

Research Report

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Putting The Sides Together *School Choice In Texas?*

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This study is available online at www.TexasPolicy.com.

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ABOUT THE TEXAS PUBLIC POLICY FOUNDATION

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institution guided by the core principles of limited government, free enterprise, private property rights and individual responsibility.

The Foundation's mission is to improve Texas government by generating academically sound research and data on state issues, and by recommending the findings to opinion leaders, policymakers, the media and general public. The work of the Foundation is conducted by academics across Texas and the nation, and is funded by hundreds of individuals, foundations and corporations.

ABOUT THE MILTON AND ROSE D. FRIEDMAN FOUNDATION

The Milton and Rose D. Friedman Foundation is a non-profit organization established in 1996. The origin of the Foundation lies in the Friedman's long-standing concern about the serious deficiencies in America's elementary and secondary schools. The best way to improve the quality of education, they believe, is to enable all parents to have a truly free choice of the schools their children attend.

The Friedman Foundation works to build upon this vision and clarify its meaning to the public by conducting and disseminating research designed to improve the public debate and amplify the call for true educational reform through school choice.

SPECIAL NOTE ABOUT THIS PUBLICATION

The views expressed by the authors of this collection do not necessarily reflect the views, ideas or philosophy of the Texas Public Policy Foundation or the Milton and Rose D. Friedman Foundation, their respective Boards of Directors or staff. This diverse collection is intended to provide a framework for understanding the issue of school choice and the variety of ideas and options available to decision makers.

Table of Contents

An Introduction To <i>Putting The Sides Together</i> by Chris Patterson.....	5
The Surprising Consensus On School Choice by Jay P. Greene.....	21
An Argument Against Education Vouchers by Catherine Clark.....	33
The Enduring Crisis In Texas Education by Juan Lara and Matthew Ladner.....	41
Vouchers: The Wrong Choice For Texas by Richard Kouri.....	55
School Choice Fallacies by John Merrifield.....	59
Houston ISD Leaves No Child Behind by Lori Bricker and Gayle Fallon.....	81
Beyond Robin Hood: Constitutional Standards And Application To Educational Choice by Allan E. Parker, Jr.....	85

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An Introduction To *Putting The Sides Together*

Chris Patterson is the director of research for the Texas Public Policy Foundation.

INTRODUCTION

The seven perspectives in this collection offer a broad examination of the debate on the use of vouchers for elementary and secondary education in Texas. Each author identifies what she or he believes are the key issues in the debate and proposes how policymakers should resolve the issue of school choice.

This unique collection was designed to capture ideas across the ideological and political spectrum. Consequently, many of the ideas in this collection do not represent the research and views of the Texas Public Policy Foundation, an organization that is guided by market-based principles. However, the collection does represent the belief that all ideas should be given an opportunity to compete and that the best solutions for public policy are those that produce desired results most efficiently and effectively in the marketplace.

THE LANDSCAPE OF SCHOOL CHOICE FOR TEXANS

The market-based principles that guide the Foundation, our economy and our democratic political system have found no purchase in public education for Texans. Our public schools are funded, operated, evaluated, and regulated by state and local government. Attendance is mandatory for those students whose parents cannot afford the alternatives of private or home schooling.

Within the public school system, choice is limited and government schools hold a virtual monopoly on K-12 education. Most children are required to enroll in the public school designated as “catchment” by the district in which they live. In some, but not the majority of school districts, students are permitted to enroll in a magnet or charter school if this government-regulated alternative exists. Because few school districts offer district-wide public school choice or charters, competition between public schools is virtually nonexistent. Competition between public schools and private schools is also limited because state law limits taxpayer funds to be spent only on government schools.

Over the past decade, Texans have expressed strong interest in school choice. Opinion polls have demonstrated majority support for vouchers across political parties and demonstrated the particular support of Hispanic and African-American voters. Voucher legislation has been filed or attached to bills in every session of the state legislature.

However, because professional associations of educators and schools posed strong opposition, vouchers have been repeatedly denied in every legislative session (either languishing in committees or voted down).

As the 78th Texas Legislature closed and members began work on interim committees to reform the state system of school finance, the voucher debated was revitalized. All alternatives were put on the table as legislators faced escalating demands from public schools for increased funding. The need to find new, more efficient and effective ways of funding public education had to be considered as sluggish economic conditions slowed state revenues, soaring health care costs aggressively competed for state education dollars, and public dissatisfaction with public school outcomes mounted.

In June 2003, the House Select Committee on Public School Finance created a subcommittee to recommend alternative methods of distributing education funds and delivering instruction. This subcommittee was charged to examine how alternatives, such as scholarships (a term used interchangeably by the legislature with the term vouchers), affect students who participate, students remaining in public schools, the public school system and the individuals who are employed in public schools.

In February 2004, a group of national scholars convened by the Hoover Institution of Stanford University proposed a key role for vouchers in Texas' school finance reform. Invited by the Governor and co-chairs of the Joint Select Committee on School Finance to help solve key education issues facing Texas policymakers, the Koret Task Force on K-12 Education proposed that vouchers be provided to the neediest of students in Texas public schools: students in urban Texas school districts and to students with disabilities.

The intimate connection between vouchers and funding of public schools offers strong promise that school choice will be part of final discussions on school finance reform in Texas. The importance of vouchers and their potential to dramatically change public education dictate that Texans engage in a measured, thoughtful and factual debate in which all voices are heard. This collection is published to help clarify the debate.

SEVEN PERSPECTIVES ON SCHOOL CHOICE

The unabridged and unedited perspectives in this collection assemble the beliefs, values and recommendations that comprise the voucher debate today in Texas. The introduction to the collection summarizes each perspective, identifies areas of agreement between authors, distinguishes verifiable fact from assumption, and identifies market-based approaches to public education.

Please take special note that the summaries were written by the Texas Public Policy Foundation as an overview of the collection. Because they were *not* written by the authors, readers are encouraged to examine each perspective in full for complete details, context and interpretations.

The Surprising Consensus On School Choice by Jay P. Greene, Ph.D., senior fellow at the Manhattan Institute for Policy Research (report originally published by The Public Interest, Summer 2001 and reprinted with permission).

This perspective summarizes the evidence of research that school choice increases parental satisfaction with their children's education, improves standardized test scores of students who take vouchers, effectively serves low-income students, positively affects public schools where choice is available, effectively promotes civic values, and increases racial integration in schools.

This publication is still considered the most comprehensive look at the research on vouchers although it is three years old and does not address the most recent research on school choice (research that, it should be noted, supports and extends the positive impact described in this publication). During the past decade, a substantial body of research has been developed on the effects of school choice. Dr. Greene describes how this research provides facts to replace limited evidence, theories, speculation, and assumptions about choice. The scientific quality of this research is remarkable, seven of ten major studies used random-assignments and control groups to evaluate voucher programs. Findings are also remarkable. All of the ten large studies found consistent, statistically significant positive benefits from choice. Three questions about vouchers are answered by this research:

First, does school choice benefit students who receive a voucher? On this question, Dr. Greene says the research is strongest and most consistently positive. Researchers who examined parental satisfaction found that parents of voucher recipients in private schools are more satisfied with the teachers, academic standards, discipline and social activities than the parents of students in public schools.

Standardized test scores of voucher recipients are also consistently, statistically positive. Improvement in student achievement was evident when researchers examined test scores of similar student groups, indicating that academic gains resulted from the voucher rather than differences in student characteristics. While different researchers found the academic impact different for different voucher programs and different student groups, there was a consistently positive impact found for at least one student group. In the few instances where there was no evidence of across-the-board improvement for all groups, there was no evidence of any negative academic impact.

The research also showed that the per pupil operating costs of private schools participating in these studies was nearly half of the per pupil expenditure of public schools. In other words, vouchers provided higher educational returns for students at about half the cost.

Second, does choice benefit non-choosers or the students who are left behind in public schools? Because the evaluations of school choice programs found that programs target the most economically and educationally disadvantaged students, there is no evidence that school choice “creams” the best students from public schools, according to Dr. Greene.

While there is no definitive, conclusive evidence at present that vouchers improve the performance of public schools when faced with competition, studies by Harvard economist, Caroline Hoxby, indicate that an increase of educational choice in a school district produces a significant increase in test scores and an increase in wages for students on entering the workforce, without any significant increase in school spending. Additional studies by Dr. Greene indicate that test score gains of schools facing the imminent prospect of vouchers were twice as large as gains realized by other public schools. Dr. Greene also found that student achievement is higher in states with more educational choices, even when the research controlled for per pupil spending, median household income, class size, and racial composition.

Third, how does choice affect integration and the democratic ideals that some wish schools to promote? Dr. Greene describes findings of several studies that show private schools appear more effective than public schools at instilling democratic ideals, even when researchers controlled for student characteristics. Students in private schools are more likely to tolerate political, religious, and social differences than students attending public schools. Private school students are also more likely to volunteer and engage in public issues than their counterparts in public schools. Examining the racial composition of choice programs, several researchers demonstrated that vouchers exert a desegregating affect on communities. Studies also show students who are enrolled in choice programs are more likely to attend racially heterogeneous schools than students in public schools.

Dr. Greene concludes that the evidence is solid. Although groups with a vested interest in opposing school choice, such as teachers' unions and their allies, ignore or disparage the research on school choice, school choice works.

An Argument Against Education Vouchers by **Catherine Clark, Ph.D.**, associate executive director, Texas Association of School Boards (written for this collection).

This perspective contends there is little evidence that students in Texas public schools need or would benefit from vouchers.

Dr. Clark introduces her examination of vouchers with a description of the availability of educational choice and the evidence of student success in Texas public schools. Over the past decade, respected state and national policy experts have reported the continuing improvement of Texas public schools, with particularly impressive performance gains for minority and low-income students. Texas urban schools have received national prizes for excellence and have been acclaimed among the finest in the nation. There are few failing schools in Texas and those that do report low performance quickly improve.

Within the public school system, there are a variety of educational choices available to Texas families, according to Dr. Clark. Most large school districts offer intra-district choice, magnet and charter schools. Hundreds of thousands of families exercise school choice annually through intra-district transfer and magnet schools. Thousands of children attend charter schools, although the performance of charter schools suggest that all

educational choices are not academically beneficial for students and that families persist in choosing schools that perform well below traditional public schools. Additionally, state law protects the rights of children to a high-quality education by providing a no-cost transfer for any child attending a low-performing school for any two of three consecutive years; the Public Education Grant (PEG) provides school choice to several hundred families annually. Despite the availability of educational choice and the evidence of educational success, notes Dr. Clark, there are some who claim broad public dissatisfaction with public education. Despite the facts, some claim children are trapped in failing schools, performance of urban schools is unacceptable, and parents lack educational choice.

Economists claim the competitive market can bring about higher quality education at lower cost for public schools in the same way that the market process affects purchases of goods and services in the private sector. Some economists claim that the lack of competition in the public school system and democratically-controlled schools actually inhibit effective delivery of education. Dr. Clark says there is little reason to believe these claims and there are numerous impediments in public education which virtually ensure that a competitive market could not be created:

- A level playing field for educational competition is impossible because private schools generally do not operate under the state and federal rules that govern public education,
- Because private schools do not use accountability systems and publicly report student performance, there is no way to determine how well private schools perform for informed consumers to affect educational quality,
- Family satisfaction, whether or not it is based on accurate information, is all that is needed to keep mediocre or low-performing schools in business. Experience with Texas charter schools suggests that school leaders and education entrepreneurs are not all well equipped to start or sustain successful schools, and
- Public schools and private schools serve two very different purposes; public schools must be all things to all people whereas private schools tailor programs to fill a niche or meet special education needs.

Because the claims of school choice proponents are unfounded, asserts Dr. Clark, the motive for vouchers appears to be a desire to destroy or greatly weaken public schools. She states it is clear that pilot voucher projects are intended to expand over time to encompass all students and consume public education, and suggests that proponents also seem to intend an overall reduction in education spending.

Vouchers could undermine the bright future for children in Texas public schools, Dr. Clark warns, by removing resources from public education and establishing unregulated, unaccountable schools.

The Enduring Crisis In Texas Education by **Juan Lara, J.D.**, former president, Hispanic CREO and **Matthew Ladner, Ph.D.**, senior fellow, Milton and Rose D. Friedman Foundation (written for this collection).

This perspective describes the failure of public schools to meet changing educational, demographic, and economic needs of Texans, and gives home-grown evidence for vouchers as the best solution to today's educational crisis.

The authors describe the challenge faced by Texas public schools today. Schools must increase the academic performance of students to meet the needs of a high-tech economy at the same time that the limits of state resources are strained by a rapidly growing student population. Additionally, fundamental demographic changes give frightening urgency to the need for reducing racial achievement gaps.

The performance of public schools over the past several decades leaves little hope that these challenges can be met with the current system, according to Mr. Lara and Dr. Ladner. Many Texas Hispanic and African-American students fail to graduate from high school and those who do are ill prepared to continue their education. This problem is especially acute in large urban districts. Depending on how numbers are calculated, the drop out rate ranges between 44 to 57 percent. Less than 10 percent of Hispanic and African-American graduates of Texas public schools are prepared to attend college. Entering post-secondary education, many of these graduates are required to take remedial courses in reading and mathematics. In some community colleges in Texas, over 90 percent of freshmen require remediation. Studies indicate only less than 10 percent of students who require remediation are able to complete a degree within seven years. Unsurprisingly, the scores of Hispanic and African-American graduates of Texas public schools have significantly declined on college readiness exams over the past decade.

While Texas public schools did make some limited progress in closing racial achievement gaps on the National Assessment of Educational Progress (NAEP), the authors contend the rate of improvement is too slow. Based on current NAEP mathematics scores, it would take 36 years to close the achievement gap between Hispanic and Anglo students and 360 years to close the gap between African-American and Anglo students. Because Texas students showed even less progress in closing the achievement gap on NAEP's reading, social studies and science tests, it would take even longer to close these gaps.

Dr. Ladner and Mr. Lara warn that Texans cannot buy better educational results from public schools. Adjusted for inflation, per pupil spending has more than tripled in the past thirty years while there is little evidence that students are actually learning more. Texans need more education for their dollars. In the absence of a productivity revolution in public education, Texans will live in significantly greater poverty and inequality within just 20 years.

Against this backdrop of persistent public school failure, the authors see a beacon of hope offered by evaluations of school choice. Every major evaluation of school choice effectiveness that makes use of scientific (control group) design has found significant

academic gains for students participating in choice. Supporters of school choice believe competition for students will create powerful incentives for all schools to improve. Confirming this belief, research by Harvard Economist Caroline Hoxby finds that public schools facing higher levels of competition demonstrate significantly higher test scores at lower average cost.

Opponents of school choice express the belief that choice will destroy public education and worry about poor children left behind by school choice, stuck in schools that cannot afford to educate them properly. The authors deny that these concerns are credible. Although districts lose funding associated with a child who chooses to use a voucher, districts also lose the expense of educating the child. Furthermore, school choice programs have been designed to leave money behind with districts in order to cover fixed costs and diminish the financial pain of choice in a way that is significantly less painful than the financial loss associated with dropouts and home schooled students.

The experience of Edgewood Independent School District in San Antonio should reassure opponents of choice, according to Mr. Lara and Dr. Ladner. With the Horizon program, the only choice program in the nation to offer vouchers to an entire school district, the district lost \$5 million over the program's initial years, according to estimates provided by the district superintendent (an amount that represents a fraction of the district's close to \$91 million budget in the 2001-02 school year). However, total annual spending by the district continues to grow despite lower enrollment. Annual spending increased from almost \$86 million in the 1997-98 school year with 14,142 students to almost \$91 million in the 2001-02 school year with 13,435 students. Average teacher pay went up, as did student achievement of district students. Controlling for student demographics and spending, Edgewood's improvement in passing rates on state assessments surpassed 85 percent of all school districts in Texas.

The authors offer results of school choice in Edgewood and throughout the nation as evidence that vouchers offer a potent and immediate solution to the educational crisis that threatens to undermine the state's economic vitality. The window of opportunity is open now for Texas legislators to improve public education and the future for all Texans.

Vouchers: The Wrong Choice For Texas by **Richard Kouri**, information and technology systems and public relations manager, Texas State Teachers Association (written for this collection).

This perspective identifies the reasons that vouchers are bad for Texas and unmask the agenda of the school choice lobby to fund private schools.

Mr. Kouri describes the progress that Texas public schools have made over the last decade, raising student achievement and closing the achievement gap between student groups on state assessments and the National Assessment of Educational Progress. He attributes this progress to strong standards and accountability, coupled with equitable funding.

While public schools are good and getting better, the author reasons that it makes no sense for Texans to spend tax dollars on vouchers and private schools, particularly when policymakers are scrambling for education funds and local property taxes are exorbitantly high. Stripped of rhetoric, the claims that vouchers will improve public schools and rescue children from failing schools reveal proponents don't care about public schools at all.

False hopes are propped up by voucher proponents, hopes that would instead cause many children to be left behind, according to Mr. Kouri. He states there is no consistent evidence to support claims that vouchers would have a positive impact on students who use vouchers or for the students who remain in public schools. Vouchers would harm low-performing schools by luring valuable resources away from public education, both revenues and involved parents. The exit of 20 or 30 voucher students would not reduce the cost of running a school but would reduce state funding for every student in the school. Mr. Kouri concludes that vouchers would force public schools to raise property taxes or cut educational services at a time when schools already need more resources and face reduced revenue.

To the author, the agenda of the voucher lobby is obvious: replace the public school system with private schools funded by public tax dollars.

Mr. Kouri warns that vouchers are the wrong choice for Texas. The cost of vouchers is far too important for Texans to overlook because public education is the key to democracy. A quality education should be available to all children because public education prepares each generation for the challenges we will encounter as a state and nation. Our basic democratic principles point to the fact that we cannot afford vouchers as long as we believe we should leave no child behind.

School Choice Fallacies by **John Merrifield, Ph.D.**, professor of economics, University of Texas at San Antonio (written for this collection).

This perspective systematically, comprehensively challenges unfounded assumptions that are promulgated by both advocates and opponents of school choice.

Dr. Merrifield examines what most Texans know about school choice today and finds much information is wrong, misleading or irrelevant. He warns the fallacies perpetuated by opponents and advocates alike insulate public schools from substantive, meaningful reform.

Fallacy 1, *Real competition is fostered by the limited forms of school choice available to parents today (such as charter schools, public school choice or vouchers for low-income students or students in low-performing schools)*. Raising expectations that these limited forms of school choice can generate market forces sufficient to substantially improve public education only creates expectations that

may not be fulfilled and, the author cautions, may discourage proposals that could actually produce genuine competition and educational improvement.

Fallacy 2. *True competition is introduced by limited choice programs.* Dr. Merrifield contends it is untrue that current choice programs can serve as meaningful experiments. The results of limited choice programs are unable to generate the educational outcomes that could be generalized to predict the impact of full, universal school choice.

Fallacy 3. *Better public schools are good schools.* While most people believe that their own children's schools are, by and large, doing a satisfactory job, recent international comparison of mathematics and science skills indicates that students in our top public schools, particularly the best students, do miserably compared to international peers. The problem for Texans is not low-performing schools, according to the author, but a low-performing school system. However, many private schools do little better.

Fallacy 4. *Only low-income students and students enrolled in large urban schools need help.* Restricting school choice to a particular student population prevents choice from dramatically improving the education of all children, notes Dr. Merrifield, and limits the success of specific choice programs.

Fallacy 5. *Full tuition vouchers remove financial penalties because private school users generally receive less funding than provided to public schools.* Private school vouchers rarely represent the same amount of funding that is provided to students in public schools. The author believes this disparity reduces access to resources for private schools and mutes the incentive to compete. Laws that require private schools to accept public funds as full payment magnify the financial disadvantages suffered by private schools. Because tuition does not cover the operational costs of many private schools, private schools need increased funding to expand facilities and to become competitive.

Fallacy 6. *Existing conditions of education in both public and private schools limit school choice.* Dr. Merrifield says this assumption is based on the unfounded beliefs that:

- Most children will always attend public schools,
- Public schools will always deliver education in the same way,
- The good of public schools is exactly the same as the good of students,
- Private sector schooling will remain primarily non-profit and church-run, with a few expensive, elite schools,
- Private schools have insufficient seats to accommodate school choice, and
- Private schools will restrict access to certain public school students.

Fallacy 7. *Vouchers only help the rich because poor parents cannot afford to pay the difference between a voucher and private school's full tuition.* Many private schools are sufficiently inexpensive for the demand for low-income vouchers to

usually exceed the availability of vouchers or the current capacity of private schools. In fact, notes the author, many low-income families are currently making major sacrifices to enroll their children in private schools.

Fallacy 8. *Private schools, not parents, would exercise school choice by selectively admitting students who are the easiest to educate, and consequently, to prevent discrimination, voucher programs must require private schools to accept any child.* Because the success of private schools are predicated on their ability to specialize in particular subjects or teaching styles, Dr. Merrifield warns that requirements for private schools to accept any voucher recipient will handicap their ability to serve any specific population well.

Fallacy 9. *The threat of “Blaine Amendments” in state constitutions and the potential of church-state litigation handicaps school choice programs.* To avoid religious litigation, some voucher programs restrict public funds only to private schools that are not run by churches. The author suggests the incidence and importance of church-state litigation is exaggerated and this restriction effectively cripples school choice because the vast majority of private schools are currently church-run.

Fallacy 10. *Contracting out educational services and management is real privatization.* Dr. Merrifield refutes this common perception. Because contractors are, at most, semi-independent, contracting out does not reduce government dominance. Contracting out generally changes a government-run monopoly into a regulated, privately-run government monopoly.

Fallacy 11. *School choice is a gamble, a statement that implicitly assumes things could get worse.* While it is true that contemporary evidence on vouchers is not very useful, the author dismisses the need for caution about school choice. Certainties of the status quo are much worse than any risks associated with implementing competition in public education. Failure to implement choice guarantees major losses and delay will exacerbate those losses for all Texans.

Unless the school choice debate is heavily dosed with facts and economic principles, Dr. Merrifield suggests Texans are likely to entrench a new generation of hard-to-change government programs that fail to address the largest problems or even compound the problems. He warns there is no time to lose in transforming public education. Our system of self-governance requires educated, informed participation and ominous signs of its absence are abundant.

Houston ISD Leaves No Child Behind by **Lori Bricker**, member, Houston Independent School District Board of Education, and **Gayle Fallon**, president, Houston Federation of Teachers (written for this collection).

This perspective recognizes the need for children to have educational choices and describes how public schools can provide educational freedom for students and their parents while holding schools accountable for learning.

The authors acknowledge the argument for vouchers is compelling: children should not be trapped in low-performing schools, and many of the failures in public schools stem from lack of educational choice, a lack that insulates public schools from competition. However, it is wrong to assume the public school system is incapable of providing real educational choice, and quality education. Houston Independent School District, Texas' largest school district, offers a wide range of choices to students:

- “Choice zones” for new schools (on a space available basis, students may select among several public schools),
- Charter schools, magnet schools, and virtual schools (for home-bound or home-schooled students),
- Privately operated alternative schools (for disruptive and under-performing students), and
- Contracts with private schools to enroll students attending low-performing public schools (that require private schools to accept the rate of per pupil funding from Houston ISD and terms of the state accountability system).

The effectiveness of public school choice in Houston ISD is clear, according to Ms. Bricker and Ms. Fallon. One out of three Houston students elect to exercise choice, student achievement is high and continuing to rise, and the achievement gap between student groups is closing. With comparable students, Houston ISD's performance is as good as the best of charter and private schools in the area.

However, the authors see a clear contrast between the school choice offered by Houston ISD and voucher bills proposed in the Texas Legislature that lack public accountability and oversight. Charter schools within the district and throughout the state show the loss of millions of dollars in lost revenue and lost educational opportunity for many students. Ms. Fallon and Ms. Bricker warn a state funded voucher that could be used in private schools would:

- Fail to cover the cost of most accredited schools (tuition, transportation, food, and uniforms),
- Encourage a proliferation of “fly-by-night” schools that will fail to meet the educational needs of children, and
- Burden the public with the cost of remediating educationally-damaged children when unregulated schools close.

The authors propose that additional monies should be given to public schools to encourage school choice instead of funding vouchers. Rather than stripping the successful school model established by Houston ISD, policymakers should support public schools that are accountable and operating in the best interest of children.

Beyond Robin Hood: Constitutional Standards And Application To Educational Choice by **Allan E. Parker, Jr., J.D.**, president of the The Justice Foundation (updated for this collection). This paper is based on a 1991 work originally written by Mr. Parker with the late Michael Weiss that appeared in The Review of Litigation).

This perspective provides a legal and historical look at the system of public education in Texas and describes how vouchers most closely meet educational standards established by the State Constitution.

Although the original paper was written almost thirteen years ago, this is still considered the most comprehensive examination of the history and constitutionality of vouchers in Texas. The author presents a tenacious argument that the state system of public education can best satisfy constitutional requirements when government schools are paired with private educational choice.

Standards for the constitutionality of Texas' current system of school finance were largely defined by a series of judicial decisions that began in 1989, known as the *Edgewood* cases. These standards, according to Dr. Parker, stand as the guide for developing a new system of school finance to replace Robin Hood and pave the way for vouchers:

- Efficiency. The system of public education must produce results with little waste, without excessive centralization and with some measure of local control. Funds must be distributed in a way that ensures gross inequities do not exist and each student has access to equal educational opportunity and substantially equal access to funds. The system must ensure that taxpayers pay substantially similar amounts for the same educational service.
- General Diffusion of Knowledge. The primary obligation of the public school system is to provide a general diffusion of knowledge, although this term is undefined. If the school system does not educate students to a certain level of academic proficiency, a level that could be identified by the courts, this standard could overturn the constitutionality of the school system.
- Suitable Provision. This standard is regarded as an independent duty separate from efficiency but there is little provision for meaning.
- Essential Change. The legislature is required to make substantive changes in the framework of the system to address essential problems that are identified by the courts.
- Policy of Locality. Communities must be able to exercise the control of choice in the delivery of public education (over such things as the content of instruction and school spending) for the system of public education to meet the standard of efficiency.

Dr. Parker notes the first *Edgewood* case established a standard for the legitimacy of Texas public schools. The system of public education must rest on consent of the governed and must be based on the original intent of the people who adopted it. Established by the State Constitution of 1876, the current system was originally designed as a voucher system. Records show that contemporaries of the 1876 Constitution interpreted "Public Free Schools" as a form of education that required parental choice.

The 1876 choice plan was simple. Any number of parents could form a community, select a teacher and the kind of education they desired, and receive their per capita share of the state school fund with minimal state regulation. The Constitution explicitly stated that the public free school was to be organized to suit the convenience of parents and guardians (not to suit the state's convenience) without reference to geographical lines within counties. In addition to private choice, the Constitution allowed any city or town to acquire by popular vote exclusive control of public free schools within its geographical limits and could govern the schools by a board of trustees or by municipal government. In calling both the community voucher model and the government control model public free schools, the 1876 Constitution combined private school choice with government-operated schools.

Today, Dr. Parker notes, Texas has only state-controlled, state-mandated, state-operated schools. Student-centered funding and private vouchers no longer exist. Public schools do not operate at the convenience of parents and students are forced to attend schools within artificial boundary lines. The current form of public education no longer conforms to its original constitutional design.

A private voucher system is not only historically constitutional, the author contends, but better meets the legal standards set for public schools than are currently met by government schools. Vouchers can introduce “essential change” to the public school system by maximizing the diffusion of knowledge, efficiency, equality, and local control. Whereas, a large body of research documents the inefficiency of Texas public schools as well as the relative efficiency of private schooling over government-controlled schools. There is also evidence suggesting that Texas public schools fail to produce a general diffusion of knowledge necessary for student success, particularly for minority students.

Dr. Parker reminds us the purpose of public education, according to the Texas Constitution, is to preserve the liberties and rights of the people. Public schools cannot serve this purpose if the system itself restricts the liberties and rights of the people. With vouchers, no Texan would lack for liberty or equal educational opportunity because all students would have equal access to any school of their own choice. When the Texas Supreme Court started on the road to Robin Hood, it opened the door to the most efficient, effective system ever devised for providing education: the free market.

PUTTING THE PERSPECTIVES TOGETHER

The seven perspectives clearly define key issues for the school choice debate. While the following analysis summarizes these differences, it should be noted that the observations are generalizations and do not represent the positions of all proponents and opponents.

With *public education funding*, choice opponents see choice undermining essential funding of public schools, whereas proponents view choice as a way to maximize taxpayer dollars. Choice opponents view increased financial investments in public schools as a necessity for educational success, whereas proponents see no improvement

in student outcomes as the result of increased funding and view resource allocation as more important than the level of funding.

On *educational accountability*, choice proponents view choice as the way to increase public accountability whereas opponents see choice undermining the responsibility of schools to deliver quality, equitable education to all students. Choice opponents view state regulation as the only way to ensure quality and equality in public education, whereas proponents view parental choice as the most powerful tool to ensure quality and equality. Choice opponents view the education establishment as best able to recognize education quality and equality, whereas proponents believe parents should be permitted to act as informed consumers of public education.

With regard to the *public school system*, choice opponents connote public schools with students and public good, whereas proponents clearly differentiate public schools from students and from the system of public education. Choice opponents view the preservation of the current educational system as the highest priority, whereas proponents view the success of each individual student as the highest priority.

When it comes to *teaching educational and social values*, choice proponents and opponents alike acknowledge the importance of public education in teaching the democratic values on which the state and nation are founded. However, proponents rate public school performance as unsatisfactory in this regard, whereas opponents view the values taught by private schools with suspicion.

Looking at the *performance of Texas public schools*, choice opponents see significant, steady progress from Texas public schools that outstrip gains posted by other states, whereas proponents see the failure of public schools to deliver the educational outcomes mandated by the state, expected by taxpayers, and required for student success.

Perspectives on *private schools and competition* differ. Choice proponents view private schools as an alternative to public schools and see educational competition as a way to stimulate public schools to be responsive to consumers (parents, students, taxpayers, and the business community). Opponents, however, suspect private schools are motivated more by concern for profits than student outcomes, and view market principles, such as competition, as inappropriate for the delivery of education.

School choice garners universal support. Both proponents and opponents of private school choice view educational alternatives and school choice as a fundamental right of parents and an essential component of student success. However, opponents believe the public school system currently provides sufficient alternatives (such as charter and magnet schools), whereas proponents dismiss these government-regulated alternatives as insufficiently diverse and ineffective.

Accepting the research as evidence marks the ideological divide for choice. Opponents dismiss and proponents accept the positive findings of scientific research on vouchers.

CONCLUSION

The school choice debate is fueled by intense emotions, strong values and powerful assumptions. Objectivity seldom rules in this debate and facts are frequently mixed with fiction. Professional and personal investments in the public school system often guide which side Texans take and party politics often swing decisions. Some times, school choice is rejected by people who truly believe it is more democratic to preserve the system of public schools than to meet the needs of individual students.

Sometimes allegiance and belief blur the critical distinction between the current institution of public schools and public education. Some misinterpret criticism of public schools and the educational establishment as an attack on public education and proof that voucher proponents don't care about children. Dr. Milton Friedman, one of the nation's leading school choice proponents, draws the line between public education and the education establishment. Vouchers are, as Dr. Friedman is cited by one contributor to this collection as saying, "the only way to make a major improvement in our educational system...Nothing else will destroy or even greatly weaken the power of the current educational establishment – a necessary prerequisite for radical improvement in our educational system." This statement recognizes the high value of public education, condemns the establishment that currently operates public schools in ways that fail children, and identifies the way to improve the public education system.

Vouchers are good for students and schools, according to the perspective written by Dr. Greene. The findings on vouchers are clear and verifiable; vouchers improve the educational and social outcomes of individual students who accept vouchers to attend private schools. For students who remain in public schools, there is growing evidence that student achievement improves when schools compete and improves without additional cost. As pointed out by Dr. Merrifield, vouchers provide an effective, efficient solution for policymakers challenged to find new ways to control state spending and boost student performance.

Texans cannot afford to dismiss or delay school choice, according to Dr. Ladner and Mr. Lara. Hispanic and African-American students are poorly served by most public schools – insufficient numbers graduate and few graduates are prepared for post-secondary experience. The consequences of this failure will critically injure all Texans unless dramatic, systemic reform – as can only be assured by vouchers – is introduced immediately.

Vouchers are neither a threat to Texas public schools nor even new to Texas, as noted in Dr. Parker's perspective. The "Public Free Schools" established by the Texas Constitution of 1876 permitted parents to use their share of the state school fund to form their own schools or to pay for enrollment in government-run schools. Private school choice and government-run schools coexisted in Texas until a state-controlled centrally administered bureaucracy, created at the turn of the century, gradually eliminated vouchers.

Putting The Sides Together: School Choice in Texas?

Although no longer part of the Texas public education system, vouchers retain their appeal for many Texans and deliberations about school finance now revitalize proposals for school finance reform to incorporate vouchers as a component of public education.

The connection between vouchers and public education is not only historical, vouchers are also intimately linked to how educational funds are distributed. Vouchers offer Texans a proven, effective way to increase the efficiency of education dollars and the effectiveness of public education.

Texans sorely, urgently need to employ every proven means to improving public education. Using education funding to connect private voucher schooling with government schools as different options for public education – a connection that was developed by the 1876 Texas Constitution – policymakers can improve the efficiency, effectiveness and equality of public education by putting the sides together again in Texas.

The Surprising Consensus On School Choice

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There has been a flurry of activity in school choice research in the last few years. As a result, where we used to have only theories and limited evidence we now have a relatively solid understanding of the likely effects of school choice. I say "relatively" because all research is necessarily imperfect and additional study can always improve the confidence with which we draw conclusions. But the research on school choice includes several random-assignment studies, the "gold-standard" of research design, where subjects are randomly assigned to treatment and control groups as in a medical study. I can think of only one other education policy issue (the effect of class-size reduction) that has been the subject of even one significant random-assignment experiment, let alone several "gold-standard" studies.

What is striking about the recent research on school choice is not just its quality but that it consistently reveals positive benefits from school choice. Of course, groups with vested interests in the results, such as the teachers' unions and their allies, always prefer to describe the results as mixed or inconclusive at best. (The tobacco industry similarly used to describe the research on smoking and cancer as mixed or inconclusive at best.) Meanwhile, journalists prefer covering controversy and fear crossing those who oppose school choice, so they describe results as mixed or inconclusive as well. And researchers have incentives to highlight disagreements with each other as a matter of academic pride and professional competition, which also helps obscure the general success of school choice programs.

The research on school choice essentially addresses three questions:

- (1) Does school choice benefit those who receive a school voucher?
- (2) Does it benefit students who do not actively choose a school (or as it is sometimes negatively framed, "those left behind")?
- (3) How does school choice affect integration and the democratic ideals that we may wish schools to promote?

The research on the first question, does choice benefit "choosers," is the strongest and most consistently positive. Whether choice benefits "non-choosers" is more difficult to study, and therefore the evidence is less conclusive on that question, although recent research suggests benefits for choosers and non-choosers alike. The last question,

whether choice poses a threat to our democratic system, has been the least studied, perhaps because it is so central to popular faith in the public school. (Like any central myth, people prefer not to examine it too closely.) But some recent research suggests that choice may enhance the ability of schools to promote democratic ideals. Let us consider the evidence on each of these three questions in turn.

DOES SCHOOL CHOICE BENEFIT CHOOSERS?

One indication of the academic effects of school choice on choosers is whether they report being more satisfied with their school experience than do non-choosers. Here the evidence in support of school choice is unambiguously and overwhelmingly positive. John Witte, one of the evaluators of the school choice program in Milwaukee, reported that "satisfaction of Choice parents with private schools was just as dramatic as dissatisfaction was with prior public schools." In Cleveland, evaluator Kim Metcalf found that "across the range of school elements, parents of scholarship students tend to be much more satisfied with their child's school than other parents. Scholarship recipient parents 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." Also in Cleveland, Paul Peterson, William Howell, and I found that after two years of the program, choice parents were significantly more satisfied with almost all aspects of their children's education than was a random sample of parents from Cleveland public schools. Nearly 50 percent of choice parents reported being very satisfied with the academic program, safety, discipline, and teaching of moral values in their private school. Only around 30 percent of Cleveland public school parents report being very satisfied with these aspects of their children's schools. Very similar results were obtained from the privately funded school choice programs in Charlotte, Washington, D.C., Dayton, New York City, and San Antonio.

If this were almost any other policy realm or consumer issue, we might consider the strong positive effect of school choice on parental satisfaction sufficient evidence that the program benefits its participants. If, for example, people report that they are happier with the maintenance of public parks, we would usually consider this sufficient proof that efforts to improve the parks have succeeded. We would not feel obliged to count the number of items of trash and repair problems to verify reports of satisfaction.

But the standards for assessing programs in education are different. Many in the education and policy communities only give serious consideration to standardized test scores, and give little credence to parental satisfaction. They suspect that parents are not informed consumers of education or experience psychological pressures to justify their choices, making their assessments of program success unreliable. To put it bluntly, they suspect that parents are stupid. And thus, despite the overwhelmingly positive effects of school choice on parental satisfaction, these findings have not significantly influenced the policy debate.

TESTING SCHOOL CHOICE

Instead, the debate has focused mainly on the effect of school choice on standardized test scores. These score results, including those from several "gold-standard" random-assignment experiments, have also been consistently positive, which gives them enormous credibility. In the last few years, there have been seven analyses of random-assignment school choice experiments, from five different programs, conducted by several different researchers. Every one of those analyses finds statistically significant benefits from school choice for those who are provided with opportunities to choose a private school.

For example, in New York City, Washington, D.C., Dayton, Ohio, and Charlotte, North Carolina, privately funded programs offered scholarships for private school. Because there were many more applicants than scholarships available, scholarships were awarded by lottery, allowing for the "gold-standard" random-assignment research design. Comparing the standardized test scores of those students who won scholarships to the scores of those who lost the lottery allows researchers to identify with confidence the effect of receiving a voucher. Since we can expect the two groups to be generally alike, differences in academic achievement between them are probably the result of the voucher, not differences in backgrounds or motivations.

The results from New York City, Washington, and Dayton were contained in a report issued by the Harvard Program on Education Policy and Governance (PEPG). The PEPG report found that after two years in private school, African-American recipients of the scholarships performed significantly better on standardized tests than did the African-American members of the control group that applied for a scholarship but were not given one by lottery. The benefit of receiving one of these privately funded vouchers in New York was about 4 percentile points, in Dayton about 7 percentile points, and in Washington about 9 percentile points. Interestingly, the PEPG report found that receiving the scholarship had no significant academic effect, good or ill, for students of any other ethnic group.

A second group, Mathematica Policy Research of Washington, D.C., the research company that was involved in collecting the data in New York for PEPG, conducted their own analyses of the New York data and issued their own report. Contrary to a misleading article in the New York Times, the findings from the Mathematica and PEPG studies were essentially the same. In fact, Mathematica calculated the average benefit for African-American students receiving a scholarship to be one-tenth of a percentile point higher than that reported by PEPG.

The only difference between the Mathematica and PEPG analyses of the New York results - a difference fully exploited by the New York Times in the throes of the presidential campaign - was the spin that each report placed on the findings. The Mathematica report preferred to emphasize the results broken down by grade, while the PEPG report focused on the average for African-American students across all grades. Breaking down the results by grade produced very small samples for each grade, so that

the positive effect of receiving a voucher was only statistically significant in sixth grade, but not significant in two of the other three grades studied. Mathematica expressed worries that the benefit of the scholarship might not be widespread and therefore advised against drawing any conclusions. PEPG focused instead on the statistically significant benefit for African-American students across all grades and, in light of the similar results from other cities, felt comfortable drawing a stronger conclusion than Mathematica did.

The difference between the two approaches can be illustrated by thinking about presidential campaign polls. Let's say that a national poll found Gore was ahead of Bush by seven points. Let's then say someone wanted to break down the results by state, even though the sample in each state is fairly small, and found that only in California was the Gore lead statistically significant. Would it then be more reasonable to conclude that Gore and Bush were tied or that Gore was ahead? The PEPG interpretation of the results is analogous to focusing on the national poll results, and the Mathematica interpretation is analogous to focusing on breaking down those results by state, even though the number of subjects is very few.

All of this discussion of the different interpretations, however, obscures a basic truth: Both the PEPG and Mathematica analyses of results from a high-quality random-assignment school choice experiment in New York find statistically significant benefits from school choice. And the PEPG report finds statistically significant benefits from the other two programs it covered, in Dayton and Washington, D.C.

Three other analyses of random-assignment choice experiments confirm the existence of academic benefits. My own analysis of the privately funded scholarship program in Charlotte found that students given by lottery a voucher to attend private school outperformed their counterparts who failed to win a voucher by 6 percentile points after one year's time. I was unable to determine whether benefits occurred exclusively for African-American students because more than three-quarters of the students in the Charlotte study were African American, leaving too few students from other groups about which to draw conclusions.

Two analyses of random-assignment data from the publicly funded school choice program in Milwaukee also found significant gains for students who received vouchers to attend private schools. One study, by Paul Peterson, Jiangtao Du, and myself, found that students who won lotteries to receive a voucher scored 6 percentile points higher on their reading scores and 11 percentile points higher on their math scores than students who did not receive a voucher. Cecelia Rouse, a Princeton University economist and former member of the Clinton administration, independently analyzed the data from Milwaukee and arrived at similar results, at least in math scores. After trying several analytical strategies Rouse concluded: "Students selected for the Milwaukee Parental Choice Program...likely scored 1.5-2.3 percentile points per year in math more than students in the comparison groups."

THE BIG PICTURE

In addition to these seven random-assignment studies, there have been three nonrandom-assignment studies of publicly funded school choice programs. The quality of these nonrandom-assignment studies (including one I conducted) is so much lower than the quality of the random-assignment studies that less weight should be given to their results. But it is striking that these lower-quality studies are also generally positive in their findings.

For example, the Cleveland choice program offers evidence on the academic effects of choice, but of lower quality because there are no random-assignment data nor sufficient data on the background characteristics of choice- and public-school families. Despite these data limitations, analyses of test scores have been performed by Kim Metcalf of the Indiana University School of Education and by myself, Paul Peterson, and William Howell. Both groups found at least some significant academic benefits of the choice program in Cleveland.

Metcalf observed that "the results [after two years] indicate that scholarship students in existing private schools had significantly higher test scores than public school students in language (45.0 versus 40.0) and science (40.0 versus 36.0). However, there were no statistically significant differences between these groups on any of the other scores." Metcalf's analyses were based on a comparison between one grade cohort of choice students and a nonrandom sample of public school students. He had a very limited set of controls for background differences, which could seriously bias results. But Metcalf still saw fit to conclude in favor of school choice:

The scholarship 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 racial composition of the Cleveland Public Schools.... The majority of children who participate in the program are unlikely to have enrolled in a private school without a scholarship. The analyses performed by myself, Peterson, and Howell also had serious data limitations. We only had test scores from two private schools, although those schools did contain nearly 15 percent of all choice students and nearly 25 percent of all choice students who had transferred from public schools. We were only able to compare scores from students over time relative to how they scored when they first entered these two schools. But since inner-city students tend to have declining scores relative to national norms over time, any gains in test scores over time should be a strong indicator of academic progress for the choice students. We found that after two years students at the two schools we examined had gains of 7.5 national percentile points (NPR) in reading and 15.6 NPR in math. These gains were achieved even though the students at these two schools were among the most disadvantaged students in Cleveland. Thus, despite shortcomings in the available data, there were indications of significant academic benefits for choice students in Cleveland.

Rather than getting lost in the details of these various studies, it is worth stepping back and reviewing the results as a whole. There have been seven random-assignment and

three nonrandom-assignment studies of school choice programs in the last few years. The authors of all 10 studies find at least some benefits from the programs and recommend their continuation, if not expansion. No study finds a significant harm to student achievement from the school choice programs. The probability that all 10 studies would be wrong is astronomically low. It is also worth noting that the private schools participating in these various school choice programs tend to have per pupil operating costs that are nearly half the per pupil expenditure in the public schools. Even if we were to find no significant academic benefit from school choice, we might still endorse the policy because parents like it, and because it costs half as much money to produce the same level of academic achievement. To increase student achievement significantly, while spending less money per pupil and making parents more satisfied, as the evidence from these 10 studies consistently shows, provides strong support for school choice.

DOES SCHOOL CHOICE BENEFIT NON-CHOOSERS?

If choice helps its beneficiaries, does it do so at the expense of others? The suspicion is that choice programs "cream" the best students from the public schools, draining talent and resources from the public system. On the other hand, it is possible that "creaming" has largely already occurred in the public system. Higher-achieving students and more affluent and involved families may have already chosen a public or private school that suits them, leaving "the rest behind." In fact, the U.S. Department of Education estimates that 59 percent of students currently attend "chosen" schools. But many of the remaining 41 percent lack the financial resources to move to a desired public school district or pay private school tuition. Can vouchers exacerbate the situation in a way that harms nonchoosing families?

As we have already seen, evaluations of the Milwaukee and Cleveland programs have concluded that the programs successfully targeted very low-income families, offering them opportunities they would otherwise lack. The average income of families participating in the Milwaukee program was \$10,860. In Cleveland, the mean family income was \$18,750; in New York, \$10,540; in Washington, D.C., \$17,774; and in Dayton, \$17,681. In Milwaukee, 76 percent of choice students were from single, female-headed households. In Cleveland, the figure was 70 percent. In Washington it was 77 percent, and in Dayton it was 76 percent. The standardized tests scores of choice students before they began private school averaged below the 31st percentile in Milwaukee, below the 27th percentile in New York, below the 33rd percentile in D.C., and below the 26th percentile in Dayton. In other words, choice students were generally performing in the bottom third academically. If this is cream, then none of us need go on a diet.

The most damaging thing one could say about all of these choice programs with respect to "creaming" is that they probably attract the more capable of the disadvantaged poor. But if this is "creaming," then Food Stamps, Temporary Assistance to Needy Families, and virtually all other antipoverty programs engage in it. These programs generally fail to serve the most dysfunctional of the poor, because these persons have difficulty taking full advantage of the programs designed to help them. This is normally seen not as an indictment against antipoverty efforts but rather as an unfortunate reality that all

programs must face. Like these other antipoverty programs, school choice programs can be designed to target disadvantaged populations, even if they do not always reach the most disadvantaged of the disadvantaged.

THE CHOICE CHALLENGE

But showing that school choice does not "cream" the best students does not address whether public schools respond effectively to the challenge of school choice. Does the quality of education improve for those who remain in traditional public schools? Studying this issue is difficult. None of the current school choice pilot programs is large enough or has existed long enough to allow researchers to detect with certainty the effects of choice programs on public schools. It is true that the Milwaukee public school district, home to the largest and longest-running choice program, has dramatically increased the number of public school choice programs to retain students who might be drawn to the private school choice program. The Milwaukee public schools have also promised parents that their children will read at grade level by the third grade or they can receive individual tutoring. The promise is advertised on billboards and the sides of buses to make people want to "choose" the public schools. This attentiveness to the needs of students in Milwaukee suggests that the school district has constructively responded to the challenge of school choice. But these reports from Milwaukee are little more than anecdotes and are not the kind of evidence that social scientists require.

The evidence from a new evaluation I conducted of the A-Plus choice and accountability program in Florida provides stronger systematic evidence that the prospect of vouchers inspires significant academic improvement in public schools. Under the A-Plus program, students in schools that had received two failing grades from the state would be offered vouchers to attend a private or a different public school. I compared the changes in test scores of Florida schools that had received a failing grade to those of other schools in the state and found that the test-score gains of schools facing the imminent prospect of vouchers were more than twice as large as the gains realized by the other schools. When Florida schools had to compete to retain their students under a choice system, they made substantial progress.

Some studies address the effects of school choice on public school improvement by examining whether areas with more choice tend to have higher student test scores than areas with less choice. Harvard economist Caroline Minter Hoxby examines the effect of choice on the quality of public and private schools by using a very innovative research strategy. Hoxby takes advantage of the fact that some families currently exercise choice by moving to different school districts within a metropolitan area or by paying the tuition to send their children to private school. Some metropolitan areas have more choices available than others because some have more school districts and more private schools. For example, Boston has several school districts in the metropolitan area (Boston, Brookline, Cambridge, Waltham, etc.), while Miami has only one school district for the entire county.

Hoxby examines whether the availability of more choices is related to higher academic achievement. As one would expect, given most economic theory, the metropolitan areas in her study with more choices available have higher academic performance at lower cost than do metropolitan areas with fewer choices available. A one standard deviation increase in the available public school district choices results in a 3 percentile point improvement in test scores and a 4 percent increase in wages for students upon entering the work force, all for 17 percent less per capita expenditure. A one standard deviation increase in choices offered by the private sector results in an 8 percentile point improvement in test scores and a 12 percent increase in wages for students upon entering the work force, without any significant change in per capita expenditure. Hoxby concludes: "If private schools in any area receive sufficient resources to subsidize each student by \$1,000, the achievement of public school students rises." Choice appears to help the non-choosers as well as the choosers.

A similar study that I conducted for the Manhattan Institute, called the Education Freedom Index, produced similar results. We measured the extent of educational choices currently available to families in each state, including charter school choices, subsidized private school choices, homeschooling choices, and public school choices. Controlling for per pupil spending, median household income, class size, and racial composition, states that offered more choices to families in the education of their children had significantly higher student test scores. When parents have more choices, schools pay greater attention to the needs of students because families may withdraw their children and the accompanying resources.

Clearly, we could have more direct and conclusive research than these three studies on whether school choice improves the quality of education for non-choosers as well as choosers. For that kind of evidence, we would need to have a number of large-scale voucher programs that were in existence for several years. We could compare the overall educational achievement in districts with large-scale school choice programs to comparable districts that did not have voucher programs to see if vouchers helped spur schools to improve. The evidence at this point certainly suggests that such large-scale choice programs are worth trying. We have seen that the mechanism by which some worry that choice will undermine the quality of public schools, the "creaming" off of the best students, has not occurred in the several choice programs that have been studied. And it is important to note that existing school choices, particularly the ability of wealthier families to move to different school districts or attendance zones, produce a considerable amount of "creaming" before voucher programs are introduced. We have also seen that the studies of school choice without vouchers show that when it is easier for more families to exercise such choices, school quality is higher.

PROMOTING CIVIC IDEALS

Even if some were convinced that school choice could improve academic achievement for choosers and non-choosers alike, they might still be wary of vouchers' possible effect on education's civic purposes. Our system of government-operated schools was developed to ensure the transmission of desired civic values to future generations, as

much as to impart economically useful skills. Oddly, however, while promoting democratic principles is a central mission of public schools, there is virtually no evidence to support the claim that government control of schools is necessary to achieve this goal. For many persons, even academics, the importance of government control of schools for promoting civic ideals is simply an article of faith.

Some recent studies, however, cast doubt on whether government management of schools is necessary or even desirable for promoting civic ideals. In one study, several colleagues and I analyzed responses from the Latino National Political Survey (LNPS), a national sample of adult Latinos. Subjects were asked whether they went to a public, private, or foreign school for each grade. They were also asked about their willingness to let members of their least-liked group engage in political activities such as running for office or holding demonstrations. Respondents in these kinds of studies most often identify the Ku Klux Klan as their least-liked group; Latinos most often picked gay activists. The more willing people are to allow members of their least-liked group to participate in these activities, the more tolerant they are said to be. Controlling for a variety of background characteristics, we found that adult Latinos who had been educated mostly in private school were more likely to be tolerant than those who had been educated mostly in public or foreign schools. The effect was moderate, but significant. Latinos who received their education entirely in private school were willing to tolerate the political activities of their least-liked group 50 percent of the time, compared to 39 percent for Latinos who never attended private school, holding all other factors constant.

In another study, headed by Patrick Wolf of the Brookings Institution, a sample of college students was asked similar questions about their willingness to allow members of their least-liked group to engage in certain political activities. Again, controlling statistically for differences in the students' backgrounds, the more time students spent in private school before college, the more tolerant they were.

Harvard University researcher David Campbell examined a large national data set of secondary school students that contained a limited set of tolerance items focusing on whether students would tolerate antireligious activities. Campbell found that Catholic school and secular private school students are more likely to be tolerant than are public school students. Secular, Catholic, and other religious private school students also outperformed their public school counterparts on other civic measures, including their experience with volunteering and their willingness to engage in public speaking or write letters on public issues.

Rather than being the bastions of intolerance they are sometimes imagined to be, private schools and religious schools appear to be more successful than public schools at instilling tolerance in their students. And remarkably, this private school advantage appears to last into the adult lives of their students.

RACIAL INTEGRATION

But does this tolerance in private schools extend to racial integration? School choice has a bad reputation on this issue because vouchers were endorsed in the 1960s by some southern segregationists who wanted to evade court orders to integrate schools. Vouchers do have this shameful history, but government-controlled public schools have a shameful history of their own, having been segregated by law in much of the country for almost a century. The desirability of school choice with regard to racial integration should be judged by the policy's merits, not its pedigree.

In the last few years, a number of studies have examined the effect of school choice on racial integration. In one study, I examined the racial composition of a random sample of public and private school classrooms collected by the National Education Longitudinal Study (NELS). I found that private school students were significantly less likely to be in racially homogenous classrooms. Fifty-five percent of public school students were in classrooms that were almost entirely white or almost entirely minority in their racial composition, while 41 percent of private school students were similarly segregated. When all families choose their schools, as they do in the private sector, more of their children end up in racially mixed educational settings than when most families were assigned to schools, as they are in the public sector. Choice appears conducive to integration, while government assignment to public school appears to encourage segregation.

In another study, several colleagues and I observed a random sample of public and private school lunchrooms in Austin and San Antonio, Texas, and recorded where students sat by race. We found that private school students were significantly more likely to be in racially mixed groups at lunch than were public school students. After adjusting for seating restrictions, school size, and student grade level, we found that 79 percent of private school students were in racially mixed groups, compared to 43 percent of public school students. Sitting in a racially mixed group was defined as having any one of five adjacent students being of a different racial or ethnic group. We found that religious private schools were better integrated than were secular schools, suggesting that the low tuition typically found at religious schools helped contribute to racial integration. If vouchers or tax-credits further reduced the financial barriers to private school attendance, integration in private schools might be even better.

We also found that public schools with more students from outside their attendance zones - that is, with more magnet or transfer students - had higher rates of integration. It appears that choice systems, where schooling is detached from housing, are better able to transcend racial segregation in housing patterns. Traditional public schools, on the other hand, appear to replicate and perhaps reinforce racial segregation in housing.

Recent work by Stanford economist Thomas Nechyba arrives at similar conclusions about segregation by income. Based on policy simulations, Nechyba finds that "by removing education-related incentives for high-income households to separate themselves from poor neighborhoods, vouchers introduce a desegregating force into

society. [And] by reducing housing prices in high quality public school districts and raising them in low quality districts, vouchers help more low-income families afford to live in areas with better public schools." In other words, by attaching schooling to housing, the public school system has created distortions in the racial mix and pricing of housing. Housing prices are artificially high in areas with desirable public schools and artificially low in areas with undesirable public schools, contributing to sorting of housing patterns by income (and race). By detaching schooling from housing, school choice makes it easier for wealthier families to stay in economically mixed neighborhoods. And by reducing the premium placed on housing in areas with good schools, vouchers make it easier for poorer families to move into those areas. It is no wonder that vouchers are most strongly supported by poor inner-city residents and most vigorously opposed by well-to-do suburbanites.

But these findings are based on examinations of existing private schools or policy simulations. What would the effects of an actual choice program be on integration? The Cleveland and Milwaukee school choice programs offer some answers. Following a strategy similar to that used to examine the data from NELS, I looked at whether choice students in Cleveland were more likely to attend schools that were racially representative of the broader community and less likely to attend racially homogeneous schools than were public school students. I found that nearly one-fifth of recipients of a voucher in Cleveland attend private schools that have a racial composition that resembles the average racial composition of the Cleveland area (defined as having a proportion of minority students in the school that is within 10 percent of the average proportion of minorities in metropolitan Cleveland). Only 5 percent of public school students in the Cleveland metropolitan area are in comparably integrated schools. More than three-fifths of public school students in metropolitan Cleveland attend schools that are almost entirely white or almost entirely minority in their racial composition. Half of the students in the Cleveland Scholarship Program are in comparably segregated schools. The amount of integration is not great in either system, but it is markedly better in the choice program.

When Howard Fuller and George Mitchell of Marquette University examined racial integration data from Milwaukee, their findings were similar to those from Cleveland. In 1998-99, they observed that 58 percent of Milwaukee public elementary students attended schools with more than 90 percent or fewer than 10 percent minority students. Only 38 percent of elementary school students at a large sample of Milwaukee Catholic schools were in similarly segregated schools. In 1998-99, Catholic schools accounted for more than half of the growth of choice students in the Milwaukee voucher program.

The public systems in Cleveland and Milwaukee, despite years of busing and other forced desegregation efforts, produce highly segregated schools. Desegregation has failed in those districts because white parents lack faith in the public schools' ability to manage integration successfully, and consequently have fled to the suburbs. The school choice programs in those cities allow families to transcend racial segregation in housing by selecting a racially mixed school in which they have confidence. And families are more likely to attend racially mixed schools by means of vouchers than through their ability to purchase housing in areas with desired schools.

Contrary to popular myth, private schools are neither bastions for intolerance nor segregation. In fact, private control of schools appears to promote the civic purposes of education more effectively than government control of schools.

A NEW CONSENSUS?

Reviewing the recent evidence on the effects of school choice leaves us with a few basic conclusions. First, all seven random-assignment studies and all three nonrandom-assignment studies found important benefits for the families that participate in choice programs. Second, choice does not appear to "cream" the best students. In all studies of existing choice programs, the evidence shows that participants have very low family incomes, predominantly come from single-mother households, and have a prior record of low academic performance. Third, the existing choice programs are not large enough nor have they operated long enough to address definitively the effects, positive or negative, on the public school system. However, the results from the A-Plus program in Florida suggest that the prospect of vouchers may induce public schools to improve. And Caroline Minter Hoxby's work finds that metropolitan areas with more choices available have significantly better outcomes at lower cost, and my work on the Education Freedom Index finds that states that offer more choices to parents enjoy higher student achievement. From these studies, we can conclude that choice is likely to improve public schools. Finally, private schools are more likely to be integrated and to promote civic virtues like tolerance than public schools.

Of course, considerably more research needs to be done on these questions before the conventional wisdom among the media and among academic and policy elites might be changed. This is especially the case since even gold-standard studies that reveal consistently positive benefits from school choice are likely to be interpreted in the least favorable light possible by choice opponents. But if the evidence we have so far is any indication, future studies will only confirm what we are already beginning to suspect: school choice works. Eventually, the weight of this evidence will make it hard to ignore or disparage.

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An Argument Against Education Vouchers In Texas

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Many advocates of school choice support the concept of vouchers – the direct use of public funds by families to select private, independent, or parochial school alternatives for their children. Some advocates simply prefer a wide range of choices for families, but more and more proponents want vouchers to serve as a ticket out of failing schools in which children are “trapped.”

With a voucher, a family could shop for a private, independent, or non-profit school using the same funds that otherwise would be directed to the public school. Of particular concern to voucher supporters are low-income and minority children in urban areas whose families lack the resources to pay for private education. Vouchers would enable these families to do what much wealthier families are able to do – to choose a private school for their children. In addition to the hoped-for escape hatch, there is an expected secondary benefit from vouchers: improvement of traditional public schools resulting from competition within a marketplace for educational services. According to economic theory, competition forces producers of goods and services to improve their products, differentiate their products to appeal to new audiences, or find ways to reduce the cost of production and thus the price of goods and services. If forced to compete, schools would have to improve performance, reduce costs, and cater to the tastes of families.

This article will argue that there is little substantive evidence in Texas for either proposition regarding vouchers. Texas has very few failing schools and those that do report low performance quickly improve. Texas students are not trapped in failing public schools. In addition, an existing system of public education choices provides alternatives that families can use to obtain different educational services for their children. As for the secondary benefit, there is scant evidence that a competitive market will be established with vouchers, given the very different circumstances under which public schools and non-public schools operate.

TEXAS SCHOOLS ARE NOT FAILING

On the day that the House Public Education Committee of the Texas Legislature first considered a “pilot” voucher initiative that would affect about 2,000 Texas schools,¹ the

Texas Education Agency issued a press release announcing better-than-expected results on a third-grade reading test administered during the first week of March 2003.² In fact, 89 percent of third-grade students passed the reading portion of the new and more difficult Texas Assessment of Knowledge and Skills (TAKS). As a point of comparison, if test results were recalibrated to equate to performance on the prior Texas Assessment of Academic Skills (TAAS), 92 percent of the students would have passed, an all-time high level of performance in third-grade reading. Results like this are not uncommon in Texas. Between 1994 and 2002, overall student performance on academic tests increased 29.7 percentage points and performance of low-income and minority students showed even more dramatic gains. Low-income students improved their performance by 39.2 percentage points, African American students by 43.9 percentage points, and Hispanic students by 38.6 percentage points.³ These results and other indicators such as results from the National Assessment of Educational Progress do not depict a failing system.

Texas schools demonstrate a pattern of persistent improvement. Over the previous ten years, Texas public schools have posted impressive performance gains, particularly for minority and low-income students. These results have been reported by Texas researchers as well as in national publications by respected public policy experts.⁴ A strong accountability system, annual testing of millions of students, and public progress reports (disaggregated by student group) combine to focus the attention of Texas educators on improving learning for all students. Low-income and minority students in urban districts, rural districts, and Rio Grande Valley districts have benefited enormously from attending school in a system that holds rising performance expectations and makes public both its successes and failures.

Texas urban schools are some of the finest in the nation. Houston Independent School District, for example, is winner of the prestigious Broad Prize for excellence. For the three most-recent years, Houston has had no school rated “low-performing” for more than one year. In 2000, 17 schools carried low ratings. In 2001, two schools had low ratings (none of those schools was on the list in 2000) and in 2002, seven had low ratings (none of those schools was on the list in either 2001 or 2000). The Dallas Independent School District has improved its standing in terms of student performance, fiscal management, and governance in the past two years under the guidance of a new superintendent. The district went from having 28 low-performing campuses in 2000 to having 15 in 2002. Of the low-performing campuses in Dallas, only three were low performing for both 2000 and 2002, and none was low performing for the three-year period of 2000–2002. The pattern of improvement is similar across Texas. In instances where schools have low performance, school districts take action to stimulate immediate change. Nowhere in Texas are school districts ignoring poor results or leaving children stranded in schools that fail them.

Despite the good news, there is no question that many people believe public schools have failed. A report by the RAND Corporation about vouchers and charter schools begins with claims about American dissatisfaction with public schools.⁵ A recently published book from the University of Texas Press identifies failure of policies “to achieve acceptable educational outcomes for inner-city students.”⁶ Numerous publications about

vouchers and charter schools open with similar declarations. The question remains why this belief is held in Texas, where public schools have improved over time while continuing to serve students with special learning needs or disadvantaged backgrounds.

PUBLIC EDUCATION IN TEXAS OFFERS MANY CHOICES

Texas families benefit from having several choice options within the public school system. Most large school districts offer intra-district transfers upon request.⁷ During the 1998 school year, five of the eight largest districts granted more than 56,800 within-district transfers.⁸ Across the state, more than 178,000 students participated in intra-district transfer programs in 1998. Urban school districts also offer magnet schools for students who want to focus their studies on a particular academic interest. In 1997-98, 54,000 Texas students attended magnet schools and another 114,000 students attended “open enrollment” campuses within their school districts.⁹ State law permits students to transfer to another public school in a neighboring district and allows school boards in adjoining districts to establish a student transfer agreement in which state funds follow the student to the receiving school district.¹⁰

Texas law recognizes and protects the rights of children to a high-quality education by providing a no-cost transfer policy for any child attending a school that is low-performing for two of any three consecutive years.¹¹ Students in such schools (irrespective of their individual performance) may elect to participate in the Public Education Grant (PEG) Program and attend school at another campus, either within the district or in another district. Receiving districts have a small financial incentive to accept such students.¹² During the 2001-02 school year, about 175 students took advantage of the PEG Program.

Texas charter schools (authorized by the State Board of Education with oversight by the Texas Education Agency) offer families another school choice option. Charter schools (also called open-enrollment charter schools) operate outside the traditional public school system and are governed by independent boards selected by the charter holder.¹³ Charter schools are exempt from many laws and rules governing public schools such as the requirement to engage certified instructional personnel and to provide minimum compensation for teachers. Texas charter schools must test students and participate in the Texas accountability system as a condition of maintaining their charters. In 2000-01, 37,369 students attended 160 Texas charter schools.

These schools, as a group, perform well below traditional Texas public schools. In 2001, 44 percent of charter schools were rated “low performing” and 61 percent were rated as needing “peer review” under the alternative accountability system established for schools serving unique alternative populations. In 2002, 17 percent were rated low performing and 22 percent of alternative charter schools needed review.¹⁴ Charter school students complete fewer advanced courses and have lower end-of-course passing rates for high school courses than students in traditional public schools. Charter school students also have lower attendance rates and higher dropout rates.¹⁵ As this performance information suggests, not all educational choices offer an improved academic environment for

students. In fact, it is interesting to note that families continue to select charter schools despite their overall lower performance.

Parents of students in charter schools express high satisfaction with the schools their children attend, claiming the academic environment is better.¹⁶ This finding of parent satisfaction has been consistent over five years of study of Texas charter schools. The evidence about performance shows just the opposite is true. Except for a few charter schools,¹⁷ the academic performance of charter school students lags well behind the state average and the performance of students in the neighborhood public schools that charter school students would have otherwise attended. Are the facts not known? Or do parents mean something different from measured performance and public accountability when they speak of school success and failure? So far, the research on parent choice decisions does not provide answers to those questions.

VOUCHERS WILL NOT ESTABLISH A COMPETITIVE MARKET FOR EDUCATION

Economists observe that competitive markets bring about higher-quality products and services when consumers can select what they want and search for the best value in products at the lowest prices. This market process rewards efficient production and yields higher-quality goods and services at lower prices for consumers. Social scientists theorize that the competitive market can produce the same result for educational services: better products at lower cost. In the simplest sense, a variety of competitors in the K-12 education sector will generate a wide range of options for families at prices that will be competitive. In this scenario, students and families are more satisfied with services and will benefit from better outcomes for students.¹⁸ One important book on educational choice and markets develops a line of reasoning that America's existing non-competitive system of public education actually "inhibits the emergence of effective organizations."¹⁹ The authors go on to note that democratically controlled schools and school districts naturally limit and undermine school authority that is needed for effective schools. The press for vouchers, then, emanates from the belief that they will diminish democratic control of schools, introduce competition, and serve as a mechanism for systemic improvement of all types of educational programs and institutions.

There is little reason to believe that vouchers and private choice options currently debated in Texas and elsewhere will help establish a competitive market for education – one in which profit-maximizing organizations will offer high-quality products efficiently and at lower cost. Numerous impediments to open competition virtually assure that no such market will exist or that it is even desired by voucher proponents. There are at least three major roadblocks to competitive education markets.

First, private and non-profit schools operate under few of the state and federal rules that govern public education. Voucher supporters seldom suggest that private and non-profit choice schools be subject to the requirements of state accountability systems, the No Child Left Behind Act, class size requirements, or other laws and rules. Competition on a

level playing field is impossible when one set of competitors must operate with numerous rules and another set of competitors is not subject to the rules.

Accountability systems and widespread public reporting of student performance, attendance, and graduation rates are not incorporated into the business operations of private and non-profit schools. Absent a reporting system using common measures, there is no way to determine how well private school students perform academically. In addition, it is not possible to determine if such non-governmental schools close the performance gap between advantaged and low-income children, if they raise the educational attainment of minority and immigrant children, and if they meet the educational requirements of students with disabilities. Because private and non-profit schools in Texas do not administer and report state academic test results, no direct comparison of students in the two systems is possible, nor is it contemplated by most voucher proponents.

Individual family satisfaction (whether founded on accurate information or not) will be all that is needed to keep a mediocre or low-performing voucher school in business. In contrast, public scrutiny, audits, open records obligations and other legal requirements shed light on public school problems and generate the concern needed to initiate change. Certain exclusive private and non-profit schools enjoy good reputations and would be likely to show success if measured by Texas academic excellence indicators. However, the current stock of such private and independent schools offers a limited supply of seats for additional students. Families currently in the public school system will be unlikely to gain admission to well-known, highly regarded private options. They will, instead, select from schools that arise from the opportunity presented by thousands of families with vouchers to spend. Experience with Texas charter schools suggests that would-be school leaders and education entrepreneurs are not all well equipped to start and sustain successful schools. For most families, vouchers will offer little promise for improved learning and educational experience. For families presently in private school or using a private voucher, a brighter picture emerges. They will enjoy the benefits of some public support for their private choices and, most likely, continue to attend schools in which they have already secured seats.

Some policy analysts assert that “democracy cannot remedy the mismatch between what parents and students want and what the public schools provide. Conflict and disharmony are built into the system.”²⁰ In contrast, private sector schools do not have to be all things to all people. They are not constrained to follow state laws and rules for education. To be successful they need only find a niche that permits them to appeal to families.²¹ “Schools can be clear, bold, and controversial in the practices they adopt as long as they attract a specialized clientele that values what they do,”²² claim two prominent researchers. Clearly, this would not be an option for traditional public schools.

ANOTHER PURPOSE FOR VOUCHER PROGRAMS

With a history of performance gains, recent demonstrations of strong performance on a new and more challenging third-grade test, and several choice options already available, it comes as a surprise to learn that Texas leaders believe Texas school children are trapped in failing schools and require tax-financed vouchers to enable them to attend private schools that will not be subject to testing, curriculum, or accountability standards established for public education. There may be other reasons guiding the efforts for change, and it may be helpful to explore other reasons for promoting vouchers.

If there is not a major academic performance problem in Texas, and if families in schools that do not perform as well have choices, and if there won't be a level playing field for competition between the public and the private education sectors, then what is the real motive behind the voucher movement? The motive appears to be a desire to end public education as currently organized or to radically restructure it. Voucher opponents may wish to convey to skeptics that they merely seek to improve the current public school system, but the writings of preeminent voucher supporters reveal a very different goal. Milton Friedman,²³ a Nobel Prize-winning economist, writes that privatization of educational services (supported with vouchers and family tuition supplements) is the "only way to make a major improvement in our educational system...Nothing else will destroy or even greatly weaken the power of the current educational establishment—a necessary prerequisite for radical improvement in our educational system."

Rather than strengthening the vast system of public schools in our nation through competition, leaders of the voucher movement seek to "destroy or greatly weaken" public schools.²⁴ Voucher proponents have little or no interest in quality controls to protect children and families or anything resembling an accountability system. Milton Friedman, again writing about vouchers, states, ". . . it is essential that no conditions be attached to the acceptance of vouchers that interfere with the freedom of private enterprises to experiment, to explore and to innovate."²⁵ In short, the motive is to end or substantially change public education. Ultimately, voucher pilots are intended to expand to serve all students.

Voucher advocates may also have in mind an overall reduction in education spending. For instance, Milton Friedman states, ". . . we must structure the [voucher] proposal so that it (1) is simple and straightforward so as to be comprehensive to the voter, and (2) guarantees that the proposal will not add to the tax burden in any way but will rather reduce new government spending on education."²⁶ A summary article on school choice published online by the Center for Education Reform, an organization that advocates school choice options, notes that "public schools react to competition by offering better schooling and reducing costs."²⁷ Other researchers offer evidence that private schooling is less costly than public schooling, suggesting that public education systems are inefficient and unnecessarily costly.²⁸

CONCLUSION

In contrast to using vouchers to change public schools in a fundamental way, public school advocates argue that public education serves Texas well and is poised to do even better. Texas has completely updated its curriculum standards to improve student knowledge and skills. Textbooks and curriculum materials are aligned with the standards. Tests have been revised to be more challenging. Texas educators expect that, initially, students will struggle with a rigorous curriculum and harder tests, but (if experience in the past ten years is a guide) schools and students will show substantial performance improvements every year. In fact, the expected low performance on new third-grade reading tests in 2003 did not materialize. As mentioned above, Texas students performed well and continue to show academic progress. In the coming years, Texas high school students will be required to take a high school curriculum that is more challenging. They will take a more challenging eleventh grade exit test that will include questions regarding English language arts, mathematics, social studies and science. Students in third, fifth, and eighth grades will have to demonstrate academic competence to be promoted to the next grade level. These are not the mechanics of a failing system, they are the improvement tools of a system that is performing well and seeks to continue to improve. Regarding public choice options, the Texas Legislature recently permitted the State Board of Education to authorize public universities to open charter schools. This effort will be more likely to result in sound academic institutions and strong student success in those university-based charter schools.

There is a bright future for Texas students in public schools. Those who want a different school setting, for whatever reason, have several alternatives to choose from. In contrast, vouchers will do no more than remove resources from public education and provide incentives for the development of unregulated, unaccountable schools for Texas children. The best chance for sustaining and enhancing the academic prospects for all Texas students is through the public education system.

ENDNOTES

¹ House Bill 2465 (Grusendorf), Filed March 12, 2003, 78th Session of the Texas Legislature.

² Texas Education Agency, "Texas third-grade students exceed prediction; 89 percent pass reading exam," Press Release, March 18, 2003. Available at <http://www.tea.state.tx.us/press/89percent.html>.

³ Longitudinal test results are available at <http://www.tea.state.tx.us/perfreport/aeis/hist/state.html>.

⁴ David W. Grissmer, Ann Flanagan, Jennifer Kawata, and Stephanie Williamson, *Improving Student Achievement: What State NAEP Test Scores Tell Us* (Santa Monica, CA: RAND, 2000), p. xxiv.

⁵ Brian P. Gill, P. Michael Timpane, Karen E. Ross, and Dominic J. Brewer, *Rhetoric versus Reality* (Santa Monica, CA: RAND, 2001), p. 1.

⁶ R. Kenneth Godwin and Frank R. Kemerer, *School Choice Tradeoffs: Liberty, Equity, and Diversity* (Austin, TX: University of Texas Press, 2002), p. 5.

⁷ Texas Education Code, Sections 25.031-25.034, authorize school districts to establish intra-district transfer policies.

⁸ Texas Education Agency, *Commissioner's Spring 1998 Survey on School Choice* (Austin, TX: TEA, 1998). Data are from Austin, Dallas, Houston, El Paso, and San Antonio. Other large urban districts did not respond to an informal survey conducted by the Texas Education Agency.

⁹ Ibid.

¹⁰ Texas Education Code, Sections 25.035-25.036.

¹¹ Texas Education Code, Chapter 29, Subchapter G. Public Education Grant Program.

¹² Texas Education Code, Section 42.157.

¹³ Texas Education Code, Chapter 12, authorizes charter schools. This section of law also permits traditional public school districts to establish charter schools and charter programs within the district. This within-district charters and programs do not have the freedom from state law and rule that charter schools have.

¹⁴ Longitudinal accountability data are available at <http://www.tea.state.tx.us/perfreport/account/ratingsxyrs.html>.

¹⁵ Texas Education Agency, *Texas Open-Enrollment Charter Schools, Fifth-Year Evaluation* (Austin, TX: TEA, 2002), pp. 11-15.

¹⁶ Ibid., p. 10.

¹⁷ A.W. Brown-Fellowship Charter School, Alief Montessori Charter School, Kipp Academy, North Hills School, Seashore Learning Center, and West Houston Charter are schools that have shown strong performance in the past three years.

¹⁸ Outcomes would be jointly determined in the market by what the family desires when it seeks education services and what the producer wants to produce. These outcomes would not depend on uniform tests and common standards set by a state legislature or central education agency.

¹⁹ John E. Chubb and Terry M. Moe, *Politics, Markets, and America's Schools* (Washington, DC: Brookings Institution, 1990), p. 23.

²⁰ Chubb and Moe, *Politics, Markets, and American's Schools*, p. 34.

²¹ Ibid., p. 55.

²² Ibid., p. 60.

²³ Professor Friedman presented invited testimony to the Texas House Public Education Committee on the subject of vouchers, March 18, 2003.

²⁴ Milton Friedman, "Public Schools: Make them Private," Cato Institute Briefing Paper No. 23. Available at www.cato.org/pubs/briefs/bp-012.

²⁵ Ibid, p. 23.

²⁶ Milton Friedman, "Public Schools: Make Them Private," p. 6.

²⁷ Center for Education Reform, "Frequently Asked Questions. Available at http://edreform.com/school_reform-faq/school_choice.htm.

²⁸ David Boaz and R. Morris Barrett, "What Would a School Voucher Buy? The Real Cost of Private Schools, Cato Briefing Paper No. 25. March 1996. Available at www.cato.org/pubs/briefs/bp-012.

The Enduring Crisis In Texas Education

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EDUCATION IN TEXAS: A STATE OF CRISIS – A WINDOW OF OPPORTUNITY

Texas can no longer rely upon natural resources to fuel our economy. The new economy demands that students learn to read, write and compute in addition to acquiring analytical and technical skills to make them employable adults. Much like modern businesses, the education system must be nimble and flexible to respond to quickly changing demands.

The future of Texas K-12 education policy will find the state struggling with three fundamental challenges. First, Texas must continue to increase the academic performance of students, equipping them with the new skills demanded by a high-tech economy. Second, a very large increase in the total student population will strain the state's budget past its limits. Finally, fundamental demographic change lends terrible urgency to the need to reduce racial achievement gaps.

RACIAL ACHIEVEMENT GAPS IN THE LONE STAR STATE

On February 16, 1999, the Finance Committee of the Texas Senate called the chancellors of the six largest Texas universities to testify and explain why there were so few African-American and Latino students enrolled. Having anticipated the question, the chancellors researched the question and were fully prepared to inform the committee of the abject failure of the state's public schools to prepare Hispanic and African-American students for college.

The chancellors presented the following figures: in 1996-7, there were just over 93,000 Hispanic 18 year olds in Texas. Of these, however, only around 54,000 had graduated from high school. Of those students who had graduated, only 13,529 had taken the SAT

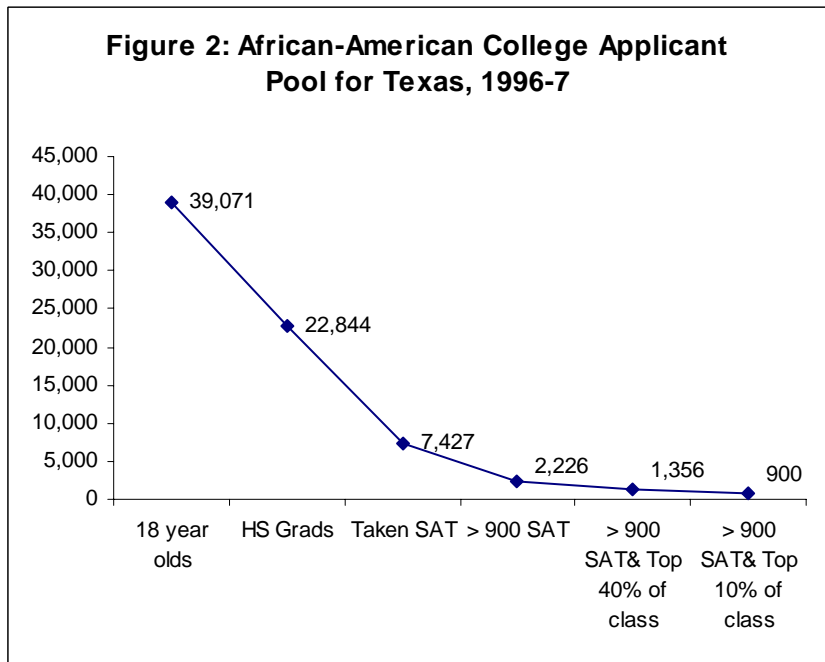
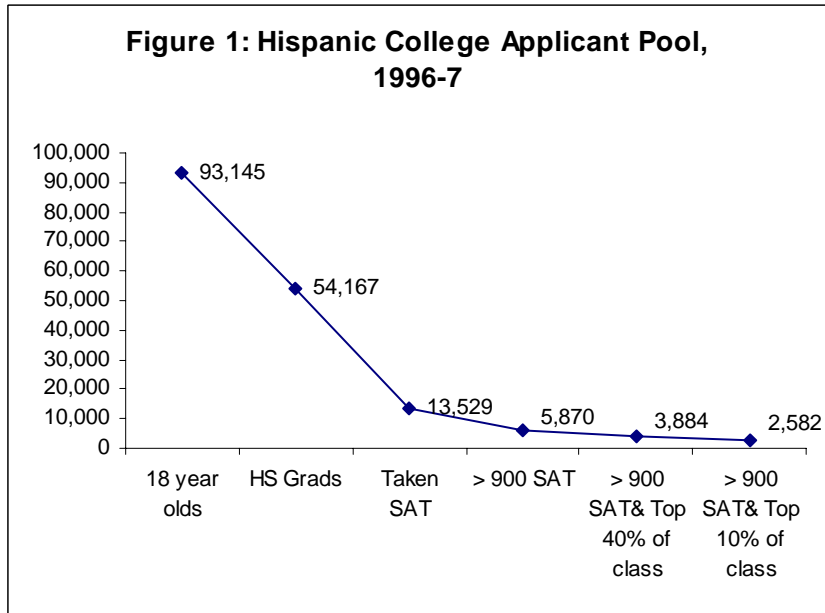
exam, meaning that only approximately 1 in 7 Hispanic 18 year olds apparently aspired to attend college.

Of those students who had graduated, and taken the SAT, only 5,870 had scored a 900 or above (a minimum score indicating college preparedness) and had graduated in the top 40% of their high-school class.

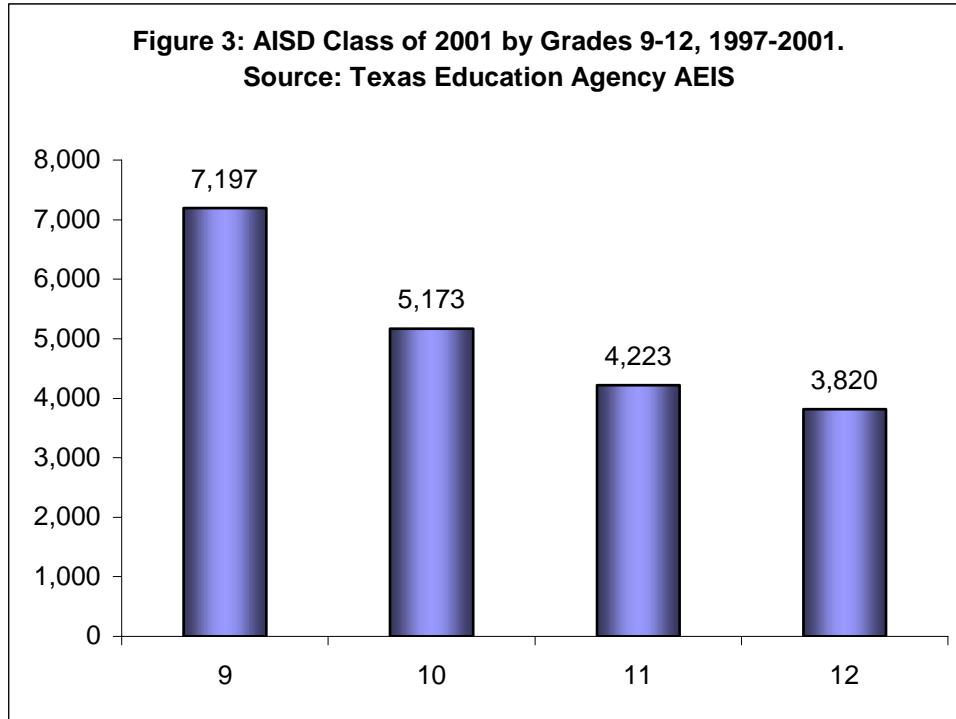
In short, with over 93,000 Hispanic students in Texas, fewer than 6,000 had been even remotely prepared to attend a college. Figure 1 presents the chancellors' data for Hispanic Texas 18 year olds. Figure 2 demonstrates that the situation is equally dire for African-American students in Texas.

The information presented in Figures 1 and 2 demonstrates that many Texas Hispanic and African-American students fail to graduate from high school, and those that do graduate are ill prepared to continue their education. This problem is especially acute in the large urban districts of Texas. Although creative accounting for students has allowed Texas school districts to claim relatively low dropout rates to the public, a simple analysis of student cohorts reveals a stunning dropout problem in our urban areas.

The Dallas Independent School district had 14,838 9th graders enrolled 1998-9 school year, and only



6,307 12th graders enrolled in 2001-2. In other words, between their freshman and senior years, DISD suffered a stunning loss of 8,531 high school students, implying a dropout rate of 57% between 9th and 12th grade.¹ Similar calculations for Houston, Fort Worth, San Antonio and Austin yield implied dropout rates of 46%, 44%, 47% and 49% respectively. All of these districts show positive enrollment growth over the last 5 years, implying that more students have moved into the districts than have moved out. Figure 3 presents data from the Austin Independent School District's class of 2001, which started high school with over 7000 9th graders but ended with just over 3800 12th graders.²



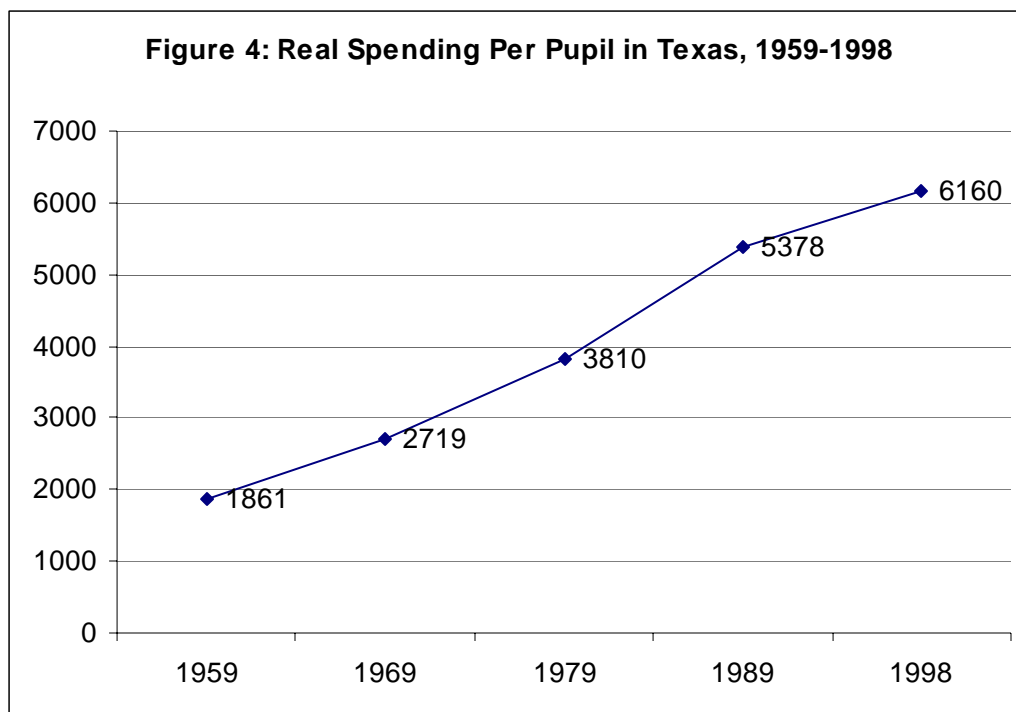
The Intercultural Development Research Association calculated a similar attrition rate for the whole of the state for the 2001 school year at 40%, with a 46% attrition rate for African American students, a 27% attrition rate for White students, and a 52% attrition rate for Hispanic students.³

Even these figures do not begin to capture the full scope of the failure to educate Texas children. Even among those students who do graduate and attend college, many require remedial courses to attempt to catch up on skills and subjects they should have learned much earlier. In the Alamo Community College District in San Antonio, for example, 90 percent of 1994 freshmen students required remediation in basic reading, writing and math, and one campus had an astounding 96.5 percent of incoming freshmen required to receive remediation. A cohort study of Texas college students who required remedial courses found that only 5% of such students had achieved a bachelor's degree after seven years.⁴

Putting The Sides Together: School Choice in Texas?

These disparities in university level results are symptomatic of a much deeper problem in public elementary and secondary schools education. The failure of children to graduate from high school and to take college entrance exams and/or to score well on college entrance exams can be directly attributed to a system of public education assigning far too many children to schools with long histories of academic failure.

Texans will not be able to spend their way out of this kind of academic performance. They have already tried it- and have little to show for it. As Figure 4 demonstrates, inflation adjusted spending per pupil has increased steadily in Texas public schools- from \$1,861 per pupil in 1959 to over \$6,000 in 1998. In other words, after factoring out inflation, Texas taxpayers had *more than tripled* spending per public school student.⁵ Unfortunately, there is little evidence that Texas public school students are actually learning more today than in decades past. School districts only spend 52% of public education spending in Texas on classroom instruction.⁶

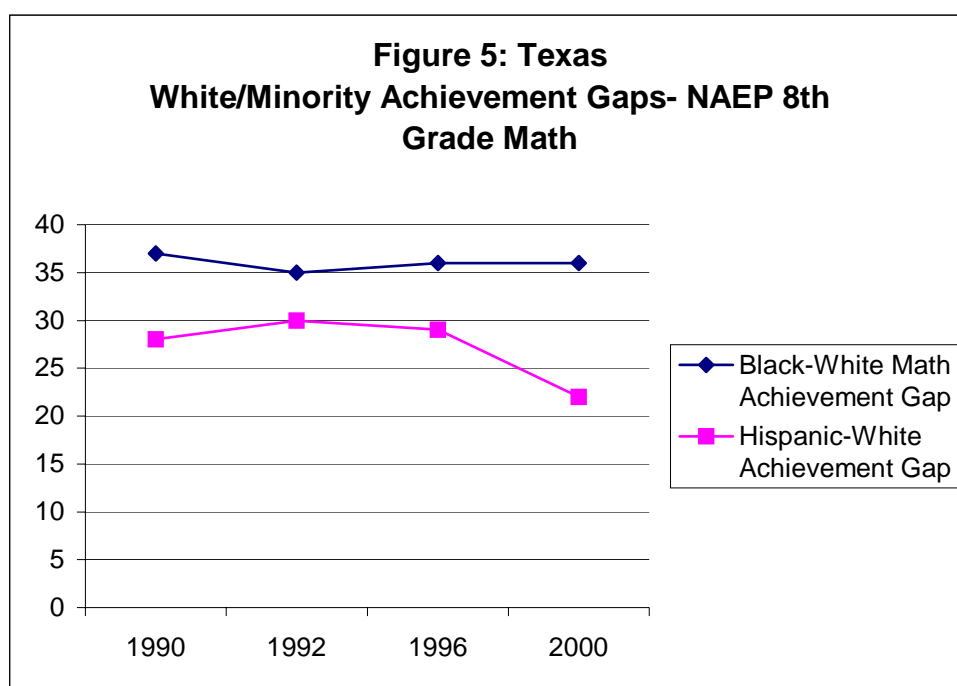


Large urban school districts in particular have demonstrated an almost complete immunity to meaningful reform despite receiving huge infusions of state and federal dollars. Low-income Texans in particular are caught in a vicious cycle: because they are poor, they cannot access the public or private schools that might enable them to prepare for a college education and to lift themselves out of poverty. Because they cannot do so, they are far more likely to stay poor, missing the opportunity for advancement.

THE RACIAL DIVIDE AND THE LONG TERM OUTLOOK

Texas public schools did see some limited progress in closing racial achievement gaps- but not nearly enough. For instance, Figure 5 below presents the results of the United

States Department of Education's National Assessment of Educational Progress Exams for 8th Grade mathematics between 1990 and 2000.⁷ The gap between White and Black and Hispanic students has been calculated by simply subtracting the respective average scores of the Texas Black and Hispanic students from the average score of White students from each of the four exams. As can be seen, African-American students made only negligible progress in narrowing their achievement gap with White students, while Hispanic students made some irregular progress. At this rate of improvement, however, the gap between Hispanic and White children would close in 36 years, while the gap between African-American and White students would close in 360 years. If we are satisfied with this pace of improvement, mark your calendars for the year 2036 and 2360, respectively. Other NAEP tests, such as 4th grade reading scores, show even less progress in closing racial achievement gaps.



College entrance examination scores have been flat or slightly declining. The state's average Scholastic Achievement Test (SAT) exam score dropped 5 points between 1997 and 2001, from an average score of 992 to 987. This drop was largely caused by an average 12 point decline in SAT scores among Hispanics, while average African-American scores declined by three points and average White scores increased by two points. The percent of students taking college entrance exams in Texas declined slightly during this same period.⁸

As if this picture is not grim enough, the Texas State Demographer, Dr. Steven H. Murdock points out that 78% of the 30 million *new* Texans between now and 2040 will be Hispanic. Dr. Murdoch projects that the Texas workforce will go from being 22 percent Hispanic to 45 percent by 2030. He also notes that, today, a record 25 percent of the Texas workforce has no high school diploma. Within thirty years, that number will be

an astounding 35 percent noting that a state cannot prosper with an uneducated workforce and that unless Texas does a better job of educating its minority population too many Texas citizens will remain paralyzed in poverty. Texas must come to terms with these facts and consider the social cost to taxpayers for failing to address the problem.⁹

PUBLIC SCHOOL OVERCROWDING ON THE RISE

School enrollment nationwide is approaching the all-time high of 49 million, which the baby boomers set in 1970. In 1998, 48 million students enrolled in public elementary and high schools.¹⁰ Texas is no different, experiencing rapid growth in its student population, with over 4.2 million students now enrolled. Over the past decade, public school enrollment has increased by 21 percent, and analysts expect the population to continue growing, reaching 4.4 million in 2009.

Looking further into the future, US Census Bureau estimates that the number of Texas children between the ages of 5 and 17 will rise to nearly 5.3 million in the year 2025, a 38 percent increase over an estimated 1995 population of 3.8 million.¹¹ To accommodate this dramatic growth in the school-aged population, Texas will need to build new schools and renovate existing ones, while attempting to avoid increases in taxes and public debt.

The bonded indebtedness of Texas school districts rose rapidly in the 1990s. At the end of fiscal 1999, Texas' public school districts had \$17.6 billion in voter-approved debt outstanding, an increase of \$9.4 billion since 1992. Thus, bonded indebtedness increased by well over 100 percent during a period in which average daily attendance rose by just 14 percent. This is a huge burden on Texas taxpayers.

The Permanent School Fund's (PSF's) Bond Guarantee Program backs issues of school debt to provide below-market interest rates. The State Auditor's Office estimates, however, that the Bond Guarantee Program will reach capacity by 2007.¹² After reaching capacity, the PSF will no longer be able to back school bond issues, increasing the interest costs for districts to build or renovate new schools. Increasing student enrollments in the public system will also lead to another type of overcrowding: larger public school class sizes.

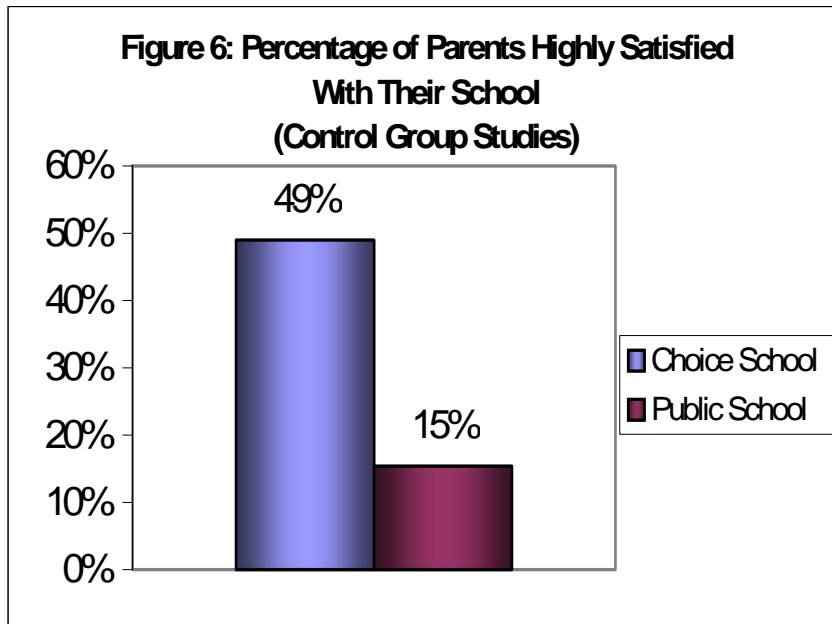
CAN TEXAS RISE TO MEET THE CHALLENGE?

The problems facing Texas schools- low achievement, racial inequality and overcrowding- are enormous, but not so large as the cost of not facing up to them. The state must find ways to continuously improve the productivity of education spending. More dollars alone will not solve Texas' problems; they must find ways to increase the "bang" for their education buck. In the absence of such a productivity revolution in education, Texas faces a future in which the skills of its workers do not begin to meet the needs of their economy, resulting in a poorer Texas with still greater inequality.

Every major statistical analysis performed note positive developments associated with school choice. Positive features include: higher standardized test scores for choosers and

non-choosers, choice program parents who express higher satisfaction with their child’s school, a reduction in the level of racial segregation in our schools, and an alternative to large school bond issues at taxpayers’ expense. Better yet, many of these evaluations have employed a study method (Control Group Design) which is of the highest possible quality, the same methodology medical researchers use to test the effectiveness of treatments and drugs. Furthermore, the weight of the evidence from non-control group studies reinforces the point that school choice programs have major benefits for students, school systems, and taxpayers. Most important of all: every school choice program studied has demonstrated the ability to increase student learning and parental satisfaction at a fraction of the cost of public school spending per pupil.

Numerous studies have found that parents who are allowed to choose the best school for their child express far greater satisfaction with their children’s schools when compared with parents unable to exercise choice. Figure 6 presents a combination of the overall satisfaction questions from the four control group studies discussed above. Given the chance to choose the school that they think best serves the needs of their children, parents display far greater satisfaction in every measurement of satisfaction. The results should hardly surprise us: after all, how happy would you be with your car, computer, haircut or anything else if you were not allowed to choose it? Choice programs have given the power to choose to low income parents who previously had little or no access to the best education available.



CHOICE PROGRAMS AND STUDENT ACADEMIC PERFORMANCE

Improved education represents the “holy-grail” for which all educational reformers profess to quest. Attempted government-school reforms have ranged from the silly (e.g. open classrooms) to the deeply controversial and possibly counterproductive- such as “New Math” and “Whole Language Reading.” As the “reforms” piled up, government-school spending raced ahead.

Putting The Sides Together: School Choice in Texas?

Unfortunately, despite decades of greatly increased spending, we have precious little to show for it in terms of academic performance. National real spending per pupil increased from \$3,500 to \$7,000 per student between 1967 and 1994 while during the same period, average SAT scores dropped 50 points.¹³ The Third International Math and Science Study found that the longer American children stay in school, the further they fall behind students in Asia and Europe in mathematical knowledge. American fourth graders tied with two other nations for 10th place out of 26 nations tested.¹⁴ American high-school seniors ranked near the bottom (19th out of 21 countries studied), ahead of only Cyprus and South Africa, in these international rankings.¹⁵

Against this backdrop of repeated failure, the evaluations of school choice shine out like a beacon. Every major evaluation of school choice effectiveness making use of the Control Group design has found significant academic gains for students participating in choice. This includes test score evaluations in Milwaukee, Washington D.C., Dayton Ohio, and Charlotte conducted by scholars from Harvard, Princeton, Stanford, Georgetown, and the University of Texas. Several programs could not make use of the Control Group design because they did not use a lottery or other random selection method to distribute vouchers, but evaluations using alternate methodologies have found gains in these programs as well.

Table 1: Test Score Evaluations of Choice Programs (Control Group Studies)	
Milwaukee - Greene, Peterson, Du 1999	
6 National Curve Equivalent (NCE) point benefit in reading and 11 NCE point benefit in math after 4 years.	
Milwaukee - Rouse, 1998	
1.5 to 2.3 NCE point gain in math per year in the choice program.	
Dayton - Howell and Peterson, 2000	
African-American students gained 7 National Percentile Rank (NPR) points in math after one year.	
New York - Peterson, Myers, Howell 1998	
Choice students in grades 2 through 5 benefited by about 2 NPR points in math and reading. Students in grades 4 and 5 gained 4 points in reading and 6 points in math after one year.	
Washington D.C. - Wolf, Howell and Peterson 2000	
African-American students in grades 2 through 5 gained 7 NPR points in reading, but students in grades 6 through 8 lost 8 NPR points in math after one year.	
Charlotte - Greene 2000	
Receiving a scholarship to attend private school improves scores on standardized math tests by between 5.9 and 6.2 NPR points, and between 5.4 and 7.7 NPR points on standardized reading depending on the type of analysis performed.	
Source: Greene (2000a) "A Survey of Voucher Results: Where We Are and What We Know" and Greene (2000b) "The Effect of School Choice: An Evaluation of the Charlotte Children's Scholarship Fund Program."	

HOW DOES CHOICE IMPACT PUBLIC SCHOOL DISTRICTS?

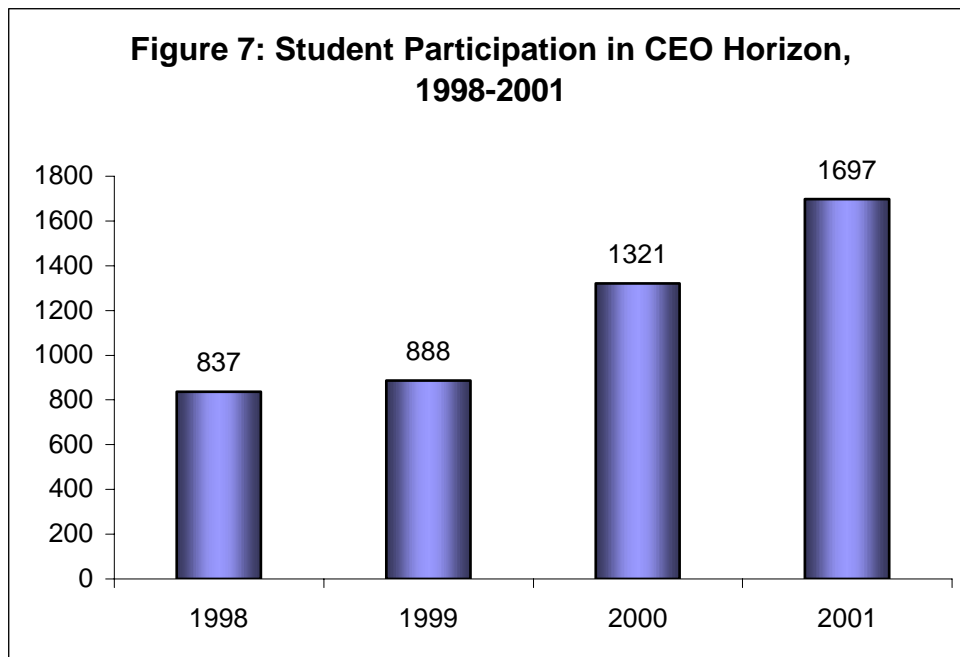
Opponents of choice express concern about children “left behind” by school choice, and conjure dark visions of the poorest of the poor stuck in schools that no longer have enough money to educate them properly. Defenders of the education status-quo claim that choice programs will “drain public schools of badly needed funds” leading to the “destruction of public education.” Supporters of school choice believe that competition for students will create powerful incentives for all schools to improve.

Given the information presented above concerning funding in Texas schools, these anti-school choice arguments lack credibility. One can hardly complain about draining students and money from districts without the facilities or teachers to accommodate their present enrollment levels. Districts lose the funding associated with a child who transfers, but they also do not have any of the expense of educating such children. Furthermore, choice programs have been designed to leave money behind with districts in order to cover fixed costs- making the financial bite of choice less than that of dropouts or transfers- including transferring to different districts or leaving for private or home schools.

Harvard economist Caroline Minter Hoxby has conducted a number of studies comparing the public school achievement scores of students in public schools facing competition from charter schools and vouchers (in Arizona and Milwaukee, respectively) to public schools in less competitive environments. Hoxby's results show that public schools facing higher levels of competition demonstrate significantly higher test scores at lower average cost. Hoxby's research also demonstrates that public school teachers earn higher salaries in competitive educational environments, a welcome and predictable consequence of greater competition for the services of talented teachers.¹⁶

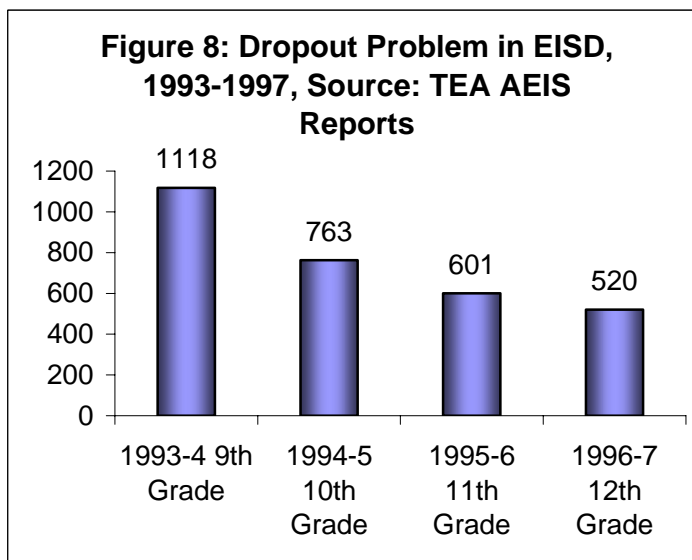
If the fears of opponents have any basis in reality, we should find evidence of choice causing terrible outcomes in the Edgewood Independent School District (EISD) in San Antonio. The Horizon Program has provided the option of a school voucher to the entire student population of the Edgewood district starting in 1998, providing an empirical test of both positive and negative theories of the effect of choice on public school students.

The Horizon program is the only school choice program in the country devoted to an entire school district. The program has no academic qualifying criteria, and is open to all permanent residents of EISD currently attending a public school (or entering kindergarten). Horizon did not employ a lottery for enrollment since all eligible students who apply receive a voucher. Figure 7 below presents the participation in the Horizon.



Enrollment in EISD declined from 14,142 students during the 1997-8 school year to 12,500 students in the 2000-2001 school year.¹⁷ Several factors impacted EISD enrollment during this period other than the Horizon program, including the relocation of a public housing project out of the district (costing the district 500 students), students otherwise moving into and out of the district, dropout rates, etc. After the commencement of the Horizon program, Edgewood announced that it would be the first district in Texas to accept transfers under a public school choice law.

Figure 8 gives an impression of the size of the dropout problem in Edgewood. These data, taken during the period immediately before the Horizon program, tracks the size of the Class of 1997 from their freshman to their senior years. The senior class had declined by 54% from the freshman figure and resulted in a major loss of revenue for the district.¹⁸ In short, EISD enrollment fluctuations have many causes besides the Horizon program. More



importantly, the dropout figures from that time show that Edgewood public schools were failing to provide their students with the credentials, skills and abilities to succeed in life.

RENAISSANCE OR DESTRUCTION IN EDGEWOOD?

How has EISD fared since the Horizon program began? Some claim that the program has harmed the district. For instance, the Dallas Morning News ran the following quote from Edgewood Superintendent Noe Saucedo, “We estimate the CEO program has cost the district \$5 million over the past few years...with that kind of decrease, we can't attract and retain quality staff.”¹⁹ Note, however, that while Edgewood receives fewer funds, it also has fewer students to educate because of the Horizon program, and loses none of the local funding despite enrollment fluctuations. Average teacher pay was \$4994 per year higher in 1999-2000 than in 1997-8, and the average number of teachers per pupil fell from 14.8 to 13.6 during this same period.²⁰

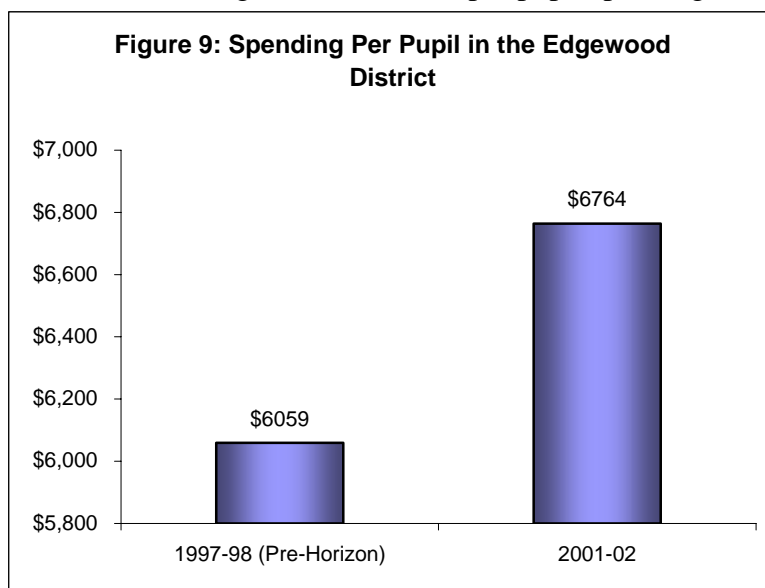
Total annual expenditures by the district have increased every year since the advent of the Horizon program despite lower enrollment. Figure 9 shows that per pupil spending in Edgewood increased after the advent of Horizon.

Total district expenditure in 1997-98 was \$85,695,522 (with 14,142 students) but was \$90,878,003 in the 2001-2 school year, with 13,435 students.

Academically, Edgewood ISD students have improved as well. The Manhattan Institute's Dr. Jay Greene conducted a study of Edgewood's school choice program,

finding evidence that the choice program improved Edgewood ISD achievement. Controlling for student demographics and school resources, Greene found that Edgewood's improvement in scores on the statewide Texas Assessment of Academic Skills test from 1998 to 2001 outperformed 85 percent of all Texas school districts.²¹

In short, Edgewood has improved their standardized test scores, have fewer pupils per teacher, and have higher teacher salaries than before the Horizon program created competition for students. Predictions of doom proved untrue upon even a cursory examination of the data. Further adjustments and challenges surely lie ahead for the district, but as of now, the district seems to be in the early stages of a renaissance, rather than sliding down the slippery slope to destruction.



CONCLUSION: A WINDOW OF OPPORTUNITY FOR TEXAS

The Texas legislature is waiting to hear if a special session will be called to reform the state's system of public school finance, and, with this, Texas lawmakers have before them a unique window of opportunity to change the current course of events. To do this, they must seize the moment for Texas history.

With the search for billions of dollars so the state can reduce local property taxes and maintain current levels of funding for public education, record overcrowding of public schools and huge bond issues burdening Texas property taxpayers, the legislature has an opportunity to change a system that is not working for so many of its citizens. School choice can be an important part of school finance reform for children in urban districts – especially low-income children - who have no access to other educational options. And since school choice does not impact the state budget in any way adversely, and considering that there is now enough evidence to justify a large scaled pilot program, the time to act is now.

The challenges facing Texas public schools are enormous: overcrowding, enduring racial achievement gaps, and a workforce unprepared for the demands of the modern economy. Texas desperately needs to increase the productivity of our enormous education budget, to relieve overcrowding in the public system, and to greatly increase the academic achievement of our most disadvantaged students. School choice addresses all of these needs- and thus is desperately needed by Texas families. The window of opportunity to change Texas history is now.

ENDNOTES

- ¹ Figures are from the Texas Education Agency AEIS Reports, available on the internet at <http://www.tea.state.tx.us/perfreport/aeis/>.
- ² While many factors impact the net loss of students, the fact that AISD lost less than 500 students between grades 1 and 4 during this same period indicates that the majority of the losses between grades 9 and 12 were primarily driven by dropouts.
- ³ Intercultural Development Research Association attrition rate by county statistics are available on the internet at <http://www.idra.org/Research/dout2001.htm#rates>.
- ⁴ Judson, Jeff. 1997. *The True State of Texas Education*. Available on the internet at <http://www.texaspolicy.com/>.
- ⁵ United States Department of Education *Digest of Education Statistics*, Table 168. Available on the internet at <http://nces.ed.gov/pubs2002/digest2001/tables/dt168.asp>.
- ⁶ See the Texas Education Agency's *Snapshot Report*, available online at <http://www.tea.state.tx.us/perfreport/snapshot/2001/state.html>.
- ⁷ NAEP test score results can be accessed by state on the internet at <http://nces.ed.gov/nationsreportcard/>.
- ⁸ Figures are from the Texas Education Agency AEIS Reports, available on the internet at <http://www.tea.state.tx.us/perfreport/aeis/>.
- ⁹ Burka, Paul. 2000. "Our Number Is Up: The State's Population Expert Says Texas Needs To Prepare for the Day When Hispanics Are the Majority, But the Politicians Aren't Listening." Article in *Texas Monthly*, October, 2002.
- ¹⁰ "School dropout rate rising; U.S. census data also point to enrollment growth," *Fort Worth Star-Telegram*, October 5, 1999.
- ¹¹ Census projections by age are available on the internet at <http://www.census.gov/population/projections/state/stpjage.txt>.
- ¹² State Auditor's Office. 2002. An Audit Report on Certification of the Permanent School Fund's Bond Guarantee Program, Report Number 02-038. Available on the internet at <http://www.sao.state.tx.us/reports/2002/02%2D038.html>.
- ¹³ Lee, Susan and Christine Foster. 1997. "Trustbusters." Article in *Forbes*, June 2, 1997.
- ¹⁴ United States Department of Education *Digest of Education Statistics*, Table 405. Available on the internet at <http://nces.ed.gov/pubs2002/digest2001/tables/dt405.asp>.
- ¹⁵ United States Department of Education *Digest of Education Statistics*, Table 407. Available on the internet at <http://nces.ed.gov/pubs2002/digest2001/tables/dt407.asp>.
- ¹⁶ Hoxby, Caroline. 2001. "The Rising Tide." *Education Next*, Winter 2001. Available on the Internet at <http://www.educationnext.org/20014/68.html>.
- ¹⁷ McLemore, David "Voucher Program Debated" *Dallas Morning News*, September 18, 2000.
- ¹⁸ We cannot be certain that dropouts account for all of this decline since students moving into and out of the district, transferring to other schools, etc. would certainly impact the figures. The decline in enrollment during the same period between 2nd and 5th grade, however, was only 8.5%. Students dropping out of high school certainly accounts for the majority of the more than six-fold increase in the enrollment decline rates between these two groups of students.
- ¹⁹ McLemore, David. 2000. "Voucher Program Debated: Educators, sponsor disagree on success." Article in the September 18, 2000 edition of the *Dallas Morning News*.
- ²⁰ Texas Education Agency, AEIS Reports, available at <http://www.tea.state.tx.us/perfreport/aeis/>.
- ²¹ Greene, Jay P. and Greg Forster. 2002. "Rising to the Challenge: The Effect of School Choice on Public Schools in Milwaukee and San Antonio." Available on the internet at www.miedresearchoffice.org.

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Vouchers: The Wrong Choice For Texas

Richard Kouri is the Texas State Teachers Association's (TSTA) information and technology systems and public relations manager. He assists in governmental relations and policy development. Mr. Kouri served as TSTA president and vice president from 1989 to 1997. Mr. Kouri taught English for 13 years in the Austin Independent School District.

At a time when the state is considering cuts in education funds and local property taxes have gone too high already, adopting a private school voucher plan simply makes no sense for Texas taxpayers or Texas children. Conservative Republicans, including George W. Bush and Rick Perry, have hailed the continuous improvements in student performance in our public schools, citing higher standards and accountability as the reason public schools are getting better.

Regardless, voucher proponents want to spend tax dollars we really cannot afford, all the while shamelessly arguing that vouchers will improve public schools as a result of “competition” as they “rescue” kids from failing schools. Never before has this rhetoric sounded so tragically hollow. For once, voucher proponents should just tell the truth like Milton Friedman did – you don’t care about public schools at all.

Our public schools are getting better without the “benefit” of competition from vouchers. Like Chicken Little, voucher proponents still cry that the sky is falling on our public schools, hoping that if they say it loud enough and long enough someone will believe them. The facts tell a different story – and Texans know better.

VOUCHERS: A DECADE OF PROGRESS WITHOUT THEM

Over the last decade, the Texas public schools have made tremendous progress. We have restructured Texas schools and revamped educational programs to better prepare students for college, the job market and life in the 21st century. The Texas Education Agency (TEA) reports a steady improvement in student test scores despite changes that have made standardized tests much more rigorous. Test scores are up, and the most dramatic gains have been for minority and economically disadvantaged students.

- In March of 2003, 89% of Texas third graders passed the reading section of Texas Assessment of Knowledge and Skills (TAKS) on the first try.
- The Council of Great City schools reported in March of 2003 that minority students in Houston have dramatically closed the gap on Texas Assessment of

- Academy Skills (TAAS) test. In eight years the gap between minority and white students has narrowed from 27% to 7%.
- 88.9% of all students tested in grades 3-8 passed the reading sections of the TAAS; 92% of all students passed the math section; and 87.9% passed the writing portion in the 2001-02 school year.
 - The proportion of Texas public school 8th graders who scored at the highest levels in math on the (National Assessment of Educational Progress) NAEP increased by 85% between 1990 and 2000.
 - Texas eighth-grade students outperformed students on both the national and international norm on the mathematics section of the 1999 Third International Mathematics and Science Study (TIMSS). Thirty-eight countries and thirteen U.S. states participated in the TIMSS study.

Improvements in our schools haven't been easy and haven't happened by accident – and we did it without the help of vouchers. It took a sustained effort by both Democrats and Republicans who care about our public schools. Ann Richards and George Bush, Paul Sadler and Bill Ratliff, Pete Laney and Teel Bivins—all of them have contributed to creating a system that is based on strong state standards, accountability, and equitable funding.

Is there still room for improvement? Of course. Do we have schools that are in need of substantial assistance? Of course. Will vouchers help address either of those issues? Of course not.

VOUCHERS: BAD FOR PRIVATE SCHOOLS, TOO

Giving public tax dollars to private schools will require private schools to substantially change the way they operate. Any true conservative would surely demand public accountability as a requirement for the expenditure of public tax dollars. Otherwise, vouchers would result in substantial public tax dollars going to pay for children to attend private schools without any accountability for how those tax dollars are being spent. At a time of budget crisis, we cannot afford such fiscal irresponsibility.

Additionally, a state funded voucher program represents an intrusion of the government into the private sector. Private schools are what they are because they can select which students they want and which ones they don't. They can teach a curriculum consistent with a selected religious belief or educational philosophy. This is possible because private schools do not take any public tax dollars. Unless we provide vouchers as a blank check, along with public tax dollars comes legislative scrutiny and state oversight.

VOUCHERS: FALSE HOPES WOULD LEAVE MANY CHILDREN BEHIND

The suggestion that vouchers would have a positive impact on low performing schools is a favorite tactical political argument of the pro-voucher lobby. Unfortunately, vouchers would make the problem worse, not better. Without question, problems still exist in schools with an overwhelming majority of students who come from low socio-economic

backgrounds. There is no consistent evidence that vouchers improve student achievement -- for those who use them or for those remaining in public schools.

We do know what makes things better in low performing schools: smaller class sizes in the early grades; putting certified teachers in every classroom; funding for expanded early childhood education programs; parental involvement programs; and substantially increased resources for additional technology for students and faculty. These things take time and resources, but the evidence shows they work.

Vouchers can only make things worse for low performing schools. The students most likely to use a voucher would be those whose parents are already the most involved in their child's education. Such parents are a valuable resource to any school, and their loss would not help neighborhood schools improve. In addition, schools lose revenue as students leave to go to other schools, reducing available resources for the very schools that need more. We need to provide children in low performing schools real options instead of offering a few children the false hope of vouchers.

Texas leaders should be working together to reach the goal of eliminating low performing schools. The legislature should focus on making sure that we have the resources to make every public school a quality public school. That job would be much tougher should our limited resources be diverted to a voucher program.

VOUCHERS: COULD LEAD TO PROPERTY TAX INCREASES

Texas school property taxes are among the highest in the nation, and vouchers could make the problem even worse. Unlike Texas proposals, the Milwaukee, Cleveland, and Florida voucher systems pay the costs for students who were never in public schools. In Cleveland, for example, only about one-third of voucher-bearing students ever attended public school. Under the proposals being considered by the legislature, vouchers would go to children who now attend public schools. And when students leave public schools to go to private schools, state money for local school districts is reduced as ADA (average daily attendance) falls, but the cost of operating the public schools is not reduced.

Twenty or 30 voucher students leaving a public school would not affect the cost of running that school. The same number of teachers would be needed to offer the same courses. The security and physical plant needs would remain the same. But state money for local schools would be reduced. Local school districts would then face two options - make up the revenue by raising local property taxes or reduce services to schools that need more resources, not less.

VOUCHERS: CHIPPING AWAY AT A FOUNDATION OF DEMOCRACY

Although proponents of vouchers use terms like "pilot programs" to sell the idea, the truth is that they are not interested in studying the impact of vouchers on instruction and learning. There is no reason for Texas to experiment with a pilot program because several districts around the country have already implemented voucher programs. Some districts

set up true pilot programs for the purpose of studying the impact of vouchers. There is no evidence that vouchers improve overall student performance.

In Texas, when the rhetoric is stripped away, the voucher lobby's agenda is obvious: replace our system of public schools with private schools funded by public tax dollars. In that context, any voucher discussion must consider the long-term impact of that agenda.

Beyond the staggering cost of a full-scale voucher scheme, the role of public education in a democracy is far too important to overlook. To quote Thomas Jefferson, "A system of general education, which shall reach every description of our citizens from the richest to the poorest, as it was the earliest, so will it be the latest of all the public concerns in which I shall permit myself to take an interest."

In our democracy, education is the key to opportunity for any person willing to work hard enough to succeed. A quality education should be available to all children. We cannot afford the price of making education available at a price - any price. Public education is a shared responsibility that prepares each generation for the challenges we will encounter as a state and nation.

The present search for additional state revenue for funding public schools points to the obvious fact that we cannot afford vouchers this year. Our basic democratic principles point to the fact that we cannot afford vouchers as long as we believe we should leave no child behind.

School Choice Fallacies

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INTRODUCTION

A nation at risk¹ needs real K-12 education reform, but significant fallacies hobble the school reform debate. Since parental choice may be a critical element of K-12 reform, it is especially unfortunate that most of the public statements about parental choice are wrong, misleading, or irrelevant. The underlying fallacies produce major policymaking errors, and they are a major reason why choice advocates make statements that reinforce the status quo's resistance to fundamental change. Choice advocates created some of the fallacies, and they are partly responsible for the persistence of all of them. The sub-section titles state fallacies.

COMPETITION ARISES WHENEVER ANY PARENTS CAN CHOOSE

Countless public statements and publications assert that limited programs like charter schools, vouchers for children from low income families or for children enrolled in so-called low performing schools, and public school choice create competition.² Even modest tax credits, and partial tuition vouchers, allegedly create competition. Such policies can foster some limited rivalry, but not the real competition and market forces that exist in most of the economy.

Real competition is more than potential rivalry. In a competitive setting, market shares are entirely contestable, the government doesn't favor particular producer or consumers, and flexible prices reflect market forces. The U.S. doesn't have any K-12 systems with those characteristics. The first two key elements overlap. The public school monopoly on tax money (discrimination against private school users) reduces contestability by leaving private schools in a precarious financial situation. Public schools don't charge tuition, so private schools must compete with a better-funded 'free' service. To achieve contestability and non-discrimination, public funding per child must not depend on school ownership.

Price change is a critical process. Our current education system lacks the critical price movement process because the 88% of K-12 children that attend public schools pay a fixed tuition-price of zero. It's a major handicap. Price movements signal constantly changing production costs and buyers' priorities. For example, higher demand calls

forth the needed industry growth through a price increase. The linkage between price and profit leads to expansions, and an influx of new producers. The supply increase prevents over-expansion by at least partially reversing the initial price increase. Because this critical element of competition is rarely acknowledged, school choice advocates show little inclination to fight for its inclusion in their reform proposals. Among the existing programs, only the tiny Cleveland program [barely] allows market forces some role in setting tuition levels.

Careless references to 'competition' are a major source of confusion. References to competition may create expectations that limited programs cannot fulfill. Disappointment could reduce the political feasibility of proposals that would actually foster genuine competition.³ Even some economists mistakenly assert the presence of competition. *When Schools Compete: A Cautionary Tale* by Edward Fiske and Duke economist Helen Ladd⁴ is the best example. Though their assertion that New Zealand's public schools compete is really an imaginary tale, it is often cited as trustworthy evidence of what competition would produce. The New Zealand system contains none of the key elements of a competitive market, but a *Wall Street Journal* editorial by former Labor Secretary Robert Reich⁵ and an *Education Week* editorial by Thomas Lasley and William Bainbridge⁶ cited the Fiske-Ladd imaginary tale as strong evidence of what 'competition' would mean to K-12 education. Harvard's Jennifer Hochschild lauded the relevance of the Fiske-Ladd findings to the public and academic interest in "market dynamics" and market experiments.⁷ R. Kenneth Godwin and Frank Kemerer cite Fiske-Ladd as evidence of voucher program effectiveness.⁸ Fiske-Ladd claims like "New Zealand's foray into the realm of *full parental choice and competition* [emphasis added]" (p. 250), "a system of parental choice and *market competition* [emphasis added]" (p. 292), and "self-governing schools functioning in a competitive environment" (p. 297) defy their own findings and textbook descriptions of competitive markets. Genuine competition requires multiple, independent sellers and freedom (low barriers) to enter the market, but New Zealand's government is virtually the only 'seller' (96.5% of K-12 is government-run - a higher government ownership rate than the U.S.). The government strictly controls the supply of schools, and the government doesn't close unpopular schools, or duplicate the practices of the popular schools. The authorities have forced greater use of unpopular schools by partially re-imposing attendance zones. The central government stifles much of the specialization that a truly free market would produce through demanding National Education Guidelines. There are no profits, no market-determined prices, and enrollment is only one determinant of each school's funding.

Economist Scott Milliman's analysis of chartered school activity repeats a common mistake. He said that Arizona's charter school law had "initiated a free market in public education."⁹ But the government regulates market entry. The state controls charters and their 'competitors'. A dominant 'producer' - traditional district public schools - has a nearly 90 percent market share. Milliman reached the conclusion that chartered schools are "market-driven," even though charter schools are largely non-profit operations that cannot turn away customers or even decide the price of their services.

EVERY PARENTAL CHOICE PROGRAM IS A MEANINGFUL EXPERIMENT

None of the existing parental choice programs contain all of the key elements of the genuine competition catalyst that would¹⁰ transform the system. Most current programs contain none of the key elements, and many of them don't even deserve their parental choice label. For example, in the just-enacted Florida program, the government decides what parents should be satisfied with. If the government decides that one of its schools is 'low-performing' – schools escape the 'low-performing' designation with as little as three 'D's and one 'F' in four years – parents can use a private school provided it can do better with about half the money per child.

Choice programs that move a few of the current system's worst victims to another part of the system dominate the debate. The children that move benefit, but the system's underlying problems remain. Such limited lifeboat operations reinforce the false premise that most schools are okay (another fallacy discussed in more detail below). Tinkering at the margins sanctifies the system's debilitating critical elements. The limits on transfers also diminish the gains of the new private school users, and they may harm some of the original private school users.

Since 'experiment' means (Webster's dictionary) 'tentative procedure', none of the well-known parental choice programs qualify. A 'Nation at Risk' needs system transformation, not limited movement within the system. Programs that achieve only the latter are not relevant tentative procedures. The Milwaukee and Cleveland low-income voucher programs contain too many restrictions to foster the market forces needed to transform a school system. Some freedom, and a helping hand for thousands of children is wonderful, but restriction-laden programs are not 'experiments.' In addition, since choice programs are in jeopardy, expired, or virtually unchanged, limited programs appear to be poor starting points for incremental change. If Milwaukee's modest programmatic expansions are examples of incrementalism working, it works very slowly. The voucher program is over a decade old, and most of the Milwaukee program's key, debilitating restrictions are still in place. And the Milwaukee Public Schools are still so bad that they barely avoided a threatened June, 2000 state takeover.

Perhaps the worst effect of all the hoopla about tiny, restriction-laden alleged "experiments" is what they taught many parental choice activists and citizens – fortunately, according to a recent poll, not many paid attention¹¹ – about parental choice and the K-12 problem. Restriction-laden programs are widely misperceived as legitimate general tests of voucher systems, and parental choice generally. The pre-occupation with moving a few disadvantaged children within the current system makes it appear as if that's the only use of parental choice programs. This quote from a San Antonio *Express-News* reporter (Jeanne Russell, 1/5/99, p 1, 14) is typical of what most choice advocates and informed citizens think about parental choice.

"Supporters cast vouchers as a lifeboat for poor parents saddled with dysfunctional public schools."

That belief underpins the fallacies that private and suburban public schools are good, and that the current system only harms low income kids.

ONLY A FEW SCHOOLS ARE BAD

A major fallacy is the assumption that the better schools are good schools. Sadly, the natural assumption that top schools are good is false. The recent international comparison of students' math and science skills is the latest evidence that our best students are not very competitive.¹² No state has more than 41 percent proficiency in any subject at either grade level tested.¹³ College professors complain about the terrible basic skills level of their entering freshmen. Former Assistant Secretary of Education Chester Finn said, "We are on various positions on the cellar stairs. Even the best students did miserably. At the top scoring schools, the average was well below grade level."¹⁴ Ninety-four percent of the nation's 11th graders could not compute how much a borrower would owe after a year on a one-year, \$850 loan with a 12 percent interest rate. Only 6% of the 11th graders knew to multiply \$850 by 1.12, or to find 12 percent of \$850 and add it to \$850. There aren't very many good schools if 94 percent of the nation's high school juniors can't make that calculation.¹⁵ In a 1992 survey of adult literacy, just 11 percent of U.S. high school graduates could restate in writing the main point of a newspaper article.¹⁶ No wonder businesses have to teach basic skills to entry-level employees.

Major deficiencies in suburban public schools are commonplace and well documented.¹⁷ Apparently, they are often hidden¹⁸ from a school's clients. A majority believes that the well-publicized deficiencies of public school systems don't exist in their own schools.¹⁹ According to the Manhattan Institute's John Miller, it's a key reason for the lopsided defeats of voucher plans. "Most suburbanites are happy with their kids' school systems. They admit the country's deep education crisis, but they just don't believe the problem affects them personally."²⁰

The fallacy that top schools must be good schools is dangerous for at least two reasons. First, it favors small changes in the status quo and says that we should copy the better schools. Transfers to better schools are seen as rescues, even though the transferees often still end up in inadequate schools. That's because the better schools are typically still not very good. This fallacy produces parental choice programs like the recent Texas voucher proposals, and the just-enacted Florida program²¹ that focus on children enrolled in low-performing schools. But the problem is a low performing system, not isolated low performing schools.

Second, parents able to relocate or who can afford private school tuition acquire a false sense of security. Families that can choose from the entire existing school menu quite often still end up using bad schools. A better suburban school is not necessarily a good school. More often than not it is still inadequate. Former Assistant Secretary of Education Chester Finn said, "Millions of middle class children [are] emerging half-ignorant from suburban schools."²²

Most of the private sector is also inadequate. The public and private sectors have similar standardized test scores. Parents often prefer relatively resource poor private schools to their better-funded, assigned public school, but again a better school isn't always a good school.

ONLY LOW-INCOME KIDS NEED HELP

The low-income inner cities of large urban areas do have the worst schools. That convinced many people that only the choices of the poor are inadequate. Unfortunately, that's false.²³ The fallacy is clearly evident in conclusions that "the most significant determinants of educational success are the student's socio-economic background and familial context."²⁴ Some people believe that schools are largely blameless for academic deficiencies because many studies find that "the most significant determinants of educational success are the student's socioeconomic background and familial context."²⁵ "Social measures that target the home and neighborhood environments of disadvantaged children might prove more effective than educational remedies."²⁶ But statistical analyses only explain data variability. The proper interpretation of such findings is that schools' impact on intellectual growth is consistent; consistently bad since academic outcomes are appalling where socio-economic conditions are the worst, rising to dismal where socio-economic conditions are good.

The fallacy is also evident in the discussion of vouchers. James Norton offered this general description of voucher programs: "School vouchers provide opportunity for a selected group of students."²⁷ Norton was not describing a particular program. He thought he was re-stating a stylized fact about parental choice through vouchers. Reflecting identical thinking, Greg Vanourek made this generalization about vouchers: "Vouchers allow low-income families to send their children to the school of their choice."²⁸ Paul Hill said we need to "Empower educators who want to create new options for poor children."²⁹ "Why Vouchers are Needed for Poor Children"³⁰ is the title of a Denis Doyle report to the House Appropriations Committee. In addition, according to Joseph Viteritti: "The long-term goal must be to enhance the educational options available to disadvantaged populations so that their opportunities more closely resemble the opportunities that pertain to the middle class."³¹ Jonathan Kozol said choice is "an escape hatch for a few students, instead of a way to improve the school system."³² The prevailing view is that "tuition stipends [vouchers] would give poor families trapped in bad public schools more choice."³³ Tim DeRoche began an *Education Week* editorial³⁴ about how competition would help teachers by asserting that "there are many good reasons to support school vouchers for poor families," even though limiting a program to poor families would curb many of the teacher benefits DeRoche promised. Similar statements are common. Even Milton Friedman thinks that vouchers would improve the schooling available to the middle class only "moderately."³⁵

Like the previous fallacy, the effect of this one is to narrow the debate to limited parental choice programs. But the caps on participation that result from limiting choice to low-income families would prevent the realization of the competition that could drastically improve the school choices of virtually every family.³⁶ Quentin Quade's eloquent attack on the propensity to cap participation in parental choice programs deserves much more attention.³⁷

"There is no logic which says school choice should stop at any particular income level or any municipal boundary line. One thinks in such incomplete categories only if still an intellectual captive of the status quo, perhaps seeing the virtues of choice just as a corrective of today's worst educational results, rather than as the natural, parent-serving social policy it is when seen in its own right. That, no doubt, is why some of today's most-heralded advocates of school choice continue to speak of it as 'good for the poor but not for all.' There is no true line between rich and poor as regards the merit of school choice."

FULL-TUITION VOUCHERS ALWAYS REMOVE FINANCIAL PENALTIES

Full-tuition vouchers could end discrimination against private school users. But none of the rare full-tuition voucher programs or proposals do so. Private school users receive less public funding, usually much less.³⁸ Even Quade's eloquent plea for parental choice without financial penalty incompletely addresses the discrimination issue.³⁹ His no penalty definition permits less support for private school users (discrimination) – say \$3000 per voucher versus \$7000 per public school student – if the voucher covers the tuition fully. But private school students still suffer a huge financial penalty. Discrimination reduces their schools' access to resources. Discrimination against private school users also mutes the incentive to compete. The incentive declines further if the tax dollars that follow transferees don't come from their school district's budget.

Laws that require private schools to accept public funds as full payment (an add-on ban) magnify the effect of discrimination against private school users, and further stifle competition. They limit choice because it means that it will cost parents a lot to buy slightly more than public funds will allow. For example, suppose a voucher is worth \$3000, and private schools can cash them only if they accept them as full payment. A \$3000/year private school is then 'free' in the same sense that a public school costs families only their school taxes. But slightly higher quality private schooling would cost families thousands of dollars. Without the option to add on, a \$3001 per year private school would cost families \$3001 more than a \$3000 per year private school. A \$3001 leap in buyers' education outlays to buy another dollar's worth of services creates a virtual price (tuition) ceiling at the tax dollar amount.

Choice advocates must insist that parents have the right to use their share of public funds to buy more education than the taxpayer-funded amount will buy. Sadly, they are often silent or opposed on this critical issue. Daniel McGroarty said banning add-ons is "a sensible move to prevent the ratcheting up of tuition costs;"⁴⁰ a common

advocate view that betrays confusion about economics and foregoes reform in favor of limited escape. The long-term net effect on tuition of the greater demand for private schooling followed by intensified competition, is uncertain. Allowing add-ons might only prompt some temporary tuition hikes. Competition could force many schools to accept the voucher as full payment; a much different effect than if the government requires it.

The interest in stable private school tuition conflicts with plans to reform the system. Increased funding per child is necessary for private schools to expand facilities and to become more competitive in teacher labor markets. Tuition revenues don't cover the costs of many current private schools. Unless they can earn more per student, private schools may not be able to expand enrollments much beyond the unused capacity of existing facilities.

There are seven major reasons to allow add-ons.

1. Equity: Everyone pays school taxes, so everyone should enjoy the benefits even if they want to buy more schooling than their share of the tax dollars will let them.
2. The freedom to add-on expands the choices, and add-ons harm no one. Some children learn more without other children learning less, and society benefits when anyone learns more.
3. Add-ons create a more level playing field between public and private schools.
4. Add-ons increase K-12 funding without higher taxes.
5. Parental involvement: Parents choose more carefully when there is an out-of-pocket cost.
6. Efficiency: **Price movement is a primary market mechanism.** Without add-ons, price (tuition) changes can only reflect political forces. When parents cannot add on, prices cannot move to reflect market forces. **Price movement is how markets signal relative scarcity, motivate producers and consumers, and allocate resources. A price control - the effect of prohibiting add-ons - is an extremely debilitating, anticompetitive factor.**
7. Innovative practices are often quite expensive at first. Unless educators can charge an add-on, many innovative practices will never get off the drawing board.

Financial sanctions exist unless children get the same public funding in non-government schools. And since public funds cannot pay for every education option, the freedom to add on enlarges the menu and it encourages private spending. Freedom to add on enhances consumer vigilance, and it creates the critical price change mechanism. Phasing in non-discrimination and permission to add on is acceptable if the final outcome is certain at the outset.

CHOICE WILL OCCUR FROM THE EXISTING SCHOOL MENU

What I call the static world fallacy often cripples reform debates. Some people merely exploit the fallacy. The true believers are intellectual captives of the status quo. They see the excess capacity of existing schools as the upper limit on private school participation in parental choice programs. They cannot imagine a system much different than the current one. They equate the public education goal with the public school system. They assume that most children will always attend public schools organized into districts, so that anything bad for the public school system is ultimately bad for children. They assume that the private sector will stay mostly non-profit and church-run, with a few expensive, elite schools.⁴¹

The February 1998 *Mobilization for Equity* newsletter plainly reflected the fallacy. Private schools don't have "enough [empty] seats. The majority of students will be forced to remain in the public system *regardless of how voucher programs are implemented* [emphasis added]."⁴² That's dangerous nonsense. It doesn't apply to a Friedman-style voucher or tax credit program. Private schools' minimal excess capacity does guarantee that public schools will have time to make themselves choice-worthy. But it doesn't guarantee their permanence.

Most examples of the static world fallacy are more subtle. Based on empty seats in Catholic schools, Peter Cookson said "you could get some competition quicker if you included private schools in a choice plan, but it wouldn't be much more competition."⁴³ Stan Karp said "this [the free market] meant [turn the education system over to] the local Roman Catholic Archdiocese,"⁴⁴ that Karp guessed had about 1000 vacant slots. Linda Darling-Hammond said, "Vouchers are a smokescreen,"⁴⁵ a distraction from critical equity issues because there are only a "limited number of slots worth choosing." Robert Lowe and Barbara Miner said a voucher system would force parents "to compete for a few select schools."⁴⁶ Joseph Newman assumed that choice programs wouldn't significantly change private schools.⁴⁷

The assumption of little private sector change and continued discrimination against private school users also appears to underlie Ann Lewis's belief that "vouchers might help some students and some schools," but won't change the system.⁴⁸ Likewise, David Berliner and Bruce Biddle believe a voucher system "sets up a two-class educational system."⁴⁹ Restricted access to vouchers is an underlying assumption of anti-voucher campaign literature:⁵⁰

- "Vouchers reward those who have not elected to attend public schools" (p. 2).
- "The vast bulk of the voucher money would subsidize those who are already in private schools" (p. 3).
- "Vouchers abandon the many for the few" (p. 3).

- The American Civil Liberties Union believes that "for most students, vouchers offer a choice between a religious school and a failing public school." [Vouchers] "single out a few for special privileges."⁵¹

The possible scope of reform through parental choice is completely lost on victims of the static world fallacy. They don't realize that a choice-worthiness requirement would transform the entire school system. Non-religion-based and for-profit schools would comprise a much larger share of a competitive education industry's private school sector than they do now.⁵² In a competitive education industry, private schools would no longer suffer the major handicap of having better funded zero-tuition competitors. And if choice opponents are right about 'public school abandonment', public schools cannot make themselves choice-worthy.

The existing array of schools is no basis from which to evaluate the effects of programs that could transform the system. The attractiveness of policies that use parental choice to change the existing school system does not depend on whether existing private schools produce better academic outcomes than existing public schools. We need schools that outperform today's typical private schools. Ending government discrimination against private school users will significantly change both public and private schools.

Choice advocates like Denis Doyle and Douglas Munro recognize the power of choice to remake the system. But they often overlook that goal and thereby make that outcome less likely. For example, a questionnaire they used to see if a parental choice program would have prevented their departure from Baltimore⁵³ defined the program as increased access to the current menu.

VOUCHERS ONLY HELP THE RICH

This is a typical assertion of anti-voucher literature: "Poor parents cannot afford to pay the difference between a voucher and a private school's full tuition."⁵⁴ However, even when the voucher is worth much less than the per pupil funds of public schools (a mistake), the claim is partially false. Many private schools are inexpensive enough that the demand for low-income vouchers usually exceeds the lesser of voucher availability or private school capacity. That is true even for partial tuition vouchers. Many low-income families are making the major sacrifices necessary to transfer a child to a private school, and many more want to.⁵⁵

With nondiscriminatory parental choice funded at existing public K-12 spending levels, claims that only the rich would benefit are utterly false. Even without an add-on, such a policy would make all but the elite prep academies affordable. The improved funding and competitive pressures would greatly improve private schools. Public schools may also respond to the competitive pressures. Since low-income families are often in below-average public schools, they have the most to gain from the certain improvement and increased availability of private schools, and the possible improvement of public schools. Rich people already have access to elite prep

academies, so low-income families will gain the most from a competitive education industry. The lowest-income families would receive public funding worth much more than their school taxes, so the truly rich would continue to pay more in school taxes than they'd get back.

EVERY SCHOOL SHOULD ACCEPT ANY CHILD

Choice opponents assert that private schools, not parents,⁵⁶ would choose through selective admissions. Private schools would allegedly take the easiest to educate, and "dump" the rest in public schools. That is a false and disingenuous claim, but it is often politically effective because choice opponents depict specialization as discrimination. It is disingenuous, because many public schools⁵⁷ use private schools as a "dumping ground for dummies."⁵⁸

Private schools supposedly would have to discriminate because they could accept only a small fraction of the likely flood of applicants. The claim is theoretically unsound and it rests on the false premise that space shortages would be permanent. School operators would respond with expansions and new schools. The claim defies two fundamental traits of competitive settings, specialization and the profit motive. When schools specialize, the easiest to educate student varies from school to school. The mainstream of many specialized schools would be the students now labeled "special ed." High achievers are easier to educate only when expectations are low, which is a side effect of neighborhood public schools' inability to specialize. But if specialization were the norm like it is in the rest of the economy, many parents would demand schools that specialized in challenging high achievers. High achievers definitely would not be among the cheapest to educate. Parents of high achievers demand much more customized attention to their children and to themselves. That's a major reason why their children are high achievers. The profit motive means that it will not matter even if some children cost more to educate than others provided costs remain below revenues. Parents of high achievers are more likely to add-on. Family investment in high achieving children is one of the most important reasons to allow parents to supplement public funding with their own. It's also a compelling reason to establish true scholarship programs to fund add-ons for high achievers from low-income families.

Those who insist that every publicly funded school admit anyone have forgotten the reason for public funding. What matters is that every child has access to a high-quality education. Competing schools of choice as a group, but not individually, would achieve that objective precisely because market forces would compel them to specialize in the many significant differences between children's skills and interests. Specialization needs to be extended to public schools, not taken from private schools.

Choice opponents' ability to turn neighborhood public schools' inability to specialize - a major shortcoming - into a political asset does not change the fact that it is a major handicap. Requiring every school to accept any child is a big mistake. To realize the higher productivity that results from specialization, each school's services will become inappropriate for many families. Each school must be free to exclude children

that will be better served by other schools. Because private schools can specialize, and neighborhood public schools can't - the latter must strive to serve every child in their attendance area - private schools that specialize in public school cast-offs often serve them better for less than is spent on mainstream public school students. Private schools' ability to specialize in particular subjects or teaching styles significantly increases the total productivity of the private sector.

Limited, restriction-laden choice programs maximize the danger that private schools will acquire some public school handicaps (such as inability to specialize). Real competition would produce the opposite effect. Private and public schools would acquire some of each other's advantages. Private schools would have more money per student, and the government-owned schools would acquire some of the flexibility and freedom of a private school.

CHURCH-STATE LITIGATION IS A POTENTIAL 'SHOW-STOPPER'

This fallacy exists because the participation of church-run schools is critical for the restriction-laden programs that dominate parental choice discussions. Such programs favor established private schools, the vast majority of which are church-run. Restriction-laden programs allocate public funds to only a few private school users. The vouchers or tax credits are too small and scarce to prompt many new schools to form.

The public focus on restriction-laden versions of parental choice greatly exaggerates the functional importance of church-state litigation. Mistaken claims like these appeared quite often prior to the June 27, 2002 Supreme Court ruling on the Cleveland Voucher Program.

In the end, the fate of school choice will turn on the willingness of the Supreme Court to impose its own constitutional guidelines upon the States in order to protect the free exercise rights of individuals.⁵⁹

Perhaps the biggest question for state policymakers is whether appropriating public funds that can be used for tuition at religious schools will ultimately pass constitutional muster.⁶⁰

The [U.S.] Supreme Court could decide, once and for all, the constitutionality of school choice in the near future.⁶¹

Similar views persist with respect to the 'Blaine Amendments' in most state constitutions.

Non-discriminatory, universal choice programs may not be politically feasible without a church stake in them,⁶² but a competitive education industry can exist even in the states with the strongest Blaine Amendments. Indeed, it may be more likely in such states. There, choice advocates have to focus on proposals that would drastically

change the private school sector. In states with strong Blaine Amendments, the Milwaukee-Cleveland-Florida version of school choice is nearly pointless. Since they're too small to foster much private sector growth, they'd be dependent on the tiny secular share of the existing private sector.

There is another important reason to acknowledge that church-run school participation is not essential to worthwhile parental choice programs. A choice program may have to contain major restrictions before judges will allow church-run school participation.⁶³ The Wisconsin Supreme Court demanded random admissions of voucher students, and opt-out provisions so that children could skip disagreeable religious instruction.⁶⁴ Since religious themes exist throughout the curriculum of church-run schools, the opt-out option may compel major changes.

The court may not have demanded those restrictions, nor would they matter much, for parental choice in a competitive education industry. Then private school users would receive equal public funding. The extra resources would motivate expansions that would quickly end the rationing of oversubscribed private school space that is a seemingly permanent effect of limited choice programs. With a competitive education industry's many specialized choices, parents won't have to endure unappreciated religious instruction for a better academic setting. Such trade-offs are typical of limited voucher programs. For example, a poll of New York City parents seeking private vouchers so they could attend Catholic schools found that the first concern of 85 percent was academic quality.⁶⁵ Only 38 percent cited religious instruction as a major attraction. Terry Moe's extensive survey found the same priorities.⁶⁶ Church-run schools would probably comprise a much smaller share of a competitive education industry than their current lion's share of the tiny private sector. The key point, though, is that a competitive education industry can exist no matter how the courts settle church-state litigation. A competitive education industry would have a much larger private sector than we have now even if church-run schools cannot receive public funds, even indirectly through parental choices.

CONTRACTING OUT IS REAL PRIVATIZATION

The public's well-founded belief that businesses outperform bureaucracies underlies the political support for privatization. Supporters are driven by images of businesses cutting costs or improving their product to compete for market share. Unfortunately, the term *privatization* can be confusing. It covers a lot of possibilities, and the effects expected by supporters will not result from most of the policies labeled "privatization."

Among the several ways to "privatize" services produced by the government, contracting out is the dominant mode. It offends the fewest special interests.⁶⁷ Contracting out doesn't privatize ownership, so contracting out is not "*real* [emphasis in the original] privatization."⁶⁸

Even contracting out management services (e.g., Baltimore; Wilkinsburg, Pennsylvania; Dade County, Florida; Hartford; Minneapolis; Philadelphia) cannot support the evolution of competitive behavior. A more competitive management services market - where public school officials are buyers - would not reduce public school dominance of the delivery of instruction. A minor exception will arise if attendance areas vanish, and several independent contractors manage an area's public schools. Otherwise, contracting out management doesn't significantly raise the number of education producers. The public school leaders and the contractors they hire are, at most, semi-independent. Differences may provide parents with some choice, but it is hard to imagine ferociously competitive behavior between public school authorities and firms they hire. Furthermore, the barriers to entry remain. Market share is not more contestable. Contracting out the delivery of instructional services usually just changes a government-owned, government-run monopoly into a regulated, privately run government monopoly.

Top-down accountability to the government will create problems like misdirected improvement efforts or an overly narrow focus on specific objective evaluation criteria such as test scores. This is one of the many reasons that subjectively assessed accountability to clients is superior to objectively assessed accountability to the government.⁶⁹ It is probably fortunate that management contracts do not list cost reduction as a performance criterion.⁷⁰ Contracted managers lack many of the cost-cutting options of owners, so they probably can't approach the per-pupil costs of most private schools.

The conditions and incentives of contracted managers and competing school owner-operators differ greatly. Contracted managers are paid by the agency that hires them, not by the children and parents they serve. "Performance contracting was never meant to increase parents' voice in schooling. Indeed, families remain noticeably absent from the performance contracting reports. The reports described accountability in terms of companies and school districts."⁷¹

Compare that to a system of owner-operated firms. Competing owner-entrepreneurs face relentless pressure to cut costs and improve all aspects of quality, not just the aspects that are objectively measured. Those dynamic factors are critical differences "between competitive market and political command-and-control mechanisms of service delivery."⁷² Contracted managers have no comparable pressures to motivate them. Their stockholders may seek cost reductions, but pressure from price-cutting competitors is more powerful. Direct competitors provide the critical cost and quality basis for comparison.

Since a contracted manager's initial competition is a predecessor's abysmal track record, contracts have short-term, static goals. Peter Hutchinson, president of Public Strategies Group Inc., defined success as "turning the district's performance around,"⁷³ ending decline, and having a "normal" district. The State of Illinois sort of contracted out management of Chicago's public schools to Mayor Richard M. Daley and his designated schools' chief, Paul Vallas. Despite major gains, the situation is

still so bad that their goal is for the Chicago public schools to reach the national norms of a nation at risk. Catching up is easier to contractually define, and it is much less ambitious than continuous pursuit of a rising standard of excellence.

If contracted managers turn schools around, achieve national norms widely seen as dismal, or just outperform the district employees they succeeded, the better nearby public schools become the new standard. There are no other education entrepreneurs to compete with, and direct rivalry with public schools exists only if there are small districts, or no attendance areas. Once they meet contract objectives, they have little incentive to modify practices already deemed successful. Tampering with successful practices is risky, and without real competition, the potential return to improvements is much lower. Education entrepreneurs from other regions cannot contest customers. They can only periodically contest the renewal of the incumbent manager's contract with the school authorities.

The politics that created the problem and convinced the authorities that they could not fix it themselves will infect the contract's terms. Many core issues (personnel, specialization areas, curriculum, student distribution) are politically sensitive. Putting them off limits greatly reduces improvement prospects. Such restrictions were a major factor in the non-renewal of Education Alternatives, Inc.'s (EAI) contracts for Baltimore and Hartford. EAI had to keep the existing curriculum and keep teachers openly hostile to the new policies. Teacher unions vigorously resist privatization even when it involves far less than contracting out management.

For example, the Wilkinsburg, Pennsylvania school authorities hired Alternative Public Schools (APS) of Nashville to manage a single elementary school. APS believed it had the authority to choose its own staff. The Pennsylvania affiliate of the NEA filed a lawsuit that reversed APS's decision to terminate the union contract and dismiss the incumbent teachers.

Uncertainty about contract longevity can create other problems. Political support is fragile, and the range of politically acceptable behavior changes with current events and elections. Early termination clauses like the Hartford/EAI contract - termination with only 90 day's notice - necessitate constant attention to political correctness.⁷⁴ Even if contracted managers have the legal authority to make politically sensitive decisions, they may not exercise it. Politically sensitive criteria like test scores receive too much attention to the detriment of other important, but less measurable education outcomes.

Another major uncertainty problem is that the payback time for capital investments is often longer than the contract period. The approach of the renewal date and the contracted manager's estimate of renewal chances directly affect investment decisions. It will take several renewals to recover the cost of many investments. The risk of non-renewal will make many investments an owner would undertake too risky for a contracted manager. And the lower the probability of contract renewal, the stronger the incentive to cut corners. Despite the non-renewal, early-termination risks,

EAI made some major investments. They claimed a loss of \$3 million when the district abruptly terminated the contract.

Privatizing management has fewer potential benefits than private ownership, and the former poses major political risks. Transitions to new management produce resentment and glitches; contracted managers cannot quickly produce the significantly better test scores that are the primary contract renewal criterion. Contracting out management services is a time-consuming, deceptive, risky detour off the road to genuine systemic reform.

Confusion about privatization and well-publicized, but poorly explained disappointments reduce the political feasibility of any market-based reform. Problems that should be interpreted narrowly can give all forms of privatization costly image problems. Disappointment with something widely referred to as "privatization" will make the public less receptive to choice-based reforms that incorporate productive versions of privatization.

SCHOOL CHOICE IS A GAMBLE

A symptom of the confusion about parental choice, and an underlying premise of parental choice "experiments," is the implicit assumption that we could make things worse. The only apparent basis for that assumption is that parental choice would produce change. A key finding of a November 14, 1997, conference at the Federal Reserve Bank of New York is a good example: "participants *cautioned* [emphasis added] that the existing evidence [from restriction-laden parental choice programs] is insufficient to justify expanding choice proposals to the student population as a whole."⁷⁵ Some conference participants noted that existing choice programs cannot generate compelling evidence

Indeed, the direct, contemporary evidence isn't very useful. But there are other factors to consider. Caution is appropriate only if something valuable is at risk, and if competition is a mysterious, untested force. And there's compelling indirect evidence, including disappointment with the current system, frustration with reform efforts, a strong theoretical case for a competitive education industry, and the spectacular track record of competitive forces in hundreds of industries, including education in the few instances where it was truly competitive.⁷⁶ The status quo certainties are much worse than the risks associated with implementing competition. Failure to do so guarantees major losses. Delay is also an issue. It will take a generation to design, implement, run, and evaluate a valid experiment.

School choice is a gamble only if the public would miss an actual - as opposed to theoretical or potential - education outcome of the status quo. Name one! The actual outcomes of public schools are the number one domestic political concern of most Americans. Supposed relative virtues⁷⁷ of a public school-dominated education system are only theoretical; unrealized to any great extent in public schools, and not systematically absent from private schools. Recent research indicates that even

limited parental choice *actually* produces the social benefits that only government-run "common schools" were *supposed to* be able to generate.⁷⁸

The current system ostensibly exists largely to increase the economic opportunities of children from low-income families, but the least advantaged children attend the very worst schools. Wide disparities in funding and other measures of resource allocation (e.g. teacher experience) exist in public schools even where court rulings demand equal funding. Despite the expense and agony of busing, neighborhood schools are still relatively homogenous by race and socioeconomic status.⁷⁹ The only common outcomes instilled by the experience intended from public schools are high rates of non-proficiency, much of which is below the basic skills level.⁸⁰ The extremists that receive so much attention, including in parental choice debates, come from public schools despite the schools' goal of instilling common values.

Literally hundreds of studies⁸¹ show that public schools almost never achieve academic improvement with extra resources. Their failure to respond favorably to additional resources is solid evidence of a totally dysfunctional system.⁸² And real accountability for low performance is controversial!? Citizens have had to form political organizations to pursue accountability and high standards. Colleges⁸³ and businesses⁸⁴ spend growing millions on remediation. Polls show that most parents would use private schools if they could afford the tuition.⁸⁵ Despair by desperate low-income families and generous philanthropists is such that "privately funded voucher programs are booming"⁸⁶ even though the privately funded vouchers are worth a fraction of taxpayer support of public school students and cover only part of the cost of using cheaper education services. Rising numbers of parents reject expensive public schools they have already paid for, and relatively inexpensive private schools most of them could afford, in favor of the difficult task of home schooling.

The existing debate is whether public schools are "a disaster,"⁸⁷ or a gold-plated disaster,⁸⁸ whether existing private schools are any better, and – in either case – exactly what reforms are appropriate. Most parental choice opponents admit that many public schools are not choice-worthy, yet they refuse to risk the "abandonment" of even the worst schools. Even prominent defenders of the current governance and funding policies like David Berliner admit the K-12 system is not capable of being effective: "It is clear that our [K-12] system is not designed to produce masses of high-achieving students."⁸⁹ The real gamble is inaction.

CONCLUSION

America's most important debate needs a heavy dose of facts and principles level economics. The fallacies begin with the scope of the problem and end with proposed solutions that are either proven acts of futility or too small to matter. Imaginary competition and pseudo-experiments can only confuse the public and diminish the prospects for effective reforms. Wishful thinking about incremental change saps energy needed for system transformation, and threatens to entrench a new generation

of hard-to-change government education programs that fail to address the largest problems, or even compound them.

The education policy indicators, including the policy proposals of the most prominent choice advocacy organizations, are not very promising. Because it may take awhile to sell effective reforms to the public, we must continue to make small improvements whenever they become politically feasible. But we cannot afford to dwell on opportunities for isolated modest gains for a select few. Doing so undermines the pursuit of the desperately needed large-scale changes. Since economic analysis, our knowledge about human nature, and the vast differences in how children learn and what interests them tell us we need to significantly change public opinion (which is difficult) to transform the system, we can't afford to do otherwise. And there's no time to lose. The founding fathers told us that our system of self-governance requires educated, informed participation. The ominous signs of its absence are abundant. But we don't have to change public opinion everywhere at the same time. We can pick the best place to start from among at least fifty political forums.

ENDNOTES

¹ Note that the 'Nation at Risk' theme is recurrent. It originated with a 1983 report of a Blue Ribbon Presidential Commission. It appeared most recently in the February 15, 2001 report of The United States Commission on National Security/21st Century: *Road Map for National Security: Imperative for Change – Phase III report*.

² See the "Faulty Analysis section of Chapter Three of John Merrifield, *The School Choice Wars* (Lanham, MD: Scarecrow Education Press, 2001).

³ For example, many states have delayed or shelved electricity deregulation because California's mistakes have given 'deregulation' a bad image.

⁴ Edward B. Fiske and Helen F. Ladd, *When Schools Compete: A Cautionary Tale* (Washington: Brookings Institution Press, 2000).

⁵ Robert B. Reich, "The Case for Progressive Vouchers," *Wall Street Journal* (September 6, 2000).

⁶ Thomas Lasley and William Bainbridge, "Unintended Consequences" *Education Week* (May 2, 2001): p 38, 42.

⁷ Jennifer Hochschild, "Book Review of: *When Schools Compete: A Cautionary Tale* by Edward Fiske and Helen Ladd (Brookings, 2000)," *Education Matters* (Summer, 2001).

⁸ R. Kenneth Godwin and Frank R. Kemerer. *School Choice Trade-offs* (Austin, TX: University of Texas Press, 2002).

⁹ Robert Maranto and Scott Milliman, "In Arizona, Charter Schools Work," *Washington Post* (October 11, 1999): A25.

¹⁰ Note that virtually everyone agrees that true competition would transform the K-12 system. The intense disagreements lie in the nature of that transformation, and its desirability.

¹¹ According to Terry Moe (*Schools, Vouchers, and the American Public* [Washington, DC: Brookings Institution, 2001]), 65 percent of the American public doesn't know anything about education vouchers.

¹² Third International Mathematics and Science Study (TIMSS), *School Reform News* (April 1998): 1.

¹³ NAEP data from 1994 and 1996 as reported in *Education Week* (January 11, 1999).

¹⁴ Barbara Kantowitz and Pat Wingert, "A Dismal Report Card," *Newsweek* (June 17, 1991): 65.

¹⁵ Because of its consistency with other indicators of educational achievement (remedial education spending by colleges and businesses, other standardized tests), the inference derived from this terrible result survives the criticism of the NAEP test that scores are low because students have no incentive to try hard. See of Joseph Murphy, *The Privatization of Schooling* (Thousand Oaks, Calif.: Corwin Press, 1996): pp. 139-148 for more examples illustrating that student achievement is utterly unacceptable nearly everywhere.

¹⁶ Chester E. Finn, Jr., "The Schools," in N. Kozodny (ed.) *What to Do About . . .* (New York: HarperCollins, 1995).

¹⁷ The evidence is direct and indirect. The appalling tests scores, including the embarrassing international comparisons, are based on the entire student population. Growing expenditures on remediation by businesses and colleges are not limited to inner city high school graduates. Direct evidence of troubled suburban schools includes Daniel J. Singal, "The Other Crisis in American Education," *The Atlantic Monthly* (November 1991): 59-74; "Dollars Don't Mean Success in California District," *Education Week* (December 3, 1997) on the troubles of a California school district that spends \$12,100 per student; Elinor Burkett, *Another Planet: A Year in the Life of a Suburban High School* (Washington, DC: HarperCollins, 2001) In San Antonio, Texas, community college bound high school graduates must take the TASP test to determine if they can begin college courses without remediation. Thirty students from San Antonio's wealthiest district, the suburban Alamo Heights District, took the TASP test in September, 1992. Of those 30 students, 22, 15, and 16 required math, English, and reading remedial courses, respectively. See also, Jay P. Greene, Paul Peterson, and Jiangtao Du. *The Effectiveness of School Choice: The Milwaukee Experiment*. (Program in Education Policy and Governance, Harvard University, 1997) for a description of Milwaukee's dismal secular private schools; Kamrhan Farwell, "Money Doesn't Always Equal High Test Scores," *The Press Enterprise* (August 10, 1998) is about several California school districts; Exploding remedial education spending by businesses, community colleges, and universities; George Clowes, "The Dark Side of Suburban School Achievement." *School Reform News* (January, 2000): 7.

¹⁸ See Chapter 4 of Myron Lieberman, *Public Education: An Autopsy* (Cambridge, Mass.: Harvard University Press, 1993) for an explanation of how parents are deceived.

¹⁹ In "Up from Mediocrity," *Policy Review* (Summer, 1992): 80-83, Finn calls it the "complacency problem." The phenomenon is also discussed in Carl G. Ball and Steven Goldman, "Improving Education's Productivity," *Phi Delta Kappan* (November 1997): 231. It's similar to the public's attitude toward another major political institution, the U.S. Congress. People think little of the U.S. Congress, but congressional incumbents rarely lose an election.

²⁰ John Miller, "Why School Choice Lost," *Wall Street Journal* (November 4, 1993).

²¹ Jessica L. Sandham, "Florida OKs 1st Statewide Voucher Plan," *Education Week* (May 5, 1999): 1, 21. A similar proposal was rejected by the 1999 Texas legislature.

²² Finn, 1995.

²³ *Ibid.*, note 14.

²⁴ Frederick M. Hess, "Courting Backlash: The Risks of Emphasizing Input Equity Over School Performance." *The Virginia Journal of Social Policy & the Law* 6 (Fall, 1998): 13.

²⁵ Frederick M. Hess, "Courting Backlash: The Risks of Emphasizing Input Equity Over School Performance," *The Virginia Journal of Social Policy & the Law* 6 (Fall, 1998): 13. Also see Alfie Kohn, *The Case Against Standardized Testing* (Portsmouth, NH: Heinemann, 2000).

²⁶ *Ibid.*

²⁷ James H. K. Norton, "Solution or Problem?" *Education Week* (March 29, 2000): 42, 47.

²⁸ Greg Vanourek, "The Choice Crusade," *Network News and Views* (December, 1996).

²⁹ Paul T. Hill, "The Innovator's Dilemma," *Education Week* (June 14, 2000): 33.

³⁰ Denis P. Doyle, "Why Vouchers Are Needed for Poor Children," *Heritage Foundation Committee Brief* (May 10, 1996).

³¹ Joseph Viteritti, *Choosing Equality* (Washington: Brookings Institution Press, 1999): 14.

³² Troy Segal, "Saving Our Schools," *Business Week* (September 14, 1992): 70-78.

³³ Rene Sanchez, "Riley Launches Attack on School Vouchers," *Washington Post* (September 24, 1997): A6.

³⁴ Tim DeRoche, "Why Vouchers?: For Our Teachers," *Education Week* (June 6, 2001): p 37.

³⁵ Friedman quoted in Edwin G. West, *Education Vouchers in Practice and Principle: A World Survey* (Washington: Human Capital Development Working Paper #64, February 1996): p. 7.

³⁶ For vouchers as a general policy tool, that principle is well established; C. Eugene Steurle, "Common Issues for Voucher Programs," in: *Vouchers and Related Delivery Mechanisms: Consumer Choice in the Provision of Public Services*. Conference, (October 2-3, 1998) Papers, (Washington: Brookings Institution, 1998): 15.

- ³⁷ Quade, Quentin L. 1996. Watch Your Step! If School Choice is So Great, Why Don't We Have It," *Network News and Views* (January/February).
- ³⁸ CEO America is lobbying for a Tax Credit Program (Linda Morrison, *The Tax Credits Program for School Choice*, [National Center for Policy Analysis, March 1998]) that has the explicit aim "to discourage non-government schools from raising their tuition and fees" - that is limiting private schools' access to resources.
- ³⁹ Quentin Quade, *Financing Education* (New Brunswick: Transaction Publishers, 1996): p. 35.
- ⁴⁰ Daniel McGroarty, *Break These Chains* (Rocklin, CA: ICS Press, Prima Publishing, 1996): 98.
- ⁴¹ Most recent example: letter to the editor (7/11/01 *Education Week*) by Edd Doerr, Executive Director of Americans for Religious Liberty.
- ⁴² "School Vouchers on Trial in Milwaukee and Cleveland," *Mobilization for Equity* (February, 1998): 1, 3.
- ⁴³ Peter Cookson in Edith Rasell and Richard Rothstein (eds.), *School Choice: Examining the Evidence* (Washington: Economic Policy Institute, 1993): p. 252.
- ⁴⁴ Stan Karp in Lowe and Miner, 1996, p. 32.
- ⁴⁵ Linda Darling-Hammond interview in Lowe and Miner, 1996, p. 12.
- ⁴⁶ Editors are interviewed in Lowe and Miner, 1996, pp. 14-15.
- ⁴⁷ Joseph W. Newman, "Bribing Students out of Public Schools," *Education Week* (January 27, 1999): 76, 53.
- ⁴⁸ Ann C. Lewis, "A Modest Proposal for Urban Schools," *Phi Delta Kappan* 78, no. 1 (September 1996): 5.
- ⁴⁹ David C. Berliner and Bruce J. Biddle. *The Manufactured Crisis*. (Reading, Massachusetts: Addison-Wesley, 1995): 178.
- ⁵⁰ Albert Fondy, *School Vouchers in Pennsylvania: Bad Education Policy, Worse Public Policy* (Philadelphia: Pennsylvania Federation of Teachers, 1998).
- ⁵¹ Statement by Nadine Strossen, president of the ACLU, posted on the FreedomChannel.com web site, August 8, 2000.
- ⁵² That assertion is supported and discussed in greater detail in the context of the Court Opinions on Church-State Issues are Key Factors' fallacy a few pages from now.
- ⁵³ Denis Doyle and Douglas Munro, *Reforming the Schools to Save the City* (Baltimore: The Calvert Institute, 1997).
- ⁵⁴ Ibid, note 47.
- ⁵⁵ The Goldwater Institute. "The Top Ten Myths about School Choice" (Phoenix, Ariz.: Author, 1994). The findings are based on data from Phoenix, Indianapolis, Atlanta, San Antonio, and Milwaukee. In each city there are long waiting lists for half-tuition grants available only to low-income families. The latest privately funded partial low-income voucher program attracted 1.25 million requests for 40,000 vouchers.
- ⁵⁶ For example, that assertion is a centerpiece of virtually every piece of "No on Prop 174" literature. For example, consider this line from an anti-174 handout entitled, "It hurts kids, it hurts taxpayers: voucher schools would choose which kids get in." According to Wendy Wagenheim ("Why Public Money Shouldn't Go to Private Schools." *Michigan Education Report* [Fall, 1998]: 12): "Under a voucher plan, it is schools that will do the choosing, not parents or students." Also see the letter written by the National Coalition for Public Education (July 29, 1997), and the comments of Elliot Minberg with People for the American Way posted on the Freedom Channel website.
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- ⁵⁸ McGroarty, 1996, p. 102.
- ⁵⁹ Joseph Viteritti, "Blaine's Wake: School Choice, the First Amendment, and State Constitutional Law," *Harvard Journal of Law and Public Policy* 21, no. 3 (Summer, 1998).
- ⁶⁰ Darcia H. Bowman, "States Giving Choice Bills Closer Look," *Education Week* (March 1, 2000): 1, 24.
- ⁶¹ Nina Shokraii Rees, "School Choice 2000 Annual Report," *The Heritage Background*, no. 1354 (March 30, 2000).
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- ⁶³ Llewellyn Rockwell, "School Vouchers: An Enemy of Religion," *The Wanderer* (September, 1998).
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- ⁶⁶ Terry Moe, *Schools, Vouchers, and the American Public* (Washington, DC: Brookings Institution, 2001).
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- ⁷⁰ Education Alternatives, Inc. (EAI) gains from cost savings because it gets to keep half of each dollar saved, but the primary performance criteria are test scores; Elizabeth Gleick, "Privatizing Lives," *Time* (November 13, 1995): 88.
- ⁷¹ Ascher, May, 1996, p. 622.
- ⁷² David F. Bradford and Daniel Shapiro, "The Politics of Vouchers," in *Vouchers and Related Delivery Mechanisms: Consumer Choice in the Provision of Public Services*. Conference [October 2-3, 1998] Papers (Washington: Brookings Institution, 1998): 52.
- ⁷³ Peter Hutchinson, "The Five C's," *Education Week* (September 17, 1997.): 37, 39.
- ⁷⁴ Nancy Gibbs, "Schools for Profit," *Time* (October 17, 1994): 48.
- ⁷⁵ FRBNY *Economic Policy Review* 4 (March 1998).
- ⁷⁶ Andrew Coulson, *Market Education* (New Brunswick, NJ: Transaction Publishers, 1999).
- ⁷⁷ Henry Levin, "The Economics of Educational Choice," *Economics of Education Review* 10 (1991): 137-158; Carol Ascher, Norm Fruchter, and Robert Berne, *Hard Lessons: The Promises of Privatization* (New York: The Twentieth Century Press, 1996).
- ⁷⁸ Mark Schneider, Paul Teske, Melissa Marschall, and Christine Roch, "School Choice Builds Community," *The Public Interest* (Fall, 1997): 86-90.
- ⁷⁹ A *Newsweek* cover story (Joe Klein, "The Legacy of Summerton," *Newsweek* (May 16, 1994): 26-31) made the case that de facto segregation persists largely through the example of a particular, supposedly typical, example. It included this statement: "Recent studies show that most school systems remain as profoundly segregated as those in Summerton, and those in the inner cities seem far more desperate (p. 27)." According to Robert L. Carter, an NAACP lawyer who helped argue *Brown v. Board of Education*: "More black children are in all or virtually all black schools today than in 1954," "Civil Rights Leaders Wear Scars of Controversy," *Washington Times*, (May 17, 1994). According to James Coleman, *Public and Private Schools* (New York: Basic Books, 1987), "They [public schools] tend to be the most exclusive and segregated schools."
- ⁸⁰ The National Assessment of Education Progress test results are reported in terms of "proficiency" and "below basic."
- ⁸¹ Eric Hanushek, "School Resources and Student Performance," in Gary Burtless (ed.) *Does Money Matter?* (Washington: Brookings Institute, 1996); the latest evidence: American Legislative Council, *You Can't Buy Higher Grades: 50-State Report Card on American Education Funds* (April 2000).
- ⁸² For more detail, see Lieberman, 1993.
- ⁸³ In a 1997 survey, three-quarters of the college deans reported an increase within the last decade in the proportion of students requiring remedial or developmental education. Arthur Levine and Jeannete S. Curetin, "Collegiate Life: An Obituary," *Change* (May/June 1998): 14-17, 51. In Texas, spending for remedial education rose dramatically from \$38.6 million in the 1988-89 biennium to \$172 million by the 1998-99 biennium; a 346 percent increase; Jeff Judson, *The True State of Texas Education*. (San Antonio: Texas Public Policy Foundation, 1998); Nationwide, "30 percent of first-time college students take remedial courses because they can't read, write, or do math adequately. At community colleges, the percentage is often much higher - and it's rising." David Wessel, "The Outlook," *Wall Street Journal* (November 19, 1998): A1.
- ⁸⁴ *School Reform News* (April 1998): 7: "According to *Training* magazine, 20 percent of the companies it recently surveyed taught their new hires reading, writing, arithmetic, or English - even though two-thirds of them already sported high school diplomas."
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- ⁸⁶ Chester E. Finn, Jr. and Michael J. Petrilli, "Washington versus School Reform." *The Public Interest* (Fall, 1998): 63.

Putting The Sides Together: School Choice in Texas?

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⁸⁸ See the findings of the U.S. Congress cited in David Kirkpatrick, *School Choice: The Idea That Will Not Die* (Mesa, Ariz.: Bluebird Publishing, 1997).

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Houston ISD Leaves No Child Behind

Choice in the Houston Independent School District

Laurie Bricker serves as an elected member of the Houston Independent School District's Board of Education. First elected in 1995, she has served as the board's president, second vice president, and assistant secretary. She began her career as a teacher and now works as an educational consultant.

Gayle Fallon serves as president of Houston Federation of Teachers/HESP Local 2415. She has led the 6,300 member teachers union in Houston ISD since 1981.

Chester Finn, President of the Fordham Foundation and former Assistant Secretary of Education, expressed a compelling argument for vouchers in 2002 when he stated that “youngsters stuck in public schools that repeatedly fail to meet Florida’s academic standards may take their money to private schools or other public schools.”¹ In fact, his is the same argument we are currently hearing in the Texas Legislature.

No one can disagree with the premise that no child should be trapped in a low-performing school. All children should have choices in their educational program. A great deal of the problem that has arisen in public schools is the result of the security that stems from having a monopoly. The real question is how best to infuse competition to ensure that students and their parents have real choices while providing maximum assurances that schools are held accountable for learning without asking the taxpayers to shoulder even greater expenses.

While we can agree that students deserve choices, there is a fallacy in the presumption that a public school system is incapable of providing real choices so that all students may receive a quality education. Houston Independent School District (HISD), the largest school district in Texas with more than 300 schools, has worked diligently to eliminate any possibility that a child is “stuck” in any school for any reason. Approximately 70,000 of the 212,099 HISD students have exercised their option under the district’s public school choice plan to attend a school other than the one to which they have been zoned.

In 1999, then-Lieutenant Governor Rick Perry reviewed the choices available in HISD, including magnet schools, space-available placements, HISD charter schools, “educational contract” schools, and the contract for service alternative schools. At that time, Lt. Governor Perry publicly stated at the Texas Association of School Boards (TASB) Legislative workshop that Houston ISD did not need vouchers because it already had school choice for its students.

In the 78th Texas Legislative Session, the voucher issue surfaced once again. Both House Bill 293 by Ron Wilson (Democrat, Houston, Texas) and House Bill 2465 by Kent Grusendorf (Republican, Arlington, Texas), Chair of the House Public Education Committee, included Houston in their target areas for a state pilot program. Wilson's bill targeted the six largest districts in the state and included all students who could be considered educationally disadvantaged. Grusendorf targeted the 11 largest districts in Texas and granted eligibility to the approximately 600,000 students attending those districts, regardless of the accountability rating of their campus. Neither bill contained any significant accountability or oversight of public funds.

These voucher bills appear to be based on the stereotype that all urban school districts are failing and that children must be rescued from their failing schools. However, Houston is definitely not the stereotypical inner-city public school system. Two-thirds of HISD's schools are ranked by the Texas Education Agency as "exemplary" or "recognized." These schools are located throughout the district, with many in our poorest neighborhoods. On October 2, 2002, the Houston Independent School District was awarded the very first Broad Prize for Urban Education.² HISD won the prize after the prestigious Broad Foundation reviewed nearly 100 urban districts across the nation. The criteria weighed best practices, as well as measured how well the district is closing the achievement gap between minority and non-minority students and low socioeconomic vs. other students.

With the full understanding that competition is very real, HISD has worked to make our schools the school district of choice for the Houston community. **This is demonstrated by the fact that one of every three HISD students has elected to be in HISD "choice" schools.** Choices available to HISD's students include the following:

- New schools have "choice" zones. An example of this is the new Pin Oak Middle School. Along with students zoned to Pin Oak, students from nearby Johnston, Long, and Pershing Middle Schools may choose to attend. This year, HISD has processed more than 32,000 space-available transfers.³
- In May 1998, the HISD Board of Education adopted "educational contracts."⁴ This program encourages private schools in the Houston area to enter into a contract with the district to accept HISD students attending low performing schools if those students applied to attend. To qualify, a private school must take the student for the cost of his or her education in HISD, and it must agree to operate under the state's accountability system. Varnett Academy was one of the first private schools to accept the educational contract. Currently, Kandy Stripe is a private school where 170 HISD students attend on contracts paid by the district.
- **HISD has 25 in-district charter schools (12 campus charters and 13 external charters) with a total enrollment of 11,388 students.** These charters receive \$4,210 per child. They also accept HISD oversight related to performance and accountability.

- Magnet schools, originally established for racial desegregation, flourish in HISD. Magnet schools not only provided a remedy for racial integration but also an opportunity for socioeconomic and geographic integration. HISD operates **108 magnet schools programs that enroll a total of 37,379 students. The majority of HISD's magnet school students are provided transportation by the district.**
- HISD is expanding the district's Virtual School curriculum to include students from any school—in or out of the district school—homebound students, and home-schooled students. Currently 500 students are enrolled in HISD's Virtual School, with 50 of those students in a home-schooled environment.
- HISD contracts with Community Education Partners (CEP), a private, for-profit alternative education program, to provide services for our students who are both disruptive and functioning below grade level. Although these students are initially referred to CEP for disciplinary reasons, the district permits parents to extend the initial placement when they feel it is in the best interest of their children. HISD has contracted with CEP to enroll up to 1,600 students. These are students who would have fallen through the cracks had they not had this innovative program. Since the initial contract in 1997 between HISD and CEP, 14,816 students have gone through this program.

That HISD has become a district of “choice” is evidenced by the fact that 2,100 non-employees' children and almost 500 employees' children come to HISD from outside the district. Those parents who are not HISD employees have voiced concern that due to budget constraints, HISD will have to charge tuition beginning with the 2002-2003 school year. The tuition does not apply to children of HISD employees.

The primary concern that we have with the proposed voucher bills is the lack of oversight and accountability. Public dollars deserve public scrutiny. This lack of accountability is evidenced by the fact that in 2000-2001 school year, 44 percent of the open-enrollment charters in Texas were ranked as low performing. This year, six of those charters were closed following three consecutive years of poor performance.⁵

The 56 open-enrollment charters operating within the HISD boundaries serve 15,000 students. This charter enrollment costs HISD approximately \$60 million in lost revenue. More important than the loss of revenue is the loss of educational opportunity to many of these children whose parents are not aware that their children are enrolled in a low performing charter school. One of the lessons learned in the charter experiment is that it is a myth that anyone can educate children better than the public school system. Many charters cannot rise to the challenge. Meanwhile, HISD's track record with comparable students is as good as even the best of the charters and the private schools in the area.

There are a series of additional problems that were not addressed in the proposed legislation last session, including the following:

Putting The Sides Together: School Choice in Texas?

- Few accredited schools have tuition that could be fully funded through a state voucher. Additionally, these schools rarely provide transportation, free breakfast or lunch, free uniforms, or application fees.
- The limited accountability provisions being proposed enable a proliferation of “fly-by-night” private schools that will function with minimal accountability, credibility, resources, or curriculum that will meet the educational needs of these children.
- As these unregulated schools close, the public bears the cost of remediating the damage done to children who attend a school with no accountability.

Instead of promoting the stereotype that, because HISD and the other urban districts have a predominantly minority population, they must be “failing districts” that need vouchers to “rescue” children, Texas legislators should support our public school districts by enabling us to provide more choices so that truly no child will be “stuck” in any school.

One real solution would be to provide funding for public school choice. The Legislature could increase the ability of public schools to provide “choice” by helping districts with the cost of transportation to other public or charter schools. Additionally, the elected officials could pass legislation to give school districts the flexibility to open more in-district charters, allow flexible funding for virtual schools and charters, and encourage accountability throughout the system with increased local control and oversight by school boards. Consider as a solution offering districts a choice. Implement a broad-based public school choice program as HISD has done or come under a mandate for vouchers.

The bottom line—in the Houston Independent School District and in all of our 1,042 districts in the state—is that we must operate in the best interest of our children. That is our responsibility, and we take it very seriously. Rather than strip a successful model public school choice program in Texas, support us—we are building our future.

ENDNOTES

¹ Finn, Chester, Texas Education Review, “Leaving Many Children Behind” Spring/Summer 2002.

² Broad Foundation Press Release, October 2, 2002.

³ HISD Connect, www.houstonisd.org/portal/hisd *Attendance Zoning and Choice of Schools* 2002-2003.

⁴ Official Meeting Notice, Regular Meeting of the HISD Board of Education, May 21, 1998.

⁵ *Legislative Hotline, Texas Federation of Teachers, March 18, 2003.*

Beyond Robin Hood

Constitutional Standards And Application To Educational Choice

Allan E. Parker, Jr. is a law professor and president of The Justice Foundation. This paper is based on the 1991 Texas Public Policy Foundation publication, "Litigating Edgewood: Constitutional Standards and Application to Educational Choice," written by Mr. Parker with the late Michael Weiss, a Texas Public Policy Foundation fellow, after it appeared in The Review of Litigation.

INTRODUCTION

When a court decides that an institution violates a somewhat vague constitutional provision, the court often must define and refine its standards until it finally decides the institution measures up. If the legislature, guessing at the meaning of those standards, fails to "correctly" reform the institution, it may face endless litigation.

Such is the case with the Texas Supreme Court's *Edgewood Independent School District v Kirby* decisions.¹ Both the legislature and the *Edgewood* litigators have faced a significant dilemma: the court has demanded a legislative solution that passes constitutional muster but has never clearly enunciated the elements of a constitutional system. This Article will attempt to derive from the supreme court's *Edgewood* cases elements² of a constitutional educational system, and then suggest some systems that would meet these demands. This Article will conclude that an educational choice plan best satisfies the constitutional mandates in *Edgewood*.

The court sees *Edgewood I* as stating the elements of a constitutional system. It then imposes on the legislature the affirmative duty to draft and implement laws that fulfill those elements.³ The problem is, of course, that the decisions nowhere clearly outline those elements.⁴ This is not to say that implicit constitutional standards are not drawn in the series of *Edgewood* cases that created "Robin Hood." In the next section I will attempt to draw out the indicia of a constitutional system.

ANALYSIS OF THE ELEMENTS

The Texas Constitution provides:

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.⁵

The court in this provision found an "express constitutional mandate" for the legislature to "make 'suitable' provision for an 'efficient' system for the 'essential' purpose of a

‘general diffusion of knowledge.’ ”⁶ From this standard, five not altogether distinct elements of a constitutional system appear in the *Edgewood* cases. These elements are:

- (1) three versions of efficiency (to the state, to the individual student, and to the taxpayer),
- (2) a general diffusion of knowledge,
- (3) suitability,
- (4) essential change, and
- (5) local control.

The court sees the first four elements as necessary to a constitutional system, while the fifth element is a policy preference.

Efficient

The Texas Constitution creates an affirmative duty on the legislature to provide an “efficient” system of public free schools.⁷ Most of the analysis in *Edgewood* revolves around the definition of that key term,⁸ which the court uses in a variety of ways. Although the court claims to define “efficient” in common terms,⁹ its actual use of the term comes closer to equality than efficiency.¹⁰

The court discusses three types of efficiency, each with its own indicia. First, the court demands that the system be efficient in the aggregate.¹¹ The system, taken as a whole, must not be wasteful or over-centralized.¹² Second, each individual has a right to equal educational opportunity.¹³ In contrast to the collective right to an efficient system, the court states that an individual right exists so that nobody may be disenfranchised.¹⁴ Lastly, the court demands the system have an efficient funding system as to the taxpayers.¹⁵ The court determines that it is inefficient for different people to pay different amounts for the same service.¹⁶

Aggregate Efficiency

An efficient school system in the aggregate would have a variety of elements. First, it would not be wasteful.¹⁷ The court in *Edgewood I* defines efficiency as using resources to “produce results with little waste”¹⁸ and as “not inactive, slack or incapable.”¹⁹ *Edgewood II* elaborates upon the school system’s waste in this sense by pointing to “vast inefficiencies” in the system’s structure.²⁰ For example, some districts have as few as two students and some counties have as many as 20 districts, and this “duplicative administrative costs are unavoidable.”²¹ As a possible remedy for this morass of inefficiency, the court proffers consolidation of school districts.

A second element of aggregate efficiency is using resources in wealthy districts to the same extent that the remainder of the state’s resources are used. “[S]ubstantial revenue is lost to the system,” the court states in *Edgewood II*. Millions of dollars of tax money could accrue if property in rich districts were taxed at the same amount as other property in the state.²²

Not only does inefficiency mean that the state loses money in spending and taxing, but it also means distributing funds in a manner so unequal as to cause “gross disparities”²³ of the amount spent per pupil. The framers “never contemplated the possibility that such gross inequalities could exist within an ‘efficient’ system.”²⁴ Therefore, an efficient system would have some amount of funding equalization.²⁵ The court suggests that a possible core reason for the inherent waste in the per-pupil expenditure is the unequal size and wealth of districts.²⁶ Independent of other issues, a plan that did not address the underlying wastefulness of the system would not pass constitutional muster.²⁷

Another interesting and somewhat overlooked indicia of efficiency on the macro-level is decentralization. As the court notes, the framers “had been subjected to a militaristic school system with the state exercising absolute authority over the training of children.”²⁸ We may infer from this some minimum level of non-state control that is constitutionally mandated, as opposed to the local control that is merely preferential.

Individual Efficiency

An “economically” efficient system could, theoretically, disenfranchise some students.²⁹ However, the court makes clear that no student may be the sacrificial lamb in the name of efficiency. The court makes clear that the right to an efficient school – or the right to equal educational opportunity and access to funds³⁰ – is a personal right vesting in each resident of the state.³¹ The court rules out the practical disenfranchisement of even one student in the pursuit of theoretical efficiency.

A more interesting question the court poses is the object of the individual right in an efficient system. The court offers two possible answers. First, each individual could have the right to equal per-pupil expenditures. Second, children must be afforded a “substantially equal opportunity to have access to educational funds.”³² Although there was some evidence for the first option,³³ *Edgewood III* conclusively answers that absolutely equal per-pupil expenditure is not a personal student right.³⁴ By foreclosing equal per-pupil expenditure as the sole element of the educational right, the court leaves only a right to equal educational opportunity³⁵ for every student. The student therefore does have a constitutional claim to, if not an equal level of funding, at least some minimum level of opportunity.

Once the court decides equal educational opportunity is a right, how should it be interpreted by litigators and legislators? It is a phrase not free of ambiguity.³⁶ The potential for litigation of this term seems limited only by the court’s foreclosing of absolutely equal per-pupil expenditure as a right.

Taxpayer Efficiency

Edgewood is not really the student equity issue one envisions in educational policy analysis. In essence, it could be said to be a taxpayer equity suit. Probably the most interesting and surprising aspect of educational efficiency is the constitutional demands the taxpayer may make under it. *Edgewood II* makes abundantly clear that to be constitutionally efficient a school system must draw revenue from all property at a “substantially similar rate.”³⁷ The reason for this seemingly abstruse definition of

efficiency might be related and limited to the specifics of ad valorem property taxes.³⁸ Another possible explanation is that it is inefficient (that is, wasteful) to make people spend unequally on essentially the same product.³⁹

General Diffusion of Knowledge

Another element of a constitutional system is that it must promote a “general diffusion of knowledge.”⁴⁰ Even an efficient system, if it did not provide for a general diffusion of knowledge, would be unconstitutional. This issue is ripe for litigation. Does this standard render unconstitutional a school system that leaves a majority of its students illiterate? Or does it mean that the intent of the legislature must be to diffuse knowledge (as opposed to what else)? Whatever it means, general diffusion lies like a claymore mine in the field of educational reform.

In one state, the entire educational provision – and not just its funding – were invalidated.⁴¹ *Edgewood II* recognizes that an efficient funding system by itself may not solve all of the state’s problems in education, but says the court must measure the finance system by the efficiency standard.

“Suitable Provision”

An even more recondite element of a constitutional system is that it must be suitable. While this may seem to be superfluous constitutional verbiage, the court mentions it twice in *Edgewood I* as an independent standard when it says the legislature has not discharged its constitutional duty “[i]f the system is not ‘efficient’ or not ‘suitable.’”⁴² After it is used twice within the first three pages of the first *Edgewood*, it vanishes. Whether it will magically reappear as a standard by which a court could find a *Rose*-like constitutional violation in later litigation is still unclear.

Essential Change

Finally, the court distills its tests into a more precise command. That command is that an “essential” change must be forthcoming; no mere Band-Aid will do.⁴³ This may just be a proxy for saying that the legislature must really comply with the other elements; it is not clear. However, the court does make clear that essential change must deal with essential problems, such as the rich/poor gap in public school funding.⁴⁴

To this effect, the court notes that “formulas that once fit have been knocked askew”⁴⁵ by time. The problem is the legislature’s formulas: wealth has not appeared with geographic symmetry. Clearly, to meet the essential change requirement, the tax rate and student funding – or input factors – would have to be made substantially similar.

A Policy of Locality

Edgewood III makes clear that a system of funding education must still comply with the holding of *Love v. City of Dallas*.⁴⁶ Clearly, this is a constitutional issue of local control of tax money.⁴⁷ However, the court goes further than mere adherence to the holding of *Love*. The court prefers local control.⁴⁸ The court seems to make a correlation between the ability to have meaningful local choices and efficiency when it states, “[o]nly if alternatives are indeed available can a community exercise the control of making

choices.”⁴⁹ The weight of this preference for local control as against other more directly constitutional demands is uncertain. However, a legislature or litigator would do well to address exactly how any given plan would affect the power of localities to control the content of education as opposed to state control.

APPLYING THE STANDARDS TO EDUCATIONAL CHOICE

As seen above, the constitutional standards of *Edgewood* are so amorphous that the potential for litigation against many aspects of the current educational system is explosive. If the legislature wishes to “fix” the system, it would do well to amend the constitution to deprive the court of jurisdiction as well. Many individuals and institutions already exist with the will and the capacity to advance well-reasoned arguments that the current educational monopoly is inefficient in a vast variety of ways, inhibits the general diffusion of knowledge, or is unsuitable for today’s environment because of rigidities encrusted over time. Further, the modern trend toward state control against local control may also be unconstitutional under *Edgewood*.

Of course, for such litigation to be successful, the reasoning of *Edgewood* must be more than simply a result-oriented patina on a political decision which will not be duplicated in any other area. Assuming the articulated standards and reasons for *Edgewood* have some vitality, the concept of educational choice appears to be most likely to meet those standards and preclude further litigation at the same time. Indeed, the power of efficiency clauses to completely overhaul public school systems can be seen in the Kentucky Supreme Court’s total invalidation of the whole system, including its regulations, districts and boards.⁵⁰ New Jersey has also championed the rights of children to systemic overhaul to obtain a “thorough and efficient” system.⁵¹

EDUCATIONAL CHOICE

Based on the sound public policy criteria established in the Texas Constitution and the *Edgewood* cases, a competitive system rather than a monopoly would be far more suitable and efficient in fostering the “general diffusion of knowledge” necessary to “preserve the liberties and rights of the people.” Today such plans fall under the rubric of educational choice. What should a choice plan look like if created by the legislature under its constitutional duty?

The first model to be discussed will be the full liberty model. Conceptually it is designed to include the broadest possible form of choice, including public and private schools, religious⁵² and non-religious schools, and even home schools. Under the full liberty choice plan, any group can start a school; any child can attend any school, public or private. Funding for all schools, public or private, will be based on how many students voluntarily attend that school. Funding will follow the child, not district boundaries. Traditional public schools will compete with new “free schools,” that is, private schools that accept students with state scholarship funding. In order to provide a real choice, free school autonomy should be protected from any regulation by the state other than standardized testing and publication of the results. Together, public schools and free

schools, with free tuition and free-of-state regulation, constitute the public free school system required by the Texas Constitution.

This full liberty model goes far toward complete liberty between public and private choice with equal funding for public and private schools, with only two limitations on full competition. First, in order to prevent involuntary segregation, no school may deny admission on the basis of race, religion, ethnic, or national origin.⁵³ Second, so that educational access does not depend on income, a school that accepts state funds may not charge extra tuition. Thus education is free for each child, as it is currently.

Pure economic analysis would lead to the adoption of the full liberty model described above. The gravest problem with the current system is the limited supply of good schools. Increasing the supply of available schools is critical to the effectiveness of real choice. If the public schools are to be subjected to the refining influence of competition, the playing field in theory should be level with equal funding for the public and private sector.

However, educational choice models have been proposed with less than full liberty and full competition. For example, a proposal placed on the Oregon ballot by initiative in November 1990 was a wide-open supply side model but with a funding bias toward public education over private education. Under the Oregon initiative, a child could attend any school – public or private, religious⁵⁴ or non-religious, or home school. However, if a child attended private school, the parent or custodian would receive a tax credit of only \$2,500 rather than a full share of the per-pupil expenditure for that child in public education.

A bias towards public education as embodied in the Oregon proposal may have a political advantage over the full-liberty equal funding model. It avoids the emotional argument that choice will drain funds from public education. When a child leaves public school, the remaining children are not worse off, but better off, because the child has left part of his share of public funding with them; per-pupil expenditures in the public school will actually rise rather than remain equal upon his departure.⁵⁵

A third prominent example of a proposed choice plan with many of the good features of the above two plans, but with more state control and less liberty, has been proposed by John Chubb and T. Moe of the Brookings Institute.⁵⁶ Specifically rejecting calling their proposal “privatization,” Chubb and Moe call for a public system under which the government charters all institutions, both old public schools and new ones created by market forces as funding follows the child. The government would also monitor and approve applications for new schools, promulgate minimal regulations applicable to all schools, orchestrate the choice process, and regulate advertising and information dissemination. Their model could be called the output and information regulated market.

A fourth model on the continuum of choice, moving toward less wide-open supply, is the public/private choice model that excludes religious schools from participation. This model would also be constitutional.⁵⁷ Further, only a limited number of economically

disadvantaged children could be allowed to participate. This system may be perceived as avoiding state establishment clause problems and is thus more politically popular.

The final, most restrictive model that still includes any element of choice is public school choice. Under these plans, children may attend any public school within their district or perhaps even statewide, as under the Minnesota open enrollment plan. Private schools are not included. These plans, although the most restrictive form of competition, have proven successful at measurably increasing student achievement – that is, the general diffusion of knowledge.⁵⁸

MAXIMIZING EFFICIENCY IN THE AGGREGATE

Presenting evidence to document system-wide economic inefficiency in the current system is not a difficult task for educational reformers.⁵⁹ A large body of research exists that estimates the educational production function,⁶⁰ which can be focused upon the Texas school system. One such study by two Southern Methodist University professors prompted by *Edgewood I* documents widespread inefficiency in Texas public schools.⁶¹ The authors conclude that “about one out of every three dollars are spent on public education is being wasted. ... A 10 percent increase in state spending would lead to an additional \$270,000 of waste in an average-size school district.”⁶² Further, the study found “very little relationship” between efficiency and the value of taxable property in a district and “no relationship” between efficiency and local tax rates.⁶³

The authors focus their definition of efficiency on the *Edgewood I* definition of efficiency that correctly identifies constitutional efficiency as the traditionally narrow definition of productive efficiency rather than modern welfare economics notions of efficiency such as Pareto optimality or Hicks-Kaldor wealth maximization. Efficiency is the “relationship between inputs and outputs” and a school is efficient if it “produces a level of achievement at the minimum possible cost”⁶⁴ or with little waste of resources as *Edgewood I* articulates.⁶⁵ By this measure, Texas school districts are only two-thirds as efficient as they could be.

As one might expect of economists, the authors of this Texas school efficiency study suggest that the results of their study argue for more competition in public education.⁶⁶ It is difficult to imagine the state finding a reputable economist who would argue that a government bureaucracy is more efficient than free markets.⁶⁷

MAXIMIZING INDIVIDUAL EFFICIENCY

All models propose equal funding per category of child rather than actual per capita funding, recognizing that various economic factors require different costs for different children, such as high school versus elementary, rural versus urban, disadvantaged, and handicapped.

As with any market system, the advantage of choice would be the amazing rapidity of response to bad situations and the marvelous flexibility of individual responses to a

specific child's needs. The Montessori idea may be excellent and the Montessori school capable of convincing a parent of the soundness of its approach. But after two months in such a program it may be glaringly obvious to a parent and even the teacher that Montessori is not the right approach for this child. With choice, a parent could easily move. But in a traditional public school, after a long battle to get Montessori in place, it would be another long battle to get it changed, after an intense political struggle. It might even be impossible to change or unwise to do so if the majority are better off under Montessori.

MAXIMIZING THE GENERAL DIFFUSION OF KNOWLEDGE

There is fertile ground for presenting evidence that the current system has sadly failed to produce a general diffusion of knowledge. The pockets of good schools should not blind one to the evidence that Texas public schools are not meeting state goals for graduation and post-secondary readiness. Depending on the measure, one third to nearly one half of public school students fail to graduate and tests of college readiness of high school graduates continue to stagnate, placing Texas' most highly educated public school students at the bottom of the nation.⁶⁸ This seems to be a general diffusion of ignorance, not knowledge.

Sadly, the diffusion of knowledge among minorities is even less general. The graduation rate for Hispanic and African-American students is significantly lower than for their Anglo and Asian peers.⁶⁹ Over the past decade there is no evidence that the achievement gap between student groups has significantly diminished in elementary and middle school according to scores posted by students of Texas public schools on the National Assessment of Educational Progress (reading, mathematics, science, and social studies tests).⁷⁰ The achievement gap between student groups continues unabated on tests of college readiness as well (SAT and ACT).⁷¹

By contrast, one of educational choice's greatest examples of achievement is in inner city, low-income East Harlem. In 1973, East Harlem's scores in reading and math ranked 32nd out of 32 city districts, with only 15 percent of students at grade level in reading. But public school choice was implemented in the early 1980s, and by 1989 East Harlem had moved up to 16th out of 32 in test scores, and 64 percent read at or above grade level.⁷²

MAXIMIZING LOCAL CONTROL AND INNOVATION

In *Edgewood II*, the Texas Supreme Court overturned Senate Bill 1⁷³ because it did not go far enough toward structural change.⁷⁴ Educational choice is a far more fundamental change, a fundamental restructuring. Senate Bill 1 was criticized for not changing the boundaries of any school district; educational choice eliminates the relevance of all boundaries for attendance purposes. Under school choice plans, children could attend school in or out of their district. The court chastises the inefficient duplication of administrations;⁷⁵ Chubb and Moe's research documents that choice and local school autonomy will eliminate unnecessary administrative duplication.⁷⁶

Edgewood's emphasis on local control shows a legitimate desire to locate the focus of decision making as close to the people affected by the decision as possible. Educational choice maximizes this value by giving power directly to those most affected – the teachers and students, not local politicians.

School district consolidation is another example of how the market would achieve efficiency far more painlessly than the political system. Despite the court's suggestion in *Edgewood II* that districts be consolidated, and despite the fact that much educational research shows that school districts under 2,000 pupils are inefficient,⁷⁷ no move has been made by the politically sensitive legislature to combine the large number of Texas school districts with less than 2,000 students. Allowing students choice would keep the districts alive at first, but as better school districts attracted more students voluntarily, and then achieved economies of scale to increase their competitiveness further, the less efficient systems would eventually improve, merge or expire, without any political vote, simply as a result of the liberty exercised by the people.

In *Edgewood II*, the court recognized “that an efficient funding system will [not], by itself, solve all of the many challenges facing public education in Texas today.” But educational choice maximizes the efficiency and equality of the whole system, both funding and delivery, and will free the creative potential of Texas citizens to address those challenges in many different ways. With thousands of individual choices being made – rather than statewide, untimely bureaucratic changes – the successful responses of educational innovators will flourish, and the failing responses will languish and fade rather than being imposed uniformly on all the children of the state. Eastern Europe and the Soviet Union have learned that only markets can draw forth creativity regularly, and creativity is certainly needed to address the abysmal state of public education today.

Educational choice can also be implemented without violating *Love v. City of Dallas*.⁷⁸ The court in *Edgewood II* clearly allows the creation of county-wide or multi-county districts.⁷⁹ Educational choice among the local public school districts within such “super districts” would clearly satisfy the *Love* prohibition, which the court refused to overrule in *Edgewood III*.⁸⁰

ESSENTIAL CHANGE: ADDRESSING RACIAL AND INCOME DISPARITIES

In *Edgewood I*, the court emphasized the 1875 Constitutional Convention's recognition of the “importance of education for all the people of this state, rich or poor alike.”⁸¹ While the framers, the ratifiers, and the Texas Supreme Court recognized the importance of adequate education for all, our current system deprives only the poor of educational choice. We have a choice system for the wealthy, who can choose a good school by choosing an expensive neighborhood or choosing to pay private school tuition. But the poor, who were supposed to be prime beneficiaries of the public system, have been deprived of their choice.

Only educational choice, not equal public school funding, will give all children, rich or poor alike, the same choice and opportunity to choose between state-controlled, wasteful

education or privately controlled education. As the court noted, the total lack of school districts outside the cities in 1876 showed that gross disparities in educational opportunity were not envisioned by the people.⁸² Yet if public education funds for the poor can be spent on public schools and attendance is mandated by district, then a gross disparity in educational opportunity will exist between those who can afford private education and those trapped in bad public schools.

Edgewood I strongly emphasizes the link between efficiency and equality, regardless of economic factors, and the court noted this link had previously been stressed by the legislature and its prior decisions.⁸³ Yet only educational choice directly equalizes access to public and private education simultaneously. As the court noted, “A band-aid will not suffice; the system itself must be changed.”⁸⁴

The greatest block to racial integration today is residential segregation. Educational choice advocates argue that it will eliminate that roadblock without government quotas, redrawing neighborhood attendance lines, merging urban and suburban districts, forced busing, or any other form of coercion other than outlawing exclusions based on race.⁸⁵

SUITABLE: MOST CONSISTENT WITH THE ORIGINAL MEANING OF “PUBLIC FREE SCHOOLS”

The court in *Edgewood I* acknowledged that for a system of government and its educational system to be legitimate, it must rest on the consent of the governed, and thus the court must look to the original intent of the people who adopted it. By the standard of original intent, an educational voucher system is clearly the most suitable and efficient public free school system, because the first school system established under the new 1876 constitution was not a state-controlled monolithic bureaucracy but a voucher system known as the community school model.⁸⁶ The first statute demonstrates the meaning of “public free schools,” at least as interpreted by its contemporaries, as requiring parental choice.⁸⁷

The 1876 Texas choice plan was simple and loose in the extreme. Any number of parents could form a community, select a teacher and the kind of education they desired, and receive their per capita share of the state school fund, with minimal state regulation. The system was created uniquely for Texas and apparently not adopted anywhere else.⁸⁸

Section 14 is an extremely important provision:

The available public free school fund shall be distributed to school communities in the several counties, to be organized on the application of the parents and guardians of those to be benefited thereby to suit their convenience, without reference to geographical lines within their counties.⁸⁹

This is the heart of what today would be called a pure educational choice voucher system. The parents’ school community is organized “to suit their convenience,” not the state’s. The parents’ school community gets the money directly from the state. The community is organized upon parents’ application, not the state’s. Any group of parents or guardians

could organize their own school, embracing any children who wanted to attend that community. More than one community per county is envisioned because the county judge has the power to assign unenrolled children among the various communities.⁹⁰ The county judge acted as the “choice office” that Chubb advocates to assign hard-to-place children.⁹¹ Parents may organize a school wherever they wish, and attendance is without regard to geographical boundaries.⁹²

In addition to purely private choice, any city or town could acquire by popular local vote exclusive control of the “public free schools” within its city limits and could govern them by either a separate board of trustees or the regular city government.⁹³

In reviewing the community school system, it becomes acutely obvious that this statute embodies the deep division between public education as we know it today and parent-controlled choice in education with tuition reimbursement so passionately discussed in the Constitutional Convention.⁹⁴ Both the community voucher model and the city government control model are called public free schools. Significant sections of the public wanted both kinds of education, so both were allowed to exist under this statute. Clearly, if a significant section of the public today convinced the legislature that parent-controlled educational choice was the best way to educate children, or sought such right from the court, such would certainly be consistent with the Fifteenth Texas Legislature’s understanding of its duty to provide an efficient system of public free schools.

Unlike the first system established under the current Texas education clause, our current educational system clearly has no balanced approach between parent control and state control. An “efficient system of Public Free Schools” in 1876 meant a mix of public and private education control, but clearly we have lost any such mix. Today we have only state-controlled, state-mandated, state-operated schools, with no state-funded private choice. This is absolutely contrary to the model of the 1876 School Law and absolutely contrary to the intent of the majority of the Constitutional Convention delegates and ratifiers.⁹⁵ The community model’s balance between public, government-operated city schools and publicly funded private education with minimal state supervision is closer to the contemporaneous and original intent of the 1876 constitution, certainly closer than today’s monopoly system, with zero choice and zero tuition reimbursement.

The 1876 education clause intent was not changed by the 1883 amendment allowing districting and local taxation. Governor Roberts in 1883 extolled the virtues of the community model even as he called for the 1883 amendment. He specifically stated that the Law of 1876 was designed to implement the constitution and be in harmony with it, and he listed the key elements of the plan that made it conform to the constitution: “by making school communities to depend upon the mutual association of citizens, ... and not by territorial divisions into school districts, by placing schools under the control of trustees, chosen from the patrons...”⁹⁶

Governor Roberts strongly warned against those who would overturn the system of 1876 and return to the highly centralized state-operated system of the 1869 constitution.⁹⁷ He opposed the creation of a separate Department of Education with power to control the

schools, special taxes, and a State Superintendent. Thus, he clearly did not envision the 1883 Amendment having this result. In fact, the constitution was designed to thwart this type of system, because Radical Republicanism was so repugnant to the citizens of Texas. “The Grangers and most other delegates went to the convention to prevent the recurrence of the centrally administered, bureaucratic school system established under the Reconstruction Constitution of 1869.”⁹⁸ Yet today we have a huge centralized bureaucracy and no parental choice.

The conclusions drawn from this contemporaneous legislative enactment of a public/private voucher system are further buttressed by other contemporaneous public documents. For example, the Republicans who had wanted state-controlled education in the 1875 Constitutional Convention in 1876 “denounce[d] the constitution framed by the late convention at Austin,” for among other reasons:

(2) Because the said Constitution seeks to cheat the people with specious provisions in relation to schools, while it utterly fails to secure an efficient system of free public schools, which is the greatest necessity of the State, the surest guaranty of progress, and the best defense of liberty...⁹⁹

That the Republicans will expose the trick on the part of the Democracy to prevent the education of the poor of the State...¹⁰⁰

The Republican’s serious charge that the 1876 constitution is a “cheat” and a “trick” to defeat the people’s right to a northern-style, state-controlled, state-operated, tuition-free public educational system is further strong evidence that the 1876 constitution does not enshrine our current educational bureaucratic monopoly.

“Considering ‘the general spirit of the times and the prevailing sentiments of the people in 1876,’ ”¹⁰¹ as was done by the court in *Edgewood I*, those who drafted and ratified the education clause intended suitable and efficient to include public/private choice in education. As the court noted in *Edgewood I*, the 1883 amendment permitting the legislature to create school districts did not change the meaning of article VII, section 1.¹⁰² Its purpose was not to change the meaning of suitable and efficient from its public/private educational choice method, but merely “to serve as a vehicle for injecting more money into an efficient system.” In order to provide for taxation at the local level, a taxing district is essential. But as the legislature has now recognized in its new education financing plan, and as *Edgewood I* recognizes, the taxing district that raises the money need not be the entity that provides the education directly. Under a constitutionally required educational choice plan the taxing districts would funnel money both to public and private schools.

What is the purpose of a constitutionally mandated system of public education? The goal is to achieve a “general diffusion of knowledge” not for the innate good of the people, nor as a goal in itself, but because such a “general diffusion of knowledge” is “essential to the preservation of the liberties and rights of the people.”¹⁰³ Because the purpose of the education clause is to preserve the liberties and rights of the people, it is essential that the education system itself not restrict the liberties and rights of the people. People have far

greater liberty under an educational choice system than under a state-controlled educational system. Under choice, they have the liberty to choose their own school rather than being forced to attend a school by artificial boundary lines.

The purpose of the education clause was to preserve liberty, not to create new rights. This is clearly an historical test, just as the U.S. Constitution's Seventh Amendment stricture to "preserve" the right to jury trial requires an historical test. Historically, the 1876 constitution's education clauses were a revolt against the state-controlled radical Republican "militaristic" system and the establishment of a liberty-centered, parent-controlled choice system.¹⁰⁴ The fundamental definition of ordered liberty includes the right to direct the education of one's own children.¹⁰⁵

CONCLUSION

When the Texas Supreme Court started on the road to "Robin Hood,"¹⁰⁶ it opened the door for a multitude of lawsuits. As some often do, the court was not loath to enter where angels might fear to tread. The court found judicially enforceable constitutional standards to apply; a constitutional system only must be suitable, efficient, and essential, and effectuate a general diffusion of knowledge. The court may have thought it was only dealing with finance issues in *Edgewood I*, but by adopting such standards for judicial review, the court is obviously on a long road to someone's idea of a truly reformed, suitable, efficient system that provides the essential ingredients for the general diffusion of knowledge. As the court invited litigants, it "must, when called upon to do so, measure the constitutionality of the legislature's actions."¹⁰⁷ If the current system is not suitable or efficient, the legislature has the duty to say so.

Because the *Edgewood* cases hold the suitability and efficiency must be maximized, full public/private educational choice could save the legislature and the courts' years of wasted effort and futile half measures by adopting the most efficient system ever devised for providing goods and services: a free market. At the same time, educational choice maximizes liberty, making it the most suitable method to diffuse knowledge and preserve "the liberties and rights of the people," which is the constitutional purpose for an educational system. With a choice system, no one would be able to sue for an alleged deprivation of equal educational opportunity, because all students would have equal access to any school and each would bear the benefits or burdens of their own free choice.

¹ 777 S.W.2d 391 (Tex. 1989) [hereinafter *Edgewood I*]; 804 S.W. 2nd 491 (Tex.1991) [hereinafter *Edgewood II*]; 804 S.W. 2nd at 499-508 (opinion on motion for rehearing) [hereinafter *Edgewood III*]; West Orange-Cove Consolidated I.S.D. et al. v. Alanis et al., 107 S.W. 3d (Tex.2003).

² For treatment of the implicit constitutional standards, see *infra* notes 17-61 and accompanying text.

³ *Edgewood I*, 777 S.W. 391, 391 (Tex. 1989).

⁴ Although the court refers to *Edgewood's* "constitutional standards" in *Edgewood III*, 804 S.W. 2d 499, 500 (Tex. 1991) (opinion on motion for rehearing) (Gonzales, J., dissenting) (citing *Edgewood I*, 777 S.W. 2d at 397) and *Edgewood II*, 804 S.W. 2d 491, 498 (Tex. 1991) (citing *Edgewood I*, 777 S.W. 2d at 397-98), the cited text does not set forward any clear standards.

⁵ Tex. Const. art. VII, § 1.

⁶ *Edgewood I*, 777 S.W. 2d at 394.

⁷ Tex. Const. art. VII, §1.

⁸ See *infra* notes 21-51 and accompanying text.

⁹ *Edgewood I*, 777 S.W. 2d 391, 395 (Tex. 1989).

¹⁰ See *infra* notes 29-39 and accompanying text.

¹¹ *Id.*

¹² See *infra* note 29 and accompanying text.

¹³ See *infra* notes 41-48 and accompanying text.

¹⁴ See *infra* notes 42-48 and accompanying text.

¹⁵ See *infra* notes 49-51 and accompanying text.

¹⁶ *Id.*

¹⁷ *Edgewood I*, 777 S.W. 2d 391, 395 (Tex. 1989) (“efficient” connotes the use of resources to produce results with little waste).

¹⁸ *Edgewood I*, 777 S.W. 2d at 395.

¹⁹ *Id.*

²⁰ *Edgewood II*, 804 S.W. 2d 491, 497 (Tex. 1991).

²¹ *Id.*

²² *Edgewood II*, 804 S.W. 2d at 497.

²³ *Edgewood III*, 804 S.W. 2d 499, 500 n.2 (Tex. 1991) (opinion on motion for rehearing).

²⁴ *Edgewood I*, 777 S.W. 2d 391, 395 (Tex. 1989).

²⁵ *Edgewood II*, 804 S.W. 2d 491, 496 (Tex. 1991) (noting that efficiency requires “some equalization of funds”).

²⁶ *Id.* At 496 (noting that some districts have 450 times more funding per weighted pupil); *id.* At 497 (discussion of the consolidation of districts as a possible solution); *Edgewood III*, 804 S.W. 2d at 499 (finding “tax base consolidation could be achieved through the creation of new school districts.”).

²⁷ *Edgewood II*, 804 S.W. 2d at 496 (finding that “these factors compel the decision as a matter of law that the state has made an unconstitutionally inefficient use of its resources.”).

²⁸ *Edgewood I*, 777 S.W. 2d at 394.

²⁹ To make clear the difference between aggregate and individual efficiency, imagine someone standing next to broken railroad tracks, towards which a full passenger train is moving quickly. The person weighs just enough so that pushing him onto the track would stop the train and save the passengers. Pushing the person onto the track would certainly be efficient in the aggregate, but the action would violate his right to personal efficiency maximization.

³⁰ *Edgewood I*, 777 S.W. 2d at 397.

³¹ *Id.* At 391 (finding “all the people of the state have the right”); *id.* At 395 n.4 (noting the importance of the “education of all the children of the state”); *id.* At 396 (noting “the constitutionally imposed responsibility for an efficient system is the same for all citizens regardless of where they live”); *id.* At 397 (noting that an efficient system shall provide for “each” student).

³² *Id.* At 397. See also *id.* At 397-98 (in providing an efficient system, the legislature cannot equalize educational opportunity on an “if funds are left over” basis).

³³ *Id.* At 396 (noting that historically, “each student in the state was entitled to exactly the same distribution of funds”); *id.* At 396 (the framers of the Texas Constitution “were contemplating equal expenditure”); *id.* at 396 (noting that had growth in the state been equal, “efficiency would have been maintained”).

³⁴ *Edgewood III*, 804 S.W. 2d 499, 500 n.2 (Tex. 1991) (opinion on motion for rehearing) (noting *Edgewood I* [does] not require a per capita distribution or absolute equality”); *id.* at 500 (finding that; “so long as efficiency is maintained [the legislature may] authorize local school districts to supplement their educational resources”).

³⁵ *Edgewood I*, 777 S.W. 2d 391, 397 (Tex. 1989) (noting the importance of “equal educational advantages”); *id.* at 397 (“equal education opportunities”); *id.* at 398 (same); *Edgewood III*, 804 S.W. 2d at 500 n.2 (noting *Edgewood I* demands that districts; “generate sufficient revenues to meet ... minimum standards”).

³⁶ See, e.g., Levin, *Current Trends in School Finance Reform Litigation: A Commentary*, 1977 Duke L.J. 1099, 1103, 1106 (discussing conflicting views of this standard). Many have noted the difficulty in applying this standard in practice. See, e.g., Hanushek & Kain, *On the Value of Equality of Education Opportunity as a Guide to Public Policy*, in *On Equality in Educational Opportunity* 116 (1972); Levin,

Alternatives to the Present System of School Finance: Their Problems and Prospects, 61 *Geo. L.J.* 879 (1973); McDermott & Klein, *The Cost-Quality Debate in School Finance Reform Litigation: Do Dollars Make a Difference?*, 38 *Law & Contemp. Probs.* 415, 419-20 (1974).

³⁷ *Edgewood II*, 804 S.W. 2d 491, 496 (Tex. 1991). See *Edgewood I*, 777 S.W. 2d at 396 (noting that “the 1876 constitution provided a structure whereby the burden of school taxation fell equally and uniformly across the state”); *id.* at 397 (finding “districts must have substantially equal access to similar revenues per pupil at similar levels of tax efforts”).

³⁸ All the language is in the context of, and may be limited to, the current ad valorem tax system.

⁴⁰ *Edgewood I*, 777 S.W. 2d 391, 396 (Tex. 1989) (noting “the purpose of an efficient system was to provide for a general diffusion of knowledge”); *id.* at 397 (finding “the standard fixed in law is certainly high enough to enable the masses of people who receive the benefit of it, to have the general diffusion of knowledge”). But see *Edgewood II*, 804 S.W. 2d at 498 (“[N]or do we suggest that an efficient funding system will by itself solve all the many challenges facing public education in Texas today.”).

⁴² *Edgewood I*, 777 S.W. 2d at 394 (noting a constitutional plan must be suitable); *id.* at 394 (juxtaposing the constitutional demands of suitability and efficiency).

⁴³ *Edgewood I*, 777 S.W. 2d at 397. See *Edgewood II*, 804 S.W. 2d 491, 492 (Tex. 1991) (noting that “Senate Bill 1 leaves essentially intact the same funding system ...”); *id.* at 496 (quoting *Edgewood I*); *id.* at 496 (finding the fundamental flaw of Senate Bill 1 is its failure to restructure the system.)

⁴⁴ *Edgewood II*, 804 S.W. 2d at 496 (“The fundamental flaw of Senate Bill 1 does not lie in any particular provision but in its overall failure to restructure the system.”). The court may or may not be reemphasizing here the element of individual efficiency. The court says Senate Bill 1 did not “remedy the major causes of the wide opportunity gaps between rich and poor districts.” For example, the bill did not “change the boundaries” of districts, change the funding allocation, nor equalize access to funds among all districts.

⁴⁵ *Edgewood I*, 777 S.W. 2d 391, 396 (Tex. 1989).

⁴⁶ *Edgewood III*, 804 S.W. 2d 499, 499 (Tex. 1991) (opinion on motion for rehearing).

⁴⁷ *Edgewood I*, 777 S.W. 2d at 398.

⁴⁸ *Edgewood I*, 777 S.W. 2d at 398 (noting an efficient system would enhance local control). But *cf.* *Edgewood III*, 804 S.W. 2d at 500 (noting the “state’s primary obligation [for education] and local districts’ secondary contributions”).

⁴⁹ *Edgewood I*, 777 S.W. 2d at 398.

⁵⁰ *Rose v. Council for Better Educ.*, 790 S.W. 2d 186 (Ky. 1989).

⁵¹ See Borden, *Litigating State Constitutional Rights to an Adequate Education and the Remedy of State Operated School Districts*, 42 *Rutgers L. Rev.* 779 (1990).

⁵² Under pure economics, religious schools should be included to increase the number of competitors on the supply side. Some litigants also would argue that social science evidence shows that religious schools perform better than public schools in obtaining measurable student achievement. See, e.g., *J. Chubb & T. Moe, Politics, Markets and America’s Schools* (1990). While including religious schools raises a colorable establishment clause issue, recent Supreme Court show that including religious schools and allowing free choice is merely an accommodation of free exercise. See *Board of Educ. V. Mergens*, 110 S. Ct. 2356 (1990); *Witters v. Washington Dept. of Servs. For the Blind*, 474 U.S. 481 (1986); *Mueller v. Allen*, 463 U.S. 388 (1983); and *Zelman v. Simmons-Harris*, 534 U.S. 1111 (2002).

⁵³ *Runyon v. McCrary*, 427 U.S. 160 (1976) upheld the prohibition of admission exclusion on the basis of race by private, commercially operated, non-religious schools.

⁵⁴ The Oregon Office of the Legislative Council rendered an opinion that inclusion of religious schools would not violate the federal establishment clause, Memorandum from Kathleen Beaufait, Chief Deputy Legislative Counsel and Mike Autio, Law Clerk, to Lee Penny, Joint Committee on Education (Jan. 29, 1990) (copy on file with author), as did Professor Michael McConnell, University of Chicago School of Law, Letter to Oregonians for Choice (Aug. 2, 1990) (copy on file with author).

⁵⁵ For example, assume an elementary school with 300 students with an annual budget of \$1.5 million, which would be a per pupil expenditure of \$5,000, about the national average. When a public/private choice plan is adopted, 10 percent (thirty) of the students leave, but only take \$3,000 per student with them (total \$90,000). The school is left with a budget of \$1,410,000, and per pupil expenditure rises to \$5,222. Those who believe that more money means a better education, as the Texas Supreme Court implicitly did in *Edgewood I*, will happily remain in public school. Those who prefer a private education will feel better off, and a win-win situation is created.

⁵⁶ J. Chubb & T. Moe, *supra* note 64, at 219.

⁵⁷ *Locke v. Davey*, 124 S. Ct. 1307 (U.S. 2004).⁵⁷ Milwaukee Parental Choice Program, *Wis. Stat. Ann.* § 119.23 (1990).

⁵⁸ East Harlem I.S.D. in New York is the most prominent example.

⁵⁹ We will now develop the approaches that could be used by choice advocates to assert its constitutionality under *Edgewood*. Lines of attack and suggestive evidence will be discussed because an exhaustive analysis is beyond the scope of the Article.

⁶⁰ See Hanushek, *The Economics of Schooling*, 24 *J. Econ. Literature* 1141-77 (1986) and Hanushek, *Conceptual and Empirical Issues in the Estimation of Educational Production Functions*, 14 *J. Human Resources* 351-388 (1979) for an extensive review of the literature.

⁶¹ M. Davis & K. Hayes, *Efficiency and Inefficiency in the Texas Public Schools* (Texas Public Policy Foundation and the National Center for Policy Analysis, 1990).

⁶² *Id.* at executive summary page.

⁶³ *Id.* at 2.

⁶⁴ *Id.* at 3.

⁶⁵ *Edgewood I*, 777 S.W. 2d 391, 395 (Tex. 1991).

⁶⁶ M. Davis & K. Hayes, *supra* note 73, at 20. No specific voucher plans are discussed.

⁶⁷ See M. Friedman, *Capitalism and Freedom* 85-107 (1962); Friedman, *The Role of Government in Education*, in *Economics and the Public Interest* 123 (R. Solo ed. 1955). See also J. Coons & S. Sugarman, *Education by Choice: The Case for Family Control* (1978); Coons, *Making Schools Public*, in *Private Schools and the Public Good: Policy Alternatives for the Eighties* 91 (E. Gaffney ed. 1981). Adam Smith and Thomas Paine might also be called upon to testify through their acknowledged expert texts. A. Smith, *The Wealth of Nations* 737 (1937) ed.; West, *Tom Paine's Voucher Scheme for Public Education*, 33 *S. Econ. J.* 378, 381 (1967).

⁶⁸ Richard Vedder and Joshua Hall, *Efficient, Effective and Fair: Paying for Public Education in Texas*, Texas Public Policy Foundation, Austin, TX, 2004 at 10.

⁶⁹ Chris Patterson, *Testing and Accountability*, presentation to the Legislative Policy Conference, Texas Public Policy Foundation, Austin, TX, September 2002 at <http://www.texaspolicy.com/pdf/2002-09-06-testing-accountability.pdf>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Hood, Miracle on 109th Street*, Reason, May 1989, at 20.

⁷³ Act of June 7, 1990, 71st Leg. 6th C.S., ch. 1, 1990 Tex. Gen. Laws 1.

⁷⁴ *Edgewood II*, 804 S.W. 2d 491, 498 (Tex. 1991); *id.* at 496 (noting the fundamental flaw is the legislature's "overall failure to restructure the system").

⁷⁵ *Id.* at 497.

⁷⁶ J. Chubb & T. Moe, *supra* note 64.

⁷⁷ See M. Davis & K. Hayes, *supra* note 73, at 12.

⁷⁸ 120 Tex. 351, 40 S.W. 2d 20 (1931).

⁷⁹ 804 S.W. 2d 491, 497 (Tex. 1991). The County Education Districts (CEDs) were also upheld by the trial court. *Edgewood Indep. School Dist. v. Kirby*, No. 362, 516 (Dist. Ct. of Travis County, 250th Judicial Dist. of Tex. August 7, 1991). The CEDs could be a giant step toward an efficient choice system. A child should be able to go to any school in his CED, because that gives the child a much wider choice. Why not allow free competition for students? The structure is already in place.

⁸⁰ 804 S.W. 2d 499, 499 (Tex. 1991) (opinion on motion for rehearing).

⁸¹ *Edgewood I*, 777 S.W. 2d 391, 395 (Tex. 1989) (emphasis in original).

⁸² *Id.* at 396.

⁸³ *Id.* at 397.

⁸⁴ *Id.*

⁸⁵ See Sugarman, *Part of the Solution Rather than Part of the Problem: A Role for American Private Schools in the 1990's*, 31 *Wm. & Mary L. Rev.* 686 (1990). If one wants to keep minorities entrapped in inefficient, stultifying, bureaucratic, single-race schools, then support the status quo. If not, give them the liberty promised in the Texas Constitution. Liberty for minorities as well as whites is why Polly Williams, a black legislator from Wisconsin, led the fight for the Milwaukee Parental Choice Plan and says it is time the public schools stop pretending they are educating all students. *Teachers v. Kids*, Wall St. J., June 6,

1990, at A16, col. 1. Liberty for minorities as well as whites is why black parents and students in Kansas City are suing for vouchers as a remedy for years of neglect in the public schools instead of more of the same integration. *Rivarde v. Missouri*, No. 890671CV-W-8 (W.D. Mo. 1989). Liberty for minorities is why parents in Illinois have sued for vouchers. *Committee for Educ. Rights v. Edgar*, No. 90 CH 11097 (Cook Co. Circuit Court, Chicago, Ill.). But unlike the divisiveness of affirmative action, vouchers for all benefits all.

⁸⁶ For a complete treatment of parent-controlled educational choice as the true meaning of “public free schools,” including the constitutional debates, early legislation and contemporaneous documents, see Parker, *Public Free Schools: A Constitutional Right to Educational Choice in Texas*, 45 Sw. L.J. 401 (1991).

⁸⁷ An act to establish and provide for the support and maintenance of an efficient system of public free schools was approved Aug. 19, 1876, 15th Leg., R.S., ch. 120, 1876 Tex. Gen. Laws 199, 8 H. Gammel, *Laws of Texas 1035* (1879). Professor C.F. Evans calls this law and the constitution a reaction to militant radical rule and a tendency to move back toward private school days. C.F. Evans, *The Story of Texas Schools 7-8* (1955).

⁸⁸ F. Eby, *The Development of Education in Texas 172* (1925).

⁸⁹ §14, 1876 Tex. Gen. Laws 201, 8 H. Gammel, *Laws of Texas 1037*.

⁹⁰ § 29, 1876 Tex. Gen. Laws 205, 8 H. Gammel, *Laws of Texas 1041*. See also § 24, 1876 Tex. Gen. Laws 203, 8 H. Gammel, *Laws of Texas 1039*.

⁹¹ J. Chubb & T. Moe, *supra* note 64, at 219.

⁹² § 29, 1876 Tex. Gen. Laws 205, 8 H. Gammel, *Laws of Texas 1041*; § 14, 1876 Tex. Gen. Laws 201, 8 H. Gammel, *Laws of Texas 1037*, ch. 31-32, 1876 Tex. Gen. Laws 205, 8 H. Gammel, *Laws of Texas 1041*.

⁹³ § 55, 1876 Tex. Gen. Laws 209, 8 H. Gammel, *Laws of Texas 1045*.

⁹⁴ See S. McKay, *Debates in the Texas Constitutional Convention of 1875* (1930).

⁹⁵ See Parker, *supra* note 98.

⁹⁶ Message of Gov. O.M. Roberts, S.J. of Tex., 18th Leg., R.S. 11 (1883), reprinted in Eby, *Education in Texas: Source Materials*, U. Tex. Bull. No. 1824, at 767 (1918).

⁹⁷ Message of Gov. O.M. Roberts, S.J. of Tex., 18th Leg., R.S. 15 (1883), reprinted in Eby, *supra* note 108, at 768-700.

⁹⁸ Watts & Rockwell, *The Original Intent of the Education Article of the Texas Constitution*, 21 St. Mary’s L.J. 771, 790 (1990).

⁹⁹ Winkler, *Platforms of Political Parties in Texas*, U. Tex. Bull. 101 (1916) (emphasis added). Note that Republicans wanted free public schools in the modern sense, not public free schools as the constitution mandated. *Id.* at 175.

¹⁰⁰ *Id.* at 179.

¹⁰¹ *Edgewood I*, 777 S.W. 2d 391, 395 (Tex. 1989).

¹⁰² *Id.* at 396.

¹⁰³ *Tex. Const.* art. VII, § 1.

¹⁰⁴ *Edgewood I*, 777 S.W. 2d at 394.

¹⁰⁵ See *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

¹⁰⁶ *Edgewood I*, 777 S.W. 2d 391, 394 (Tex. 1989).

¹⁰⁷ *Id.* at 394.

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