

Introduction
After
Zelman v. Simmons-Harris,
What Next?

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In the most anticipated decision of its 2002 term, the Supreme Court ruled, in the case of *Zelman v. Simmons-Harris*, that the school voucher program in Cleveland, Ohio, did not violate the Constitution's ban on the "establishment" of religion. Opponents of vouchers—that is, the use of public funds to help low-income families pay tuition at private schools, including religious schools—were predictably disappointed, but pledged to fight on. As Senator Edward M. Kennedy declared, "Vouchers may be constitutional," but "that doesn't make them good policy."

The policy's sympathizers, needless to say, saw the ruling in a different light. President George W. Bush used the occasion of the Supreme Court's decision to issue a full-throated endorsement of vouchers. *Zelman*, he told a gathering in Cleveland, did more than remove a constitutional cloud; it was a "historic" turning point in how Americans think about education. In 1954, in *Brown v. Board of Education*, the Court had ruled that the country could not have two sets of schools, "one for African-Americans and one for whites." Now, the president

continued, in ruling as it did in the Cleveland case, the Court was affirming a similar principle, proclaiming that “our nation will not accept one education system for those who can afford to send their children to a school of their choice and one for those who can’t.” *Zelman*, according to the President, is *Brown* all over again.

But is it? That question forms the core issue addressed in this collection of papers, most of which were initially presented at a conference hosted by the Program on Education Policy and Governance at Harvard University in October 2002. Part One of the volume looks at the legal meaning of *Zelman*, assessing whether its legal impact is broad or narrow. Part Two explores the broader political and policy context in the wake of this Supreme Court decision. Altogether, the collection as a whole provides an overview of the direction in which the school choice movement is likely to go in the years ahead.

Publicly funded school vouchers got their start in Milwaukee, Wisconsin, in 1990. Established at the urging of local black leaders and Wisconsin Governor Tommy Thompson (now Secretary of Health and Human Services), the program was originally restricted to secular private schools and included fewer than a thousand needy students. To accommodate growing demand, religious schools were later allowed to participate, an arrangement declared constitutional in 1998 by the Wisconsin Supreme Court. The Milwaukee program now provides a voucher worth up to \$5,785 each to over 10,000 students, amounting to more than 15 percent of the school system’s eligible population.

In 1999, at the behest of Governor Jeb Bush, Florida also established a publicly funded voucher program, aimed at students attending public schools that failed to meet state standards. Though only a few hundred students were participating in the failing-school program in 2003, another 9,000 students

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were participating in a separate voucher program for those found to be in need of special education. The failing-school program in Florida is also noteworthy because it served as a model for the voucher-like federal scholarship program advocated by George W. Bush during the 2000 presidential campaign.

Though the Milwaukee and Florida programs received the most public attention, it was the program in Cleveland that finally reached the writing desk of the Chief Justice. The Cleveland program is relatively small, providing in 2003 a maximum of \$2,750 a year to each of roughly 5,000 students. Parents use the vouchers overwhelmingly for religious schools, which in recent years have matriculated over 90 percent of the program's participants. This, according to lawyers for the teachers unions, the most powerful foe of vouchers, constituted an obvious violation of the separation between church and state. The unions prevailed twice in federal court, winning decisions at the trial and appellate level against Susan Zelman, Ohio's superintendent of public instruction and the official responsible for administering the Cleveland program.

But the Supreme Court, in a 5–4 decision, was not persuaded. In his opinion for the majority in *Zelman*, Chief Justice William Rehnquist pointed to three well-known precedents—*Mueller* (1983), *Witters* (1986), and *Zobrest* (1993)—in which the Court had allowed government funds to flow to religious schools. What these cases had in common, Chief Justice Rehnquist wrote, and what they shared with the Cleveland voucher program, was that public money reached the schools “only as a result of the genuine and independent choices of private individuals.” Under Cleveland's program, families were in no way coerced to send their children to religious schools; they had a range of state-funded options, including secular private schools, charter schools, magnet schools, and traditional pub-

lic schools. As Kenneth W. Starr points out in the opening essay below, Rehnquist concluded that the voucher program was “entirely neutral with respect to religion.”

The dissenters in *Zelman*, led by Justice David Souter, challenged the majority’s reading of the relevant precedents—especially of *Nyquist* (1973), a ruling that struck down a New York State program giving aid to religious schools—and suggested that the choice in Cleveland between religion and non-religion was a mere legal fiction. They saved their most pointed objections, however, for what they saw as the likely social consequences of the ruling. The Court, Souter wrote, was promoting “divisiveness” by asking secular taxpayers to support, for example, the teaching of “Muslim views on the differential treatment of the sexes,” or by asking Muslim Americans to pay “for the endorsement of the religious Zionism taught in many religious Jewish schools.” Justice Stephen Breyer suggested that the decision would spark “a struggle of sect against sect,” and Justice John Paul Stevens wondered if the majority had considered the lessons of other nations’ experience around the world, including “the impact of religious strife . . . on the decisions of neighbors in the Balkans, Northern Ireland, and the Middle East to mistrust one another.”

In his essay below, Peter Berkowitz reflects on the vitriol contained within these comments, pointing out that there is little in the practice of religious schools in the United States that justifies such language. Moreover, most of the world’s democracies fund both religious and secular schools without causing undue domestic turmoil. In their essay on the way in which the religious issue is handled in other countries, Charles L. Glenn and Jan De Groof show that tensions can be managed without bitter, divisive controversy.

Still, if judicial rhetoric is all that counts, the dissenters in *Zelman* had the better of it. In the majority opinion, by con-

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trast, there is very little that rises to the level of *Brown's* oft-cited language about the demands of American equality. Even observers pleased by the ruling were disappointed that the majority's opinion did not go much beyond showing how the facts of the case fit past precedents; there are no ringing declarations in Chief Justice Rehnquist's stodgy prose. In fact, the decision may have been a narrow one, hardly in the same league as *Brown*. In two separate essays, Stephen K. Green as well as Louis R. Cohen and C. Boyden Gray suggest that *Zelman* may have been a more narrow decision than some believe. In Cleveland, vouchers were accompanied by charter schools (called community schools in Ohio) and other forms of school choice, which give parents a range of secular options that accompanied the religious ones obtained through vouchers. They point out that it is not altogether clear whether voucher initiatives are unconstitutional in the absence of a significant range of secular choices.

Still, in separate concurring opinions written by two of the Justices one gets a sense of the wider issues at stake. Responding to the worries of the dissenters, Justice Sandra Day O'Connor pointed out that taxpayer dollars have long flowed to various religious institutions—through Pell Grants to denominational colleges and universities; through child-care subsidies that can be used at churches, synagogues, and other religious institutions; through direct aid to parochial schools for transportation, textbooks, and other materials; and, indirectly, through the tax code, which gives special breaks to the faithful. If government aid to religious institutions were such a problem, she suggested, wouldn't American society be torn already by sectarian strife?

As Peter Berkowitz points out, several well-designed studies have shown that students who attend private schools in the U.S. are not only just as tolerant of others as their public school

peers but are also *more* engaged in political and community life. Catholic schools have a particularly outstanding record, probably because for more than a century American Catholics have felt compelled to teach democratic values as proof of their patriotism. There are obviously some extremists, but there is no reason to doubt that most of the country's religious schools are attempting to prove that they, too, can create good citizens.

As for *Brown* itself, only Justice Clarence Thomas, in his own stirring concurrence, pointed to it as an explicit precedent, quoting Frederick Douglass to argue that today's inner-city public school systems "deny emancipation to urban minority students":

The failure to provide education to poor urban children perpetuates a vicious cycle of poverty, dependence, criminality, and alienation that continues for the remainder of their lives. If society cannot end racial discrimination, at least it can arm minorities with the education to defend themselves from some of discrimination's effects.

For Justice Thomas, as for President Bush, whose own remarks were undoubtedly influenced by these passages, vouchers are a civil rights issue; they promise not to intensify religious strife, as the Court's dissenters would have it, but to help heal the country's most enduring social divide.

Whether *Zelman* can in fact meet these high expectations remains very much to be seen. *Brown*, in principle, was self-enacting. Neither state legislatures nor local school boards could defy the ruling without running afoul of the law. George Wallace, Bull Conner, and many other Southern politicians were willing to do just that, but in the end, federal authorities imposed the Supreme Court's decision on the vested interests that opposed it.

Zelman is different. Though it keeps existing voucher pro-

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grams intact, it does not compel the formation of new ones. Here the barricades to change remain extraordinarily high.

When *Brown* was handed down, Northern public opinion was moving against segregation; on the issue of vouchers, by contrast, public opinion is highly uncertain. Pollsters can get either pro-voucher or anti-voucher majorities simply by tinkering with the wording of their questions and the order in which they are asked. Nor, despite greater exposure for the issue, have the public's views evolved much in recent years; questions asked in 1995 generated basically the same results in 2000.

Vouchers suffer from more serious problems among members of the political class. As Terry M. Moe discusses in his essay on voucher politics, at both national and state levels, substantial bipartisan support is usually necessary to get a piece of legislation through the various committees, past a vote in two chambers, and signed into law. For vouchers, such support has never materialized. Whatever the private opinions of Democrats, for most of them it is political suicide to support vouchers publicly. Teachers unions have long placed vouchers at the top of their legislative kill list, and they are a key Democratic constituency, providing the party with both substantial financing and Election Day shock troops.

Nor can voucher proponents rely on wholehearted support from the GOP. Most Republicans, especially social conservatives and libertarians who have read their Milton Friedman, support vouchers in principle. Still, an idea whose primary appeal is to black Americans, the most faithful of all Democratic voting blocs, is a hard sell among the Republican rank-and-file. Vouchers simply do not have much resonance with well-heeled suburbanites who already have a range of educational choices. When vouchers came up as state ballot questions in both California and Michigan two years ago, most

Republican politicians found a way to dodge the issue—and the proposals lost badly.

Even if this political situation were to change, most states have constitutional restrictions of their own that may be invoked to scuttle attempts to provide vouchers for use at religious schools. Many of these provisions are the so-called “Blaine” amendments, dating to the nineteenth century, when James G. Blaine, a Senator from Maine and a Republican presidential candidate, sought to win the anti-immigrant vote by campaigning to deny public funds to Catholic schools. (Blaine is perhaps most famous for describing the Democrats as the party of “Rum, Romanism, and Rebellion.”) In its classic version, the Blaine amendment read as follows:

No money raised by taxation for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations.

In a number of cases, Clint Bolick tells us in his essay below, state courts have interpreted Blaine amendments to mean nothing more than what is required, according to the Supreme Court, by the establishment clause of the First Amendment. In this interpretation, vouchers are safe—but not every state judge necessarily shares this opinion. In Florida, an appeals court has overturned a trial court decision that found that Florida’s voucher program runs afoul of the state constitution.

Although the Florida case may persist in state courts for some time to come, the issue may appear before the U.S. Supreme Court in a quite different case as early as 2004, when the Court is expected to decide *Davey v. Locke*. This case arose

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because the State of Washington relied partly on its Blaine amendment to revoke the publicly funded scholarship of a student, Joshua Davey, who decided to major in theology at Northwest College. An appeals court found this interpretation of the Washington constitution in violation of the federal constitution. If the U.S. Supreme Court upholds the appeals court, it may neutralize the Blaine amendments altogether, thereby clearing the legal path for school vouchers.

But even if school vouchers should falter on state constitutional grounds, that would not necessarily forestall the school choice movement. Three other avenues remain under active consideration—tax credits, charter schools, and public school choice—though each contains its own set of speed bumps and potholes.

Several states, including Minnesota, Arizona, Florida, and Pennsylvania, are experimenting with tax credits and tax deductions, reducing taxes by a portion of the amount one pays for school tuition, or by what one contributes toward private school scholarships. In some forms, private school tax credits and deductions are indistinguishable from vouchers, the only difference being the distribution of funds to parents via the tax code rather than by the grant-making authority of government. To many economists, this is a legal distinction without substantive meaning. But in the world of law and practice, says Martin R. West in his essay below, state tax credits and deductions are quite different. For one thing, their constitutional validity is much more difficult to challenge, having stood tests in both state and federal courts. For another, they are more popular with the general public, winning higher levels of support than vouchers in opinion polls. Many private school operators also prefer tax credits and deductions, because they are less likely to be accompanied by governmental strings. On the other hand, it is more difficult to target tax credits and deduc-

tions toward disadvantaged populations. Much of the equal opportunity élan that has motivated the voucher movement might be lost, were this to become the sole form of school choice.

Charter schools, schools run under government charters by private entities, have gained even broader acceptability than tax credits and tax deductions. As many as thirty-six states have allowed the formation of charter schools, though in many states the law restricts charter school operations in important ways, either by limiting the number of charter schools or by placing them under the authority of potentially hostile regulatory agencies. But according to Bryan Hassel, in his essay below, the idea has been popular enough that, as of 2003, almost 685,000 students, better than one percent of the school-age population, were attending over 2,700 charter schools. The period of rapid growth occurred in the mid to late 1990s; since 2000, the growth rate has tapered off in the face of strengthened union opposition, tighter regulatory controls, and a series of well-publicized scandals at a few charter schools.

Hassel points out that the charter system has one important advantage over school vouchers: it addresses the supply side of the school choice equation. Although vouchers may give parents the wherewithal to pay for private schools, that means little unless private schools increase in number, or expand in size. Yet the initial costs of starting a new school, and recruiting a constituency for the school, can be very large. With a charter from the state in hand, charter school operators are better placed to open a new school. Also, charter schools have typically received an amount close to that received for the operating costs of public schools, something not available through most existing voucher programs. But even with these advantages, charter schools still face many practical and political problems that can be addressed only if they receive greater

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encouragement from public officials and if they develop their own networks of support and sharing of information. Hassel identifies useful ways in which progress can be made.

Finally, there is the public school choice encouraged under the recent federal legislation, No Child Left Behind, enacted into law in January 2002. The legislation says that any failing school must allow students to attend other public schools within the school district. It remains unclear whether this nationwide choice provision will open the door to a wide set of school choices. According to Ronald Brownstein, local school districts have done little to implement the legislation in the first year that it has taken effect; in time, groups may form to spur more effective implementation of the law, but skeptics will wonder whether a choice among traditional public schools is enough for those trapped within the inner core of our large metropolitan areas.

Depending on the way in which these issues are addressed, the Court's famed ruling in *Zelman* could still make the decision as critical as *Brown*. Certainly, the pro-choice movement, like the desegregation movement, means much more for minority students and their families than for other Americans.

For decades, and despite a host of compensatory reforms, the sizable gap in educational performance between blacks and whites has remained roughly the same. According to the National Assessment of Educational Progress, black eighth graders continue to score about four grade levels below their white peers on standardized tests. Nor is this gap likely to close as long as we have, again in President Bush's words, "one education system for those who can afford to send their children to a school of their choice and one for those who can't."

When parents choose a neighborhood or town in which to live, they also select, sometimes quite deliberately, a school for their children, often relying on various Internet services and

real-estate agents for information about test-score data and other pertinent details about school districts and even individual schools. But there is a catch: the mobility that makes these choices possible costs money. It is no accident that children lucky enough to be born into privilege also attend the nation's best schools.

African Americans are often the losers in this arrangement. Holding less financial equity, and still facing discrimination in the housing market, they choose from a limited set of housing options. As a result, their children are more likely to attend the worst public schools. Richer, whiter districts rarely extend anything more than a few token slots to low-income minority students outside their communities.

It is therefore not surprising that blacks have benefited most when school choice has been expanded. In multi-year evaluations of private voucher programs in New York City, Washington, D.C., and Dayton, Ohio, my colleagues and I found that African American students, when given the chance to attend private schools, scored significantly higher on standardized tests than comparable students who remained in the public schools. In New York, where estimates are the most precise, those who switched from public to private schools scored, after three years, roughly 8 percentage points higher on math and reading tests than their public school peers, a difference of about two grade levels. If reproduced nationwide, this result would cut almost in half the black-white test score gap. (Interestingly, there is no evidence that vouchers have improved the academic performance of students from other ethnic groups. In my own research, they had no impact, positive or negative, on the test scores of either whites in Dayton or Hispanics in New York City.)

These findings about the especially positive effects of private schools on African American students are hardly isolated.

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One review of the literature, conducted by the Princeton economist Cecilia Rouse, concludes that even though it is difficult to discern positive benefits for white students, “Catholic schools generate higher test scores for African Americans.” Another, done by Jeffrey Grogger and Derek Neal, economists from the University of California at Los Angeles and the University of Chicago, respectively, finds little in the way of detectable gains for whites but concludes that “urban minorities in Catholic schools fare much better than similar students in public schools.”

We do not know precisely what accounts for the gains that black students have made by switching to private schools. The answer is certainly not money, since the private schools they attend are usually low-budget, no-frills operations. The most striking difference, according to the research conducted by William Howell, Patrick Wolf, David Campbell, and myself, lies in the general educational environment: the parents of these students have reported being much more satisfied with everything from the curriculum, homework, and teacher quality to how the schools communicate with the parents themselves. The classes tend to be smaller, they say, and there is less fighting, cheating, racial conflict, or destruction of property.

No Child Left Behind

But how about those students left behind in traditional public schools? Even if students attending private schools are better off, will not those remaining in public schools be adversely affected? Like Caesar’s Gaul, this question can be divided into three parts. Do vouchers attract the best and brightest from public schools? Does the performance of public schools spiral

downward? Do public schools lose critically important fiscal resources? Let's consider each part separately.

Do Vouchers Attract the Best and the Brightest?

My own research has looked at the question of “the best and the brightest” in two different ways. In one study, my colleagues and I compared a random sample of all those who applied for a voucher offered nationwide by the Children's Scholarship Fund with a national cross-section of all those eligible to apply. African American students were twice as likely to apply as others. Specifically, 49 percent of the applicants were African American, even though they constituted just 26 percent of the eligible population. Other results reveal little sign that the interest in vouchers is limited to only the most talented. On the contrary, voucher applicants were just as likely to have a child who had a learning disability as all those in the eligible population. Nor is it only the better educated families who take an interest. Twenty-three percent of the mothers of applicants said they had graduated from college, as compared with 20 percent of the mothers in the eligible population.

In a second study, this time of vouchers in New York, Washington, D.C., and Dayton, my colleagues and I looked at those who actually made use of a voucher when it was offered to them. We did not find any evidence that private schools discriminated on the basis of a young student's test-score performance at the time they received an application from a voucher recipient. Among young applicants in New York City and Washington, D.C., there was no significant difference in the test scores at the time of application between voucher users and those who turned down the voucher and remained in public school. In Dayton, those using the voucher actually had

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lower math scores at the time of application, showing even more clearly that private schools were willing to take the educationally challenged student. Only among older students (grades 6–8) in Washington, D.C., did we see some signs that private schools expected students to meet a minimum educational standard prior to admission.

Other researchers find much the same pattern. In Milwaukee, the Wisconsin Legislative Audit Bureau found that the ethnic composition of the participants in Milwaukee’s voucher program during the 1998–1999 school year did not differ materially from that of students remaining in public schools. Similarly, a University of Wisconsin evaluation of an earlier, smaller voucher program in Milwaukee found few consistent test-score or family-background differences between those who took vouchers and those who remained in public schools. In Cleveland, Indiana University analysts said that voucher “students, like their families, are very similar to their public-school counterparts.” In short, vouchers tend to recruit a cross-section of the families and students eligible for participation.

Upon reflection, these findings are not particularly surprising. Families are more likely to want to opt out of a school if their child is doing badly than if the child is doing well. A number of families, moreover, select a private school because they like the religious education it provides, or because it is safe, or because they like the discipline. When all these factors operate simultaneously, the type of student who takes a voucher usually looks little different from those who pass up the opportunity.

Public School Performance

If vouchers do not simply pick off the top students within the public schools, but instead attract a cross-section of students,

then there is no obvious educational reason why public schools should suffer as a result of the initiative. On the contrary, public schools, confronted by the possibility that they could lose substantial numbers of students to competing schools within the community, might well pull up their socks and reach out more effectively to those they are serving. Interestingly enough, there is already some evidence that public schools do exactly that.

Harvard economist Caroline M. Hoxby has shown, for example, that since the Milwaukee voucher program was established on a larger scale in 1998, it has had a positive impact on public school test scores. The public schools in the low-income neighborhoods most intensely impacted by the voucher program increased their performance by a larger amount than scores in areas of Milwaukee and elsewhere in Wisconsin not affected by the voucher program. She also found a similar positive impact of charter school competition on public school test scores in Michigan and Arizona, the two states in the country with the largest number of students attending charter schools. In other words, when substantial numbers of students are using vouchers or going to charter schools, public schools in the vicinity apparently respond by improving their educational offerings and, as a result, public school performance is enhanced.

Even the threat of a voucher can have a positive effect on test scores. Research by Manhattan Institute scholar Jay Greene shows that when public schools were in danger of failing twice on the statewide Florida exam, making their students eligible for vouchers, these public schools made special efforts to avoid failure. Their test scores climbed more than did almost equally bad schools (which had D-minus test scores) that were not threatened by vouchers. Greene was able to rule out the possibility that the improvements were the result of the additional

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resources made available to the F schools. In other words, competition—even the threat of competition—had positive effects in Florida.

One way to look at the impact of choice on public schools over the long run is to compare student performance across metropolitan areas that have varying numbers of private schools. The greater the number of private schools, the greater the competition, and the greater the impact on public schools. If the presence of private schools undermines public schools, then one expects to find lower public school performance in metropolitan areas where private schools abound. But a Harvard study has shown exactly the opposite: public school students do better in those parts of the country where there is more ready access to private schools. Similarly, some metropolitan areas have more school districts than others, giving parents the option to choose among different public school systems by moving to the neighborhood of choice. Knowing that this sort of parental choice can affect community property values, school boards seem to respond by providing parents better quality education. Research shows that this in fact happens, that in metropolitan areas with more school districts, students are given more demanding academic courses, school sports are given less emphasis, costs are reined in, and students learn more.

Fiscal Impacts on Public School Children

To see how school vouchers affect the fiscal resources available to public school children, the structure of public school financing needs to be briefly considered. Although the financial arrangements vary from one state to the next, on average, nationwide, 49 percent of the revenue for public elementary and secondary schools comes from state governments, 44 per-

cent is collected from local sources, and the balance comes in the form of grants from the federal government. Most of the revenue school districts get from state governments is distributed on a “follow the child” principle. The more students in a district, the more money it receives from the state. If a child moves to another district, the state money follows the child. Local revenue, most of which comes from the local property tax, stays at home, no matter where the child goes. As a result, if a district suffers a net loss of students, the amount of money the district has per pupil actually increases, simply because local revenues can now be spread over fewer pupils.

The voucher programs in Milwaukee, Cleveland, and Florida have been designed along similar lines. The state money follows the child, but the local revenue stays behind in local public schools, which means that more money is available per pupil. In Milwaukee, per-pupil expenditures for public school children increased by 22 percent between 1990 and 1999, rising from \$7,559 to \$9,036. Not all of the increase was a direct result of the voucher program, but the case disproves any claim that students in public schools necessarily suffer from fewer financial resources when voucher programs are put into effect.

Though voucher programs have been designed in such a way as to be fiscally advantageous to public school children, future central-city programs should do more. They should be designed in such a way as to enhance resources available to public and private schools alike. If funds for public schools are greatly enhanced, public schools will be given every opportunity to respond effectively to the competition private schools pose. And given the competition, public schools will have strong incentives to make effective—and efficient—use of the extra monies. At the same time, vouchers that are much larger than those currently available will attract new entrepreneurs to education, both nonprofits and for-profits. Existing private

schools will be as challenged as public schools by new, energetic educators.

The Future of School Choice

Until now, all voucher programs have been limited to students from low-income families. Although this may have been appropriate for initial demonstration programs, a larger program should not encourage segregation of students by income. Instead, programs should be designed to encourage integration in both public and private schools, economically as well as socially. For this to happen, vouchers need to be generally available.

A citywide voucher program may also attract some of the middle and working class families who left cities because of the low quality of the urban schools. Gentrification has restored a number of urban neighborhoods in a few parts of the country, but city life has proved mainly attractive to those who need not worry about school quality—the young and the retired. Unfortunately, many couples leave the city they enjoy simply because they cannot bear the thought of placing their children in a public school—and a private school is beyond their means. Vouchers would provide an option for such families. If enough are enticed into remaining in the city, schools will gradually become better integrated, and central cities will be revitalized.

Still, the key to change lies within the black community, and especially with parents, who increasingly know that private schools provide a better education for their children. A 1998 poll by Public Agenda, a nonpartisan research group, found that 72 percent of African American parents supported vouchers, as opposed to just 59 percent of white parents. A poll conducted two years later by the Joint Center for Political

and Economic Studies had similar results, with just under half of the overall adult population supporting vouchers but 57 percent of African American adults favoring them. Perhaps more to the point, blacks constituted nearly half of all the applicants for the 40,000 privately funded vouchers offered nationwide by the Children's Scholarship Fund in 1999, even though they comprised only about a quarter of the eligible population.

Even in the face of such numbers, it is too much to expect that men like Jesse Jackson and Al Sharpton will reconsider their virulent opposition to vouchers; their political tendencies are too well defined. But pressure to support school vouchers is building among black parents, and black leaders will have to respond. Howard Fuller, the former superintendent of Milwaukee's public school system, has formed the Black Alliance for Educational Options, a pro-voucher group that has mounted an effective public relations campaign and is making waves in civil rights circles.

Not even the Supreme Court, it should be recognized, can make educational change come quickly in America. Though *Brown* was handed down in 1954, it took more than a decade before major civil rights legislation was enacted; southern schools were not substantially desegregated until the 1970s. Anyone writing about *Brown* ten years after its passage might have concluded that the decision was almost meaningless except for a few border states.

The question now is whether the ruling in *Zelman* will have any greater near-term impact than *Brown* did. Like *Brown* the Court's authoritative pronouncement on the constitutionality of vouchers has already conferred new legitimacy on those calling for reform. Newspaper editors and talk-show hosts have been forced to give the idea more respect, and political opponents cannot dismiss it so easily. Still, just as *Brown* did not produce immediate results, the same may be said about

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Zelman. Perhaps the safest prediction is that, in four or five decades, American education will have been altered dramatically, in ways we cannot anticipate, by the parental demand for greater choice—a demand codified in *Zelman*. Many battles will be fought and lost along the way, to be sure, but the victories will accumulate, because choice, once won, is seldom conceded.