noticed that the context for freedom of choice is now completely changed, or that majorities of both black and white parents now say in poll after poll that they favor freedom of educational choice?

Unfortunately, the legacy of resistance to integration still hinders efforts to give Virginia families the benefits of school choice. A new Education Freedom Index generated by the Manhattan Institute for Policy Research shows that three of the ten states ranking lowest in educational options for families are in the South: Virginia, South Carolina, and Georgia.<sup>120</sup> Virginia is forty-fourth nationally on an index that measures access to public charter schools, other forms of public school choice, tax credits or vouchers for attending private school, and a favorable regulatory climate for home-schooling.

When choice proposals emerge in Southern statehouses, opponents with long memories often turn out to loudly cry “resegregation” and to invoke the bad old days. But it’s time to recognize that this is a bright new day, full of opportunity.

There is now solid research showing that empowering parents to choose their children’s schools actually *increases* racial integration, substantially. It is available in a study distributed by the Friedman Foundation entitled “Choosing Integration” by Jay Greene, a senior

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119. *Brown v. Board of Education*, 347 U.S. 483 (May 17, 1954).

120. Jay P. Greene, Civic Report 14: The Education Freedom Index, Manhattan Inst. Center for Civic Innovation, Nov. 2000, available at [http://www.manhattan-institute.org/html/cr\\_q4.htm#t1t2](http://www.manhattan-institute.org/html/cr_q4.htm#t1t2).

fellow at the Manhattan Institute.<sup>121</sup> Here are some of Dr. Greene's findings:

More than half of public-school students (54.5%) are in classrooms that are more than 90% white or 90% minority. Fewer private-school students (41.1%) are in classes with such a high degree of racial isolation.<sup>122</sup> . . . More than one third (36.6%) of private-school students are in classes in which the racial composition is between 15% and 35% minority, which is the average range nationally. By contrast, only 18% of public-school children are in such integrated classrooms.<sup>123</sup>

In Milwaukee and Cleveland, the two cities with long-running publicly funded vouchers for private-school choice, voucher parents have a significantly better chance of getting their kids in integrated classes than do their public school counterparts. In Cleveland, for instance, almost one-fifth of voucher students (19%) go to private schools where the proportion of whites falls within 10% of the metropolitan-wide average. Just 5.2% of Cleveland public-school students are in similarly integrated schools.<sup>124</sup>

Observations of public and private school lunchrooms also revealed that private-school students mingle interracially more freely than do public-school students. By one measure, there was by almost a 2-to-1 margin more voluntary socializing among the races in private lunchrooms than public ones.<sup>125</sup>

Dr. Greene believes freely chosen private schools promote integration because "families are more likely to trust the operators of those schools to manage integration more successfully. Integration raises various concerns, some reasonable and some not, in some parents' minds, mostly concerning safety and discipline."<sup>126</sup> In addition, private schools have the advantage of being able to enroll students from outside a school district, while a public school may be stuck with the effects of residential segregation.

Imagine children of all races and backgrounds being able to select widely from schools, public or private, that best meet their needs. Wouldn't integration be likely to increase naturally? Why shouldn't

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121. JAY P. GREENE, CHOOSING INTEGRATION, THE MILTON & ROSE D. FRIEDMAN FOUNDATION, (2000).

122. *Id.* at 14.

123. *Id.*

124. *Id.* at 16.

125. *Id.* at 15.

126. *Id.* at 19.

there be a well-designed, fair experiment to see what the benefits of freedom might be?

### XIII. THE CORE KNOWLEDGE MOVEMENT

Within the context of legal and political battles over choice, it is worth considering the specifics of the kind of deviation from education orthodoxy many parents would choose if they had the chance.

The battle over the surest way to teach children what they need to know has gone on longer than the War of the Austrian Succession. In the past thirty years ample research has made possible a definite conclusion: Tightly focused teacher-directed instruction is more effective for most children than is child-directed instruction in which the teacher acts purely as a coach, mentor, or facilitator. For instance, a 1999 American Institutes of Research look at two-dozen models of “whole school” designs reaffirmed the superiority of largely teacher-directed approaches like Direct Instruction, Success For All, and Core Knowledge.<sup>127</sup>

Despite repeated proof that this is so, large segments of the education world stubbornly ignore this reality. They remain wedded to the so-called progressive doctrine. In her important new book, *Left Back: A Century of Failed School Reforms*,<sup>128</sup> education historian Diane Ravitch documents how the progressive movement championed most notably by philosopher John Dewey has exerted a powerful hold on American education from the early days of the 20th Century to the present. Ms. Ravitch argues powerfully that American schools must return to their basic mission of teaching knowledge.

There can be little doubt that most parents prefer the traditional, structured approach over progressive ways. Public Agenda, a nonpartisan research organization, repeatedly asked parents during the 1990s what they expected from their children’s schools.<sup>129</sup> Invariably parents of all races and backgrounds wanted schools that taught the academic basics, with attention to children being able to speak and write standard English. Parents also wanted schools where children were expected to obey rules, such as being “neat, on time, and polite.” But Public Agenda found quite different goals among professors in the

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127. AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS, *AN EDUCATOR’S GUIDE TO SCHOOLWIDE REFORM* (1999).

128. DIANE RAVITCH, *LEFT BACK: A CENTURY OF FAILED SCHOOL REFORM* (2000).

129. Steve Farkas, *Different Drummers: How Teachers of Teachers View Public Education* (visited Feb. 22, 2002), available at [www.publicagenda.org/aboutpa/aboutpa3i.htm](http://www.publicagenda.org/aboutpa/aboutpa3i.htm).

teacher-training schools, where strains of progressivism still exert a powerful grip. True to the old-time gospel of John Dewey, most professional educators thought advancing “social justice” more important than teaching children knowledge. Unlike parents, these teachers of teachers wanted schooling that is less structured and more “learner-centered.”

“Progressive” sounds benign but is the opposite of a structured approach in which the teacher is an authority figure who transmits essential knowledge to pupils. Some terms associated with progressive thinking and style are: child-centered, child-directed, constructivist (children construct their own learning), discovery, applied, hands-on, inquiry, cooperative learning, thematic, performance-based, and learner-centered.

The competing school of thought is the traditional or classical approach. Some terms associated with this approach are teacher-directed, structured, fact-based, drill, practice, ordered, and disciplined. Systematic phonics to teach reading is an example of this structured approach.

Of course excellent teachers can effectively mix the two approaches to find something that fits their own styles and best meets the needs of their own students. But there needs to be a default method that furnishes order and structure for the experimentation with style. University of Virginia English professor E. D. Hirsch, Jr., who started the Core Knowledge Foundation in 1986 in conjunction with the writing of his seminal work, *Cultural Literacy*, put it this way:

The only truly general principle that seems to emerge from process outcome research on pedagogy is that focused and guided instruction is far more effective than naturalistic, discovery, learn-at-your-own-pace instruction. But within the context of focused and guided instruction, almost anything goes, and what works best with one group of students may not work best with another group with similar backgrounds in the very same building.

Hirsch himself prefers to use drama or storytelling to engage the interest of students, but within the crucial context of structure.<sup>130</sup>

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130. E.D. HIRSCH, JR., *THE SCHOOLS WE NEED AND WHY WE DON'T HAVE THEM* 172 (1999) (visited Mar. 14, 2002), available at <http://mwhodges.home.att.net/tracy/tracy-hirsch.htm>.

#### XIV. THE RISE OF CORE KNOWLEDGE

In 1990, Dr. Hirsch and his allies convened a national conference at which twenty-four working groups finalized a draft Core Knowledge Sequence for use in elementary schools. The sequence was based on research into the content and structure of the highest-performing elementary schools around the world, as well as consultation with teachers, parents, scientists, curriculum specialists, and others.

In 1991, the Core Knowledge Sequence debuted in a year of implementation at Three Oaks Elementary in Ft. Meyers, Florida under the leadership of the principal, Dr. Constance Jones (who in 1999 became president of the Core Knowledge Foundation in Charlottesville, Virginia). The Core Knowledge schools were born. The interest in and spread of these schools devoted to content-rich direct teaching has been phenomenal. In the fall of 2000, there were more than 1,100 full-fledged Core Knowledge schools in 46 states. Hundreds of additional schools use portions of the Core Knowledge program.<sup>131</sup>

Particularly in the very early stages, adoption of Core Knowledge depended on principals and teachers who had to make the case to an often-skeptical school administration for importing a curriculum that rubs against the grain of education progressivism. James Traub wrote about Jim Coady, a principal in liberal Cambridge, Massachusetts, who had to battle the administration's hostile curriculum supervisors to bring Core Knowledge to Morse Elementary School, which was a struggling school with a relatively high proportion of children from low-income and minority homes. The supervisors argued, among other things, that the Harvard Graduate School of Education was against the experiment. But Coady won the right to experiment and by 1998 all grades at Morse scored at or above the national norm in math and reading, and the first graders were third in the entire city in their reading scores.<sup>132</sup>

With the emergence of the national charter school movement in 1992, Core Knowledge became a viable option for parents, teachers, and others seeking to secure charters to start their own schools. In Colorado, a state evaluation of the performance of fifty-one charter schools that have been in operation for at least two years found Core

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131. Robert Holland, *Core Knowledge Schools Now Top 1,000*, School Reform News, Nov. 2000, available at <http://www.heartland.org/education/nov00/core.htm>.

132. JAMES TRAUB, THOMAS B. FORDHAM FOUNDATION, *BETTER BY DESIGN? A CONSUMER'S GUIDE TO SCHOOLWIDE REFORM* (1999), [http://www.edexcellence.net/library/bbd/better\\_by\\_design.html](http://www.edexcellence.net/library/bbd/better_by_design.html) (visited Mar. 14, 2002).

Knowledge distinguishing itself both in quantity and quality. Twenty-two of the public charter schools (or 42%) used the Core Knowledge curriculum. Among charter schools using a “whole-school” model Core Knowledge was clearly dominant—twenty-two versus three for the next-most-used model. More importantly, Core Knowledge was delivering results. The evaluators concluded that fourteen of the Core Knowledge schools “exceeded expectations set for their performance,” and the remaining eight “generally met” expectations.<sup>133</sup>

Furthermore, Core Knowledge schools were a significant part of the reason Colorado charter schools scored, on average, ten to sixteen percentage points higher on basic subjects than public schools with comparable demographics.

Nationally, about 15% of Core Knowledge schools are charter schools. Another 70% are regular public schools, while the remaining 15% are a mixture of secular and religiously affiliated private schools. But as the charter-school movement continues to spread, with more states passing charter school laws, the Core Knowledge model figures to attract many charter organizers who want to provide children a substantive academic fare.<sup>134</sup>

“Shared” is an important word in the Core Knowledge lexicon. In his 1996 book, *The Schools We Need And Why We Don't Have Them*, Dr. Hirsch emphasized the importance of shared knowledge. Citizens in a democracy need to share an extensive body of information in order to communicate and function fully in society. The same holds in the classroom: if students draw a blank at mention of the names “Lee” and “Grant” not to mention “Bull Run” and “Appomattox,” how can they be expected to engage in critical thinking about the Civil War?

Education progressives claim that knowledge is changing so rapidly that what children learn today will be outdated tomorrow; that schools therefore can at best only teach them “accessing skills,” such as how to surf the Internet. But such a rationale does a grave disservice to children, because there is a body of bedrock knowledge—pivotal events in world history, the development of constitutional government, principles of writing and mathematics. And there are masterworks of art, music, and literature—with which they should be familiar in order to be fulfilled individuals.

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133. COLORADO EVALUATION STUDY, *supra* note 51.

134. HIRSCH, *supra* note 129.

Progressivism has done a particularly grave injustice to minority and disadvantaged children, according to Dr. Hirsch. One of the “tragic paradoxes” of our times, he has observed, is that the 1954 *Brown* decision was handed down just as “romantic progressivism finally succeeded in abolishing the emphasis on traditional academic content in the early grades.”<sup>135</sup> This foreclosed the chance that school integration would “equalize achievement and enhance social justice.”<sup>136</sup> A large purpose of Core Knowledge is to bring both equity and excellence to schooling through an enriched, carefully designed curriculum for all.<sup>137</sup>

The Core Knowledge idea is “that for the sake of academic excellence, greater fairness, and higher literacy, elementary and middle schools need a solid, specific, shared core curriculum in order to help children establish strong foundations of knowledge, grade by grade.”<sup>138</sup> The Core Knowledge approach is not to throw tidbits of information helter-skelter at children. Rather the program specifies important knowledge in language arts, history and geography, mathematics, science, and the fine arts, and lays out a sequence for children to master what they need to know grade by grade.

A guiding principle of the Core Knowledge Sequence is that “knowledge builds on knowledge.”<sup>139</sup> Children learn by building on what they already have learned. The Sequence provides in great detail exactly what children should learn at each grade in core subjects so they can carry that knowledge on with them to the next level.

## XV. EVIDENCE OF CORE KNOWLEDGE SUCCESS

As cited earlier, the 1998-99 Colorado Charter Schools Evaluation Study showed that Core Knowledge schools were contributing in a big way to the success of charter schools in that state. Core Knowledge schools accounted for almost half the charter schools that were studied. And the charter schools outperformed their home districts and schools with comparable socioeconomic profiles. Note these pro-

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135. E. D. Hirsch, Jr., *Why Core Knowledge Promotes Social Justice*, Convocation Address to the Students and Faculty of the University of Tennessee-Chattanooga (Oct. 6, 1999) available at <http://www.coreknowledge.org/CKproto2/about/articles/socialJustice.htm>.

136. *Id.*

137. *Id.*

138. Core Knowledge Foundation *About Core Knowledge*, available at <http://www.coreknowledge.org/CKproto2/about/index.htm>.

139. *Id.*

portions of Colorado charter-school students who scored “proficient” or higher on standardized tests:

3rd grade reading: 77% of charter students; state averages, 67%.

4th grade reading: 73% of charter students; state average, 59%.

4th grade writing: 49% of charter students; state average, 34%.

7th grade reading: 66% of charter students; state average, 56%.

7th grade writing: 57% of charter students; state average 41%.<sup>140</sup>

From other states and researchers, evidence of the positive effects of Core Knowledge has begun tumbling in. One of the most impressive studies was done by Gracy Taylor and George Kimball of the Oklahoma City Public Schools.<sup>141</sup> Their study paired 300 Core Knowledge students with 300 students in other schools who had the same characteristics as the CK students on seven critical variables: grade level, pre-score, sex, race/ethnicity, and eligibility for free lunch, Title I services, and special education. The control students were randomly selected via computer according to those variables.

The researchers studied the effects of implementing one year of Core Knowledge in grade three, four, and five. The well-validated Iowa Test of Basic Skills was the measuring stick. Given the almost identical backgrounds of the two groups of students, one might have expected one-year differences to be less than pronounced. However, the study found that Core Knowledge students made significantly greater gains in reading comprehension, vocabulary, science, math concepts, and social studies. Moreover, the greatest gains, which came in reading, vocabulary, and social studies, were judged to be “highly significant.” The effect of raising vocabulary—the best predictor of academic success—was particularly noteworthy, because it shows hope for closing the socioeconomic gap in student achievement.<sup>142</sup> The researchers remarked:

According to the literature and personal conversations with Dr. Hirsch prior to the analyses, the impact on student achievement related to Core Knowledge instruction should be most pronounced in vocabulary and comprehension. The implementation of the Core Knowledge scope and sequence is intended to provide and develop a broad base of background knowledge that children utilize in their reading. According to Dr. Hirsch’s cultural literacy theory, the more

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140. COLORADO EVALUATION STUDY, *supra* note 51.

141. GRACY TAYLOR AND GEORGE KIMBALL, THE EQUITY EFFECTS OF CORE KNOWLEDGE (2000), [http://www.coreknowledge.org/CKproto2/about/eval/oklahoma\\_study\\_2000.htm](http://www.coreknowledge.org/CKproto2/about/eval/oklahoma_study_2000.htm) (visited Feb. 22, 2002).

142. *Id.*

background knowledge a child has, the greater facility in reading the child will have. The initial results of this study do appear to support that notion.<sup>143</sup>

In other words, the evidence so far is that the Core Knowledge approach accomplishes what it sets out to do. And if its adherents are right that knowledge builds on knowledge, the results should only grow more striking over the years.

Along that line, a three-year study by the Center for Social Organization of Schools, Johns Hopkins University, concluded from looking at twelve schools that use Core Knowledge to varying degrees that when the Core Knowledge Sequence is taken to heart and really implemented, it really works. The study found that the difference in gains on standardized tests between low-and high-implementing schools averaged about twelve NCEs (approximately the same as percentile points), a highly significant gain. The study also found signs that, as predicted, the growth of general knowledge had a cumulative effect for students who had been in Core Knowledge schools since the early elementary grades.<sup>144</sup>

As opportunities expand for parents, teachers, and other entrepreneurs to start public charter schools, it is likely that many will be turning to Core Knowledge as not just a program but a philosophy, that works.

## XVI. THE BROADENING OF SUPPORT

For many years, conservatives advocated school vouchers with a free-market fervor that gave the impression they owned the issue. But political liberals are breaking with government education's vested interests and embracing vouchers with growing ardor. They see vouchers as an instrument of equity for poor and minority children who lack the economic wherewithal to escape inadequate government schools.

One of the major converts to the voucher ranks was Robert Reich, Secretary of Labor during the first Clinton term, who presented the case for what he called "progressive" vouchers in *The Wall Street Journal* on September 6, 2000. Reich proposed need-based

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143. *Id.*

144. Sam Stringfield et al., *National Evaluation of Core Knowledge Sequence Implementation: Final Report* (1999).

vouchers ranging up to \$10,000 to \$12,000 per year for children from the poorest 20% of families.<sup>145</sup>

Reich's idea of pooling property taxes from the richest and poorest communities and "dramatically increasing federal and state funding" to amass the resources for his progressive vouchers might well presage an eventual break with supporters of vouchers who believe in limited government. Nevertheless, Reich's embrace of the voucher principle is a major development. Citing evidence that vouchers work, gleaned from a recent study of students in New York, Washington, D.C., and Dayton, Ohio, Reich suggested "why not simply 'voucherize' all education funding and let students and their parents select where they can get the best education?"<sup>146</sup> That is close to the original vision for vouchers projected by Dr. Milton Friedman, the Nobel-Prize-winning economist who originated the idea of vouchers in the 1950s.

The school-choice evangelism of a new generation of African-American political leaders may be the most compelling evidence of the diversification of the movement. *The New York Times* reported on this phenomenon in an article headlined "Young Blacks Turn to School Vouchers as Civil Rights Issue."<sup>147</sup>

One of the movement's leaders is Cory A. Booker, a thirty-one year-old Democratic member of the Newark City Council. Booker is a Rhodes Scholar who lives in impoverished neighborhoods and works to empower the residents. He invokes the words of Malcolm X—"by any means necessary"—in addressing ways to fix a broken school system. This is what Booker told *The Times*:

It's one of the last remaining major barriers to equality of opportunity in America, the fact that we have inequality of education. I don't necessarily want to depend on the government to educate my children—they haven't done a good job in doing that. Only if we return power to the parents can we find a way to fix the system.<sup>148</sup>

Booker is just one of a lengthening list of Democrats with deep concern for the plight of minorities who are speaking out in favor of school choice. Among others are former Atlanta Mayor Andrew Young, who was a top aide to civil rights pioneer Martin Luther King,

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145. Robert Reich, *The Case for 'Progressive' Vouchers*, WALL ST. J., Sept. 6, 2000, at A26.

146. *Id.*

147. Jodi Wilgoren, *Young Blacks Turn to School Vouchers as Civil Rights Issue*, N.Y. TIMES, Oct. 9, 2000, at A1.

148. *Id.*

Jr., and former Congressman Floyd Flake of New York.<sup>149</sup> A variety of moderate-to-liberal Democrats, including Senators Joseph Lieberman of Connecticut and John Kerry of Massachusetts, have campaigned for expanded choice.<sup>150</sup>

The formation of the Black Alliance for Educational Choice (“BAEO”) by former Milwaukee school superintendent Howard Fuller, and others, was one of the highly significant developments of 2000.<sup>151</sup> BAEO has been running pro-school-choice messages in newspapers, magazines, and major television markets, including the Washington, D.C. metropolitan area. BAEO’s TV and radio ads feature parents and grandparents from Pensacola, Milwaukee, and Cleveland, cities where children are benefiting from the availability of vouchers enabling them to switch to private schools.

During recent months, liberal commentators also began to see vouchers as a tool for social equity. For instance, *The New Republic*, after taking a swipe at conservatives for backing vouchers as an article of free-market faith, went on to criticize teacher unions for their refusal to consider even experimental voucher programs. The journal noted that the unions’ response, is to defend endlessly the principle of public schools—when, by their implacable opposition to virtually every effort to hold the public schools accountable, they themselves ensure that many of those schools make a mockery of the ideals upon which they were founded. We do not fully know whether vouchers will work. But the Democratic Party must no longer be afraid to find out.<sup>152</sup>

Additionally, a few days before the 2000 election, the editorial page of *The Washington Post*, which tends to support liberal Democrats and endorsed Al Gore for President, gave favorable consideration to a voucher initiative on the Michigan ballot. Proposal 1 would have awarded vouchers worth \$3,300 to children in school districts rated “failing” because of their abysmal graduation rates. The measure contained a built-in guarantee that per-pupil spending for public education would not decline. While advocates of children in poor neighborhoods supported the initiative, *The Post* noted, the opposi-

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149. Jennifer J. Garrett, *Increasing Opportunities for America’s Children to Succeed*, (Washington, D.C.: The Heritage Found., Oct. 2001).

150. Dana Milbank, *Bush Likely to Drop Vouchers; Education Policy to Focus on Testing, States’ Flexibility*, THE WASHINGTON POST, Jan. 2, 2001, at A1.

151. Jennifer J. Garrett, *Progress on School Choice in the States*, (Washington, D.C.: The Heritage Found., May 2001).

152. *Editorial*, THE NEW REPUBLIC, Sept. 11, 2000.

tion of teachers' unions, the ACLU, and certain civil rights groups may carry the day, as in fact happened. "That would be too bad," *The Post* continued. "Is \$3,300 enough? Would the poorest be left behind? Would students end up learning even less in private schools? We don't know, and it's safe to assume that no proposed experiment will prove flawless. But we do know the *status quo*. To the many children losing out in the current system, some state-by-state experimentation might offer relief."<sup>153</sup> *The Post* observed that many poor black students in the inner city attend public schools that are *de facto* segregated, low-performing academically, and unsafe. In one Michigan district, only 20% of the children graduate from high school. In Detroit, almost two-thirds of parents say violence is the No. One problem their children face at school. Most voucher opponents, *The Post* noted, "don't tolerate such conditions for their children," yet insist that children left behind should not be allowed to escape, lest it be "unfair to the rest."<sup>154</sup>

In the long run, the broadening of the school-choice coalition is likely to be far more significant than a few ballot initiatives falling to a naysaying, self-interested opposition. Eventually, school choice could come to be viewed as what Harvard law professor Einer Elhauge calls the "new property," a fundamental individual right with a just claim to judicial protection, just as is the case with traditional property rights. As we should all know from making consumer selections every day, notes Elhauge, "nothing makes institutions more solicitous of your views than the property right to take your money elsewhere."<sup>155</sup>

The Supreme Court may decide by this June if vouchers are a constitutional mechanism for making a good education a property right for all Americans, not merely the affluent. It would be shocking if a majority of the Supreme Court decided that 4,000 Cleveland children must vacate the only decent schools they have ever known and return to unsafe, non-achieving institutions run by a government monopoly. But even if that should unexpectedly happen, the movement for freedom of choice in education will not die, because the idea is powerful and it is taking root in a multitude of ways that do not depend on a single funding method.

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153. *Voucher Wars, Editorial*, THE WASH. POST, Nov. 1, 2000, at A32.

154. *Id.*

155. Einer Elhauge, *The New 'New Property'*, S.F. CHRON., Nov. 6, 2000, at A25.