

Chapter 11

School Vouchers

School vouchers are the boldest privatization proposal now under active consideration in the United States. By directing education funds to parents, rather than to government-school administrators, vouchers break the government-school monopoly over tax funding and end the anticompetition cartel erected some 150 years ago. Vouchers make access to universal schooling possible without government actually running schools, and they create a competitive education marketplace without requiring parents to pay the full cost of their children's schooling during their K–12 years.

School voucher programs would present to teachers, administrators, investors, and entrepreneurs a wide and exciting range of opportunities for business and facility ownership, competition and cooperation, profit and loss, and innovation and choice. Government and private schools would be allowed to compete as well as cooperate with one another. A new generation of private schools would emerge, and businesses and institutions not now in the K–12 education industry—museums, hospitals, libraries, universities, and computer and publishing companies—would play a more active role in educating the country's young people.

Allowing parents to choose the schools their children attend is less an issue in affluent suburbs than in urban low-income neighborhoods. Many suburban parents already exercise school choice

by deciding to live in a particular community based on their perceptions of the quality of local schools, property taxes, and other considerations. However, even their freedom of choice is severely curtailed by the similarity of government schools and by the financial penalty they must bear when they choose private schools.

The need for school vouchers is most urgently felt in urban areas, where families are prevented by poverty, bureaucracy, and politics from choosing better schools for their children. They cannot afford to move to the suburbs to find better schools, nor can they pay private school tuition. Big-city school systems are dominated by teachers unions and other status quo interests powerful enough to resist the changes, choices, and accountability desired by parents.

Opponents of school vouchers raise several objections. They doubt that the demand for private schools is very great, while at the same time they doubt whether the supply of private schools could expand sufficiently to serve those who want to switch schools. They say new regulations will accompany the vouchers, compromising the independence and quality of schools that accept them. And they contend giving public funds to parents who choose religious schools violates the First Amendment's prohibition on the establishment of religion.

Even those who favor some sort of privatization of schooling wonder whether school vouchers are the best way to advance that goal. In the wake of lopsided defeats of voucher initiatives in 2000, some doubt that vouchers can attract sufficient public support or overcome the power of interest groups that oppose privatization. These doubters propose tuition tax credits as an alternative strategy, believing that they are easier to adopt legislatively and might make it more difficult for governments to regulate private schools. Finally, many people wonder where the voucher path leads in the long term, decades from now, when demographic and political conditions may be quite different.

This chapter addresses each of these issues. It references model legislation illustrating some of the features of voucher plans (those model plans can be found on the Internet at www.heartland.org).

Although every chapter ends with recommended readings, the reader's attention is called specifically to those at the end of this chapter because the issues addressed only briefly here have been subjected to book-length treatment by other authors.

DEMAND FOR PRIVATE SCHOOLING

Chapter 8 explained the law of demand, which says a lower price generally leads consumers to demand larger quantities of a good or service. The precise relationship between price and demand varies. In some cases, very large changes in price are necessary to bring about even a small changes in consumption; in other cases, small changes in price can lead to large change in consumption. Which is true of the demand for private schools?

A comprehensive statistical analysis of the factors influencing the decision to choose a private school showed the cost of tuition significantly affects that decision.¹ According to analysts Barry Chiswick and Stella Koutroumanes, a 10 percent increase in the price of private schooling reduces the probability of a family selecting private schooling by 4.8 percent; a 10 percent reduction in price causes a 4.8 percent increase in the probability of choosing private schools.²

If the relationship between tuition and the probability of choosing private schools remains the same even as the cost of tuition goes to zero, then a 100 percent reduction in price would cause a 48 percent increase in the probability of choosing private schools. In other words, a voucher plan that covered the entire cost of private school tuition would increase from 12 to 60 the percentage of students attending private schools. More than half of all families would opt for private schools if they did not have to pay twice—once through their taxes, and again through tuition.

¹B. R. Chiswick and S. Koutroumanes, "An Econometric Analysis of the Demand for Private Schooling," *Research in Labor Economics* 15 (1996): 209–37.

²Ibid. "[A] price elasticity of .48 overall was calculated for private schools. The 95% confidence interval for the price elasticity was {.59, .38}." In other words, if repeated independent samples were taken, in 95 percent of those samples the price elasticity would be between .38 and .59.

Chiswick and Koutroumanes's data do not allow us to extrapolate the relationship they found all the way to zero tuition, but opinion surveys reveal the 60 percent figure is plausible. A 1999 survey by Public Agenda found that 55 percent of parents with children currently in government schools (67 percent of inner-city parents) would choose private schools if tuition was not a concern.³ The Harwood Group found large majorities of parents, including upward of 80 percent of African-American families, would choose private schools over government schools if tuition were not a consideration.⁴

Terry Moe's careful analysis of public opinion, published in 2001, found that "most public school parents say they would be interested in going private," and "even 'satisfied' public parents might be interested in going private if they were motivated by the desire to seek out better alternatives."⁵ Finally, there are international examples that shed light on this issue. When the Netherlands introduced a voucher system a century ago, one-third of Dutch children attended private schools; today about 60 percent do. And since Sweden adopted reforms in 1992 giving private schools (both sectarian and independent) public financing on close to equal terms with government schools, enrollment in private schools has grown by 10–12 percent a year.⁶

Tuition is not a complete description of the cost of choosing a private school. If choosing a private school increases travel time for students and parents (which is likely in the short term, given that government schools outnumber private schools by about eight to one nationwide), the complete cost of the decision (time

³Public Agenda, *On Thin Ice: How Advocates and Opponents Could Misread the Public's View on Vouchers and Charter Schools* (New York: Public Agenda, 1999).

⁴The Harwood Group, *Halfway Out the Door: Citizens Talk about Their Mandate for Public Schools* (Dayton, Ohio: Kettering Foundation, 1995).

⁵Terry M. Moe, *Schools, Vouchers, and the American Public* (Washington, DC: The Brookings Institution, 2001), 153, 164.

⁶Harry Anthony Patrinos and David Lakshmanan Ariasingam, *Decentralization of Education: Demand-Side Financing* (Washington, DC: The World Bank, 1997), 11; F. Mikael Sandstrom and Fredrik Bergstrom, "School Vouchers in Practice: Competition Won't Hurt You!" Working Paper No. 578, The Research Institute of Industrial Economics, Stockholm, 30 April 2002.

plus money) is higher than the price of tuition alone. For this reason, the rate at which parents choose private schools may increase more slowly than the decline in tuition.

PRIVATE SCHOOL CAPACITY WOULD INCREASE

Economics predicts more of a good or service is produced when consumers are willing to pay a higher price for it. The possibility of profits encourages firms and individuals who had previously devoted themselves to producing other products to switch to producing the higher-priced product, and companies already producing the product will hire more staff and acquire other inputs to increase their output. Eventually, supply once again equals demand.

Would the market for schooling perform the same way as other markets? An increased number of parents able to pay tuition can be expected to lead to investment in new schools and personnel, but would this be sufficient to provide a place for every child? There are many reasons to believe the answer is yes.

Vouchers would not necessarily increase the total amount of schooling demanded; they would merely change the mix of public and private schooling.⁷ Resources, including facilities and personnel, could be released from the public sector in amounts roughly equal to their acquisition by the private sector.⁸ The private K–12 schooling sector constitutes a very small part of a marketplace that

⁷Increased expenditures for educational activities at home may increase the tendency to homeschool, which might reduce the demand for formal schooling, although homeschooling starts with a very small share (2 percent) of the current market. Parochial schools have shown a superior ability to keep low-income students from dropping out, which could increase the number of students enrolled in schools by a similarly small amount.

⁸The qualifier *roughly* is necessary because tax credit and voucher proposals often do not require that spending on public schools fall at the same pace as public school enrollment. State aid is provided on a per-pupil basis, so unless that formula is changed, state funding of public schools should track enrollment trends. Local funding, provided by property taxes, would not automatically decline.

includes public prekindergarten and K–12 schools, public and private technical and business training, and public and private higher education.⁹ Therefore, even if they were to grow rapidly, private K–12 schools would have little effect on wages or rent.

None of the inputs needed for K–12 schooling is especially scarce or specialized. Schools can and do operate in a variety of places, including shopping malls, museums, universities, and office buildings.¹⁰ If schooling were provided in a competitive market, we would expect to see greater diversity in size and location as entrepreneurs tailored the traditional school and classroom to meet the interests and needs of parents and students.

Approximately 200,000 new teachers enter the market every year, with a growing portion of them certified through alternatives to traditional teachers colleges.¹¹ Breaking the teachers' college monopoly on training and reducing the strength of unions in schools would greatly expand the number of people entering the teaching profession, especially in such fields as computer science, mathematics, and science.

College and university enrollment growth following passage of the Servicemen's Readjustment Act of 1944 (the G.I. Bill) suggests that schooling capacity can be added quickly. In the space of just two years, enrollment in the nation's colleges and universities rose 33 percent above prewar levels and 45 percent over the previous (wartime) period.¹²

It is very unlikely, then, that private school capacity would not increase to keep pace with rising demand. The charter school

⁹See Chiswick and Koutroumanes, "Demand for Private Schooling," 217.

¹⁰Richard C. Seder, *Satellite Charter Schools: Addressing the School-Facilities Crunch Through Public-Private Partnerships* (Los Angeles: Reason Public Policy Institute, April 1999).

¹¹C. Emily Feistritzer, *Alternative Teacher Certification: A State-by-State Analysis 2000* (Washington, DC: National Center for Education Information, 2000).

¹²David Barulich, "Fiscal Impact Analysis of the Parental Choice in Education Amendment for the California Constitution," self-published manuscript, 23 June 1992, 7, Appendix 4. Note this was new demand for schooling, whereas vouchers and tax credits only shift demand from public to private schools. This makes the argument that supply is highly elastic even stronger.

movement has demonstrated there are many parents, teachers, and entrepreneurs willing and able to start new schools, notwithstanding the obstacles and regulations placed in their path by unions and other elements of the education establishment.

Opponents of market-based reforms sometimes claim some of the new investment made possible by vouchers would be wasted on advertising, profits, or redundant new facilities across the street or just blocks away from underused facilities.¹³ Such predictions are raised every time privatization is proposed, regardless of the field in which it is applied, yet privatized enterprises almost invariably result in higher-quality services and lower prices.¹⁴ As we explained in Chapter 5, advertising is not wasted money. It is an indispensable means of providing information to consumers and is a part of nearly every efficient market.

The economic laws of supply and demand mean a growing demand for a product or service must result either in increased supply or increased prices. The demand must either be served (by new supply), or slowed (by higher prices). Insight into the effect vouchers may have on K–12 education can be gained by looking at the effects of Pell Grants (which subsidize demand for higher education) on college tuition and access to postsecondary education.

Begun in 1973 under the name Basic Education Opportunity Grants (and renamed in 1980), the Pell Grants program provides about \$6 billion in aid to about 4 million students each year. Research by Thomas Kane suggests Pell Grants did not result in

¹³These allegations often appear in the literature on school vouchers. See Stephen Arons, “Equity, Option, and Vouchers,” and Eli Ginzberg, “The Economics of the Voucher System,” both in *Educational Vouchers: Concepts and Controversies*, ed. George R. La Noue (New York: Teachers College, Columbia University, 1972); David C. Berliner and Bruce J. Biddle, “Poor Ideas for Reform,” chap. 5 in *The Manufactured Crisis* (New York: Addison-Wesley Publishing Company, 1995), 173–214; and Paul Hill, Lawrence Pierce, and James Guthrie, “Contracting and Other Reform Proposals,” chap. 4 in *Reinventing Public Education* (Chicago: University of Chicago Press, 1997), 83–124.

¹⁴Charles Wolf Jr., *Markets or Governments: Choosing between Imperfect Alternatives* (Cambridge: The MIT Press, 1988); E. S. Savas, *Privatization and Public-Private Partnerships* (New York: Chatham House Publishers, 2000).

higher tuitions.¹⁵ According to Kane, the cost of attending an average public university between 1973 and 1980 actually fell by about 15 percent, in inflation-adjusted 1993 dollars, this at a time when the real value of Pell Grants was at its highest: \$3,628 in 1975. Between 1980 and 1993, the average cost of college attendance increased 41 percent, from about \$4,800 to \$6,500, while the value of the maximum Pell Grant fell 22 percent, to about \$2,300 in 1993.¹⁶

The experiences in higher education, first with the GI bill and more recently with Pell Grants, confirms that subsidizing the demand for schooling increases supply at least proportionately. Under a voucher plan, most parents and children who want to shift from government to private schools will find room in suitable schools.

AVOIDING NEW REGULATIONS

Voucher proponents and opponents alike increasingly agree that excessive regulation and nonacademic mandates hurt the quality of government schools.¹⁷ William Stanmeyer, a former professor of law, comments, "We have a peculiar ratio here, almost an illustration of Parkinson's law: in modern American education, student performance has declined in inverse proportion as government regulation of schools has increased. One begins to see a causal relation: arguably, the regulations—a form of detailed oversight—actually, through a complicated process of discouraging of quality, promote

¹⁵Thomas J. Kane, "Rising Public College Tuition and College Entry: How Well Do Public Subsidies Promote Access to College?" Working Paper 5164, Cambridge, Mass., National Bureau of Economic Research, 1995, 173–85.

¹⁶*Ibid.*, 174–75.

¹⁷Educational divestiture—reduction of nonacademic tasks—is one positive response to the tendency of politicians and interest groups to overburden schools with such tasks. See Louis Goldman, "An End to Hubris: Educational Divestiture," *The Educational Forum* 49, no. 4 (summer 1985): 411–21.

For example, see Arthur E. Wise, *Legislated Learning: The Bureaucratization of the American Classroom* (Berkeley and Los Angeles: University of California Press, 1979), and Joseph H. McGwiney, "State Educational Governance Patterns," *Educational Administration Quarterly* 15, no. 2 (spring 1979).

poor performance. That is, the regulations are not serving their purpose. It follows that if the way to harm quality is to add regulations, the way to promote quality is to remove regulations (subject, of course, to reasonable health, safety, and reporting rules).¹⁸

To extend such regulation to private schools would clearly be counterproductive. Some private school representatives and libertarians thus oppose voucher programs, out of fear that regulation would be the inevitable consequence of government funding of private schools.¹⁹ Typical is the warning from the late Benjamin A. Rogge, "While the parent may find it pleasant to have his child's education subsidized, the price he pays for this is loss of control over his education. He who pays the piper will call the tune."²⁰

The appropriate response to this legitimate concern is not resignation or defeatism but resolve to create voucher programs that ensure private schools retain their authority over curriculum; textbook selection; admissions, retention, and disciplinary policies; and personnel policies, including employment contracts. Private schools should continue to be exempt from statutes that guarantee tenure and contract renewal, and that restrict transfers and demotions. Private schools should continue to enjoy protection against the assertion of special constitutional rights by school employees.²¹ As in the case of hospitals, the clients' welfare should be the primary consideration.

At present, private schools enjoy greater autonomy in all these areas than do government schools, despite the efforts of many

¹⁸Testimony of William A. Stanmeyer, former professor of law, Indiana State University, on proposed regulation of nonpublic schools in Maine. "Statement on Proposed Chapter 121," Arlington, Va., Lincoln Center for Legal Studies, 1979.

¹⁹See John Chodes, "State Subsidy to Private Schools: A Case History of Destruction," *The Freeman*, March 1991.

²⁰Benjamin A. Rogge, "Financing Private Education in the U.S.," monograph, Institute for Humane Studies, Fairfax, Va., n.d., 5.

²¹See William D. Valente, *Education Law: Public and Private* (St. Paul, Minn.: West Publishing Co., 1985), 377; see also Myron Lieberman, "The Due Process Fiasco," chap. 4 in *Beyond Public Education* (New York: Praeger Publishers, 1986) for a discussion of the difficulties faced by government schools in firing incompetent teachers. In defense of a minimalist regulatory scheme, see Stephen Arons, "In Search of a Theory concerning Government Regulation of Private Schools," *Educational Freedom* 23, no. 1 (fall-winter 1989-1990): 42-47.

government and teachers union officials to the contrary.²² But it is wrong to suggest vouchers would open to government regulators doors not currently open to them. State constitutions already allow for heavy regulation of private schools, regardless of whether those schools receive government funding. (More comments on this topic appear in the Postscript to this book.)

Although competition is the surest guarantor of quality in education, voucher advocates probably will not win the support of a majority of legislators and the general public without some further assurances of accountability.²³ Voucher opponents argue that public funding demands public accountability, by which they mean government oversight. Voucher proposals can be designed to require participating schools to administer standard achievement tests and make test results available upon request. Because most private schools already administer such tests, this is unlikely to be a burdensome regulation.

Preserving school autonomy requires that authority over school certification, testing, and information distribution not be centralized in a state bureaucracy. It is too easy, and wholly unnecessary, to compromise in the direction of government-administered testing and school certification. A number of independent tests of student achievement are already recognized by, and used in, most states, and several private agencies certify schools.²⁴ In a compet-

²²Conflicts between religious private schools and government authorities seeking to regulate them have become more frequent in recent years. For an excellent overview of the literature on state regulation of religious schools, see Thomas C. Hunt, James C. Carper, and Charles R. Kniker, eds., *Religious Schools in America: A Select Bibliography* (New York: Garland, n.d.).

²³Moe, *Vouchers*.

²⁴Independent tests include the Iowa Basic Skills Test (University of Iowa), National Assessment Program (Testronics Testing Program, New York and Chicago), Comprehensive Test of Basic Skills (McGraw-Hill Series, Manchester, Mo.), Stanford Achievement Test (Stanford, Calif.), and Scholastic Tests (Psychological Corp., San Antonio, Tex.).

Private agencies that certify schools include the National Federation of Nonpublic School State Accrediting Associations (St. Louis, Mo.), the Independent Schools Association of the Central States (Downers Grove, Ill.), and the North Central Accrediting Association (Denver).

itive environment, good schools will have sufficient motivation to publish and even advertise performance-based information; parents, likewise, will have significant motivation to inquire about such information. The government need only enforce the test mandate, and perhaps only for a limited time.

Four more specific means would reduce the threat of increased regulation of private schools. The first, and most likely to succeed, is constitutional language stating the right of private schools to autonomy. Several proposed constitutional amendments establishing voucher programs freeze the regulatory requirements a private school can be required to meet. The California Educational Choice Initiative, for example, contained this language: "Scholarship Schools shall be entitled to redeem the state scholarships for their students upon filing a statement indicating satisfaction of those requirements for hiring and employment, for curriculum and for facilities which applied to private schools on July 1, 1987; the Legislature may not augment such requirements. No school shall lose eligibility to redeem scholarships except upon proof of substantial violation of this section after notice and opportunity to defend."²⁵

The second means involves voucher legislation giving opponents of regulation the resources and legal status they need to protect school autonomy. Language that would do so appeared in the 1996 California Educational Freedom Amendment, for example, which was endorsed by Milton Friedman and many other voucher experts.

A third means to avoid increased regulation of private schools under a voucher program is to require that any government body with regulatory powers over participating private schools have a membership equally balanced between government and private school interests. This is accomplished, for example, by provisions in the Missouri Educard and Louisiana Right-to-Learn proposals.

²⁵See Robert Wittmann and Thomas Hetland, "Sample Educational Choice Legislation," in part 7 of *Rebuilding America's Schools*, ed. Joseph and Diane Bast (Chicago: The Heartland Institute, 1991).

A final means to limit regulation is to combine with the voucher plan an initiative to deregulate government schools. Voucher-plan critics say lightly regulated private schools would enjoy an unfair competitive advantage over government schools, which shoulder many regulations in return for their public funding.²⁶ The solution, once again, is not adherence to a status quo that is demonstrably failing but deregulation of the government schools.

Charter schools and performance-based deregulation are gaining popularity in academic and legislative circles and can be pointed to as examples of responsible deregulation.²⁷ The Coons-Sugarman Voucher Initiative and the American Legislative Exchange Council (ALEC) Education Voucher Amendment offer excellent examples of innovative public-sector deregulation strategies within the context of voucher programs.²⁸

CONSTITUTIONALITY

Any comprehensive voucher proposal is likely to face constitutional challenges. These challenges will usually fall into one of four categories: the establishment clause of the U.S. constitution, state Blaine amendments, equal protection and uniformity, and state public purpose. Recent court decisions suggest a well-designed voucher plan can pass all tests.

²⁶See John E. Chubb and Terry M. Moe, "No School Is an Island: Politics, Markets, and Education," *Brookings Review*, fall 1986.

²⁷In 1988, South Carolina became the first state to adopt a statewide policy of freeing local school districts from state mandates and regulations if state performance standards were met. More than twenty states have adopted waiver provisions that enable schools to request relief from regulations that stand in the way of effecting positive change. See *Education Week*, 11 April 1990. See also Peter Schmidt, "States Redesigning Roles, Structures of Education Agencies," *Education Week*, 17 October 1990.

²⁸For further discussion of government school deregulation, see "Chartered Schools," in *Citizens League Report* (Minneapolis: Citizens League, November 1988) and Ted Kolderie, *What Makes an Organization Want to Improve: Ideas for the Restructuring of Public Education* (Minneapolis: Public Services Redesign Project, n.d.).

THE ESTABLISHMENT CLAUSE OF THE U.S. CONSTITUTION

School choice programs that allow religious private schools to receive public funds, however indirectly, have been charged with violating the separation of church and state required by the establishment clause of the First Amendment.²⁹ To remove any threat of a constitutional challenge on establishment grounds, religious schools were specifically forbidden to participate in the pilot voucher program launched in Milwaukee in 1990. On June 10, 1998, the Wisconsin Supreme Court permitted expanding the Milwaukee Parental Choice Program to include religious schools. The U.S. Supreme Court refused to hear a challenge to the state court's decision, in effect signaling its approval.

Tax credits for parents who choose religious schools for their children passed constitutional muster in a number of U.S. Supreme Court decisions dating to 1980. In one important case, *Mueller v. Allen* (1983), the Court ruled, "The Establishment Clause of course extends beyond prohibition of a state church or payment of state funds to one or more churches. We do not think, however, that its prohibition extends to the type of tax deduction established in Minnesota. The historic purposes of the clause do not encompass the sort of attenuated financial benefit, ultimately controlled by the private choices of individual parents, that eventually flows to parochial schools from the neutrally available tax benefit at issue in this case."³⁰

²⁹See R. L. Maddox, "Why Vouchers Are Wrong," *Church and State* 39, no. 9 (1986): 22–23; Leonard W. Levy, *The Establishment Clause: Religion and the First Amendment* (New York: Macmillan, 1987). For a more accommodationist interpretation of the Establishment Clause, see Robert L. Cord, *Separation of Church and State: Historical Fact and Current Fiction* (New York: Lambeth Press, 1982), and Nancy Fink, "The Establishment Clause According to the Supreme Court: The Eclipse of Free Exercise Values," *Educational Freedom* 13, no. 2 (spring–summer 1980): 5–16. On the Court's bias against religion, see Richard L. Baer, "The Supreme Court's Discriminatory Use of the Term 'Sectarianism,'" *Journal of Law and Politics* 6, no. 3 (Charlottesville, Va., University of Virginia Law School, spring 1990): 449–68.

³⁰*Mueller v. Allen*, 51 L.W. 5050 and 103 S.Ct. 3062.

The Court was slower to affirm the constitutionality of school vouchers. In two important cases in the 1990s—*Lamb's Chapel* (1993) and *Rosenberger* (1995)—the U.S. Supreme Court ruled that the right to freedom of religious expression, protected by the First Amendment, extends to schooling and cannot be trampled by establishment concerns. In the *Lamb's Chapel* case, a school district was found to have violated the Constitution when it barred a private group from using its facilities to present family values from a religious perspective. In *Rosenberger*, the University of Virginia was found to have violated the Constitution when it denied funding to a student organization whose publication offered a Christian viewpoint.³¹

In *Agostino v. Felton*, decided in June 1997, the U.S. Supreme Court ruled that government school teachers funded by federal tax dollars may teach special education classes to parochial school students within private facilities. The ruling overturned a previous decision, *Aguilar v. Felton*, issued in 1985 and widely viewed as a barrier to including religious schools in school voucher plans.

These decisions were extended in 2001 in *Good News Club v. Milford Central School*, in which the Court ordered that school districts must give children's Bible clubs the same access to public schools for after-school meetings as they provide to other community groups. "The Court's decision is a reminder that religious speech is not second-class speech," commented law professor Richard Garnett. "The court's current case law makes it clear that the First Amendment permits religious schools and faith-based service providers to participate in our shared efforts for educational opportunity and empowerment and against poverty and addiction."³²

In June 2002, in *Zelman v. Simmons-Harris*, the U.S. Supreme Court finally and emphatically ruled that school voucher programs, properly designed, did not pose a threat to the First Amendment. Cleveland's voucher program, the Court ruled, is

³¹George Clowes, "Supreme Court OKs Bible Club Meetings in Schools," *School Reform News*, August 2001.

³²*Ibid.*

“entirely neutral with respect to religion.” The Court went on to say, “It provides benefits directly to a wide spectrum of individuals, defined only by financial need and residence in a particular school district,” and continued, “It permits such individuals to exercise genuine choice among options public and private, secular and religious. The program is therefore a program of true private choice. In keeping with an unbroken line of decisions rejecting challenges to similar programs, we hold that the program does not offend the Establishment Clause.”

The impact of *Zelman v. Simmons-Harris* can hardly be overstated. Prior to the decision, liberal antivoucher advocate Bill Berkowitz, writing in *Working for Change*, wrote, “A favorable decision will undoubtedly open the voucher floodgates. With the court and the administration in sync, the road to education reform looks like *deja vu* welfare reform all over again.”³³ Voucher legislation in fact was introduced in more than 20 states following the Court’s ruling.

Zelman v. Simmons-Harris only slightly modified the terms and conditions, as set forth in previous Court rulings, that school voucher programs must meet to avoid successful legal challenges on First Amendment grounds. The programs must have a secular purpose; aid must go to parents, not directly to private schools; the class of recipients must be broad (e.g., low-income families) and not defined on the basis of religion; the program must be neutral between religious and nonreligious options; and families must have adequate nonreligious educational options from which to choose. These nonreligious options need not be private schools but may include charter schools and public magnet schools.³⁴

STATE BLAINE AMENDMENTS

Constitutionality of educational choice at the federal level is not the only issue. Many state constitutions contain specific prohibitions

³³Bill Berkowitz, “The Education Gravy Boat,” *Working for Change*, 10 August 2001.

³⁴Marie Gryphon, “School Choice after *Zelman*,” *School Reform News*, April 2003, 7.

against direct or indirect public aid to religious private schools.³⁵ Known as Blaine amendments (after James G. Blaine, a former member of Congress who in 1875–76 sought unsuccessfully to amend the U.S. Constitution to prohibit states from devoting public money or land to schools having any religious affiliation), the language of these provisions would seem to disallow the adoption of voucher programs by statute.

The recent U.S. Supreme Court decisions in favor of the free exercise of religion in schools gives voucher proponents a powerful weapon in state courts. In many states, Blaine amendments have been interpreted to track the Supreme Court's analysis of the federal Establishment Clause.³⁶ Recent Supreme Court decisions have clearly sided with protecting religious speech and practice in schools, and state laws calling for discrimination against families who wish to send their children to religious schools would seem to violate the U.S. Constitution. The Supreme Court unequivocally held in *Widmar v. Vincent* that a state's desire to achieve greater separation of church and state than that mandated by the federal Constitution does not justify discrimination against religion.³⁷

EQUAL PROTECTION AND UNIFORMITY CHALLENGES

The equal protection clauses of the U.S. Constitution and state constitutions may be used to challenge any regulatory exemptions or waivers that benefit private schools disproportionately. Students are sometimes given an enforceable right to equal educational opportunity by state constitutions, and it may be asserted that the lack of regulation of private schools makes it impossible

³⁵See A. E. Dick Howard, *State Aid to Private Higher Education* (Charlottesville, N.C.: Michie Co., 1977) for an overview of state constitutional provisions regarding public funding of religious education. See also Patricia Lines, *State Constitutional and Legal Provisions Prohibiting or Granting Public Support for Private Education* (Denver: Education Commission of the States, Education and Law Center, 1984).

³⁶See, for example, *Board of Education v. Bakalis*, 54 Ill. 2d 448, 299 N.E.2d 737, 743–745 (1973).

³⁷*Widmar v. Vincent*, 454 U.S. at 276.

for the state to ensure they will deliver educational services of a quality equal to that provided by government schools. Conversely, parents and administrators of government schools may argue that the burden of regulation on government schools prevents them from providing the same level of quality as that delivered by the less-regulated private schools.

Again, the best way to avoid challenges on equal protection grounds is to include deregulation of government schools in choice legislation. Previously mentioned voucher proposals by John Coons and Stephen Sugarman do this.

A voucher plan can also incorporate minimum performance standards for participating schools, allowing citizens, legislators, and public authorities to monitor their performance. The Milwaukee voucher program, the longest in operation, requires participating schools to meet at least one of four requirements concerning graduation, attendance, student achievement, and parent involvement. Because government schools are rarely required to meet such standards, the claim that they are somehow held more accountable than private schools is untenable.

When equal protection and uniformity challenges were brought against the Milwaukee voucher program, Circuit Court Judge Susan Steingass ruled in favor of the voucher plan on three grounds. First, Judge Steingass wrote, “the Uniformity Clause neither guarantees nor requires that all education in all district schools be absolutely the same. Rather, it requires that the ‘character’ of education be uniform.”³⁸ The character of education was described in previous court decisions as referring to such policies as minimum standards for teacher certification, number of school days, and standard school curriculum. Even those standards did not, according to Judge Steingass, establish precise criteria that must be met before an education can be said to be constitutionally sufficient.

Judge Steingass rejected the uniformity challenge for a second reason. “I am not persuaded that this program turns private into public schools; and if they are not public schools, they are not

³⁸*Davis v. Grover*, Circuit Court Branch 8, Case No. 90 CV 2576.

subject to the Uniformity Clause,” she writes. “Here it seems more accurate to characterize participating schools as private schools that accept public school students. The student certainly remains public school pupils [sic], but I do not think the private schools lose their character because of that fact.” In other words, the act of accepting tuition payments in exchange for teaching students once enrolled in government schools does not bring private schools under the same regulatory requirements that apply to government schools.

Finally, Judge Steingass rejected the equal protection challenge because the voucher plan contained provisions that enabled government officials to monitor the performance of participating schools. “The legislature requires detailed, direct reporting to a degree,” she writes, “that I, at least, have not previously seen in enactments regarding education.”

STATE PUBLIC-PURPOSE CHALLENGES

A voucher program may be challenged on the grounds that private schools do not fulfill the public-purpose requirement of a state constitution. Voucher programs benefit private institutions, the argument goes. The public purpose is lost, voucher critics contend, when private schools are permitted to exclude students, when only a small number of students may participate, and when the state surrenders its control over the education students receive in private schools.

The first line of defense against a public-purpose challenge is to place a clear and succinct statement of purpose in the choice legislation. This statement should honestly stress that the purpose is to improve the educational opportunity or achievement of all children by promoting healthy competition, parental participation, and innovation. If the program is restricted to only a small number of pupils, the language should stress that they must be truly needy, that designing a program only for them is a worthy public purpose, and that the lessons learned from this program may lead to programs extending choice to larger numbers of pupils in the future. An excellent example of a purpose clause can be found in the Minnesota Educational Quality and Equity Act.

Any interpretation of public purpose that excludes private institutions as a matter of definition is excessively narrow and unconstitutionally abridges the equal protection guarantees these institutions enjoy. In the case of education, the overwhelming preponderance of evidence indicates that private schools meet the public-purpose test as intended by constitutional framers. As former Supreme Court Justice Lewis F. Powell Jr. remarked, “Parochial schools, quite apart from their sectarian purpose, have provided an educational alternative for millions of young Americans; they often afford wholesome competition with the public schools; and in some States they relieve substantially the tax burden incident to the operation of public schools. The State has, moreover, a legitimate interest in facilitating education of the highest quality for all children within its boundaries, whatever schools their parents have chosen for them.”³⁹

In cases where public purpose is interpreted by voucher opponents as including all legislative and judicial mandates for provision of special services (for example, services for disadvantaged and handicapped students), voucher advocates must argue that such over-and-above mandates apply to private schools only if funding for these programs is made part of the voucher amount—in other words, only if private schools receive the same level of per-student funding as do government schools. As was shown in Chapter 1, more than \$130 billion has been given to government schools under Title 1, supposedly to benefit children in poverty.

Voucher plans can also be designed to provide a funding advantage for government schools to compensate them for having to accept students not accepted elsewhere. As said earlier, however, choice is likely to reduce the problem-child population in the government schools by promoting a wider variety of school environments that will accommodate students with diverse needs. Moreover, private schools, especially in inner-city areas, are no more likely to make significant use of selective admissions

³⁹*Wolman v. Walter*, 433 U.S. 229, 226 (Powell, J., concurring in part, concurring in judgment in part, and dissenting in part).

standards or to suspend or expel students than are government schools.⁴⁰

VOUCHERS AS A REFORM STRATEGY

Although it is easy to propose ways to privatize schooling, it is more difficult to develop proposals that have a reasonable chance of winning the political and public support needed for them to be implemented. Public-choice theory, as described in Chapter 9, warns that special interest groups often prevent adoption of policies that serve the public interest, even when they are vastly outnumbered by individual citizens who might benefit from the change in policy. School vouchers overcome this recalcitrance by breaking up the education establishment and creating new constituencies and interest groups in favor of competition and choice.

Defenders of the status quo take advantage of the fact that most parents and voters are unaware that schools in the United States were historically privately operated and partially publicly funded. They cast proposals for serious reform as unpatriotic attacks on “the public schools,” being careful to avoid using the more accurate term government schools. Vouchers, however, can be defended as part of an effort to improve, rather than abolish, public schools. Competition and choice lead to better test scores and other measurable outcomes at government as well as private schools. Members of the public may feel some loyalty to their alma maters and to government schools in general, but most do not oppose reforms that promise to make schools more effective, less costly, or both. They are especially supportive of the idea that parents of children in failing schools should be allowed to send their children to other, more successful public and private schools.

Thanks to the pervasiveness of choice in the private sector, the general public is constantly exposed to the benefits and feasibil-

⁴⁰See evidence and source citations in Joseph and Diane Bast, eds., *Rebuilding America's Schools*, part 1 (Chicago: The Heartland Institute, 1991).

ity of being free to choose, and these lessons are readily applicable to the challenge of improving schools. People who believe schooling should be a universal entitlement can agree that private schools should be allowed to compete with government schools and with one another for public funds.

POPULAR SUPPORT FOR VOUCHERS

School vouchers are favored by most Americans. Gallup Polls conducted during the 1980s showed steadily increasing support for vouchers. By 1992, Gallup found 71 percent of the general public, including 88 percent of African-Americans and 84 percent of Hispanics, in favor of vouchers.⁴¹ The Gallup Organization subsequently changed the language of the question to imply that vouchers would require higher taxes (they would not), and the approval rating for vouchers fell, but even with the unfavorable phrasing, support rose from just 24 percent in 1993 to 41 percent in 1999.

Other polls with more balanced phrasing confirm the popularity of vouchers. Terry M. Moe, in a book-length analysis of public opinion on vouchers, concluded that 60 percent of the public favors vouchers and only 32 percent are opposed.⁴² A 1999 survey conducted by Public Agenda found 57 percent of the general public, including 68 percent of African-Americans and 65 percent of Hispanics, favored vouchers.⁴³ An impressive 67 percent thought vouchers would pressure the public school system to improve, while only 20 percent thought vouchers would destroy the public school system.

A poll conducted in 1999 by the Democratic Leadership Council found that 54 percent of all respondents favored vouchers (versus

⁴¹Terry M. Moe, "Private Vouchers: Politics and Evidence," in *School Choice or Best Systems: What Improves Education?* ed. Margaret C. Wang and Herbert J. Walberg (Mahwah, N.J.: Lawrence Erlbaum Associates, 2001), 71.

⁴²Moe, *Schools, Vouchers*. Moe also found most parents have only a dim understanding of vouchers, tax credits, and charter schools. Better understanding could lead to higher levels of support for such reforms.

⁴³Steve Farkas, Jean Johnson, and Tony Foleno with Ann Duffett and Patrick Foley, *On Thin Ice: How Advocates and Opponents Could Misread the Public's Views on Vouchers and Charter Schools* (New York: Public Agenda, 1999).

38 percent opposed).⁴⁴ Another poll conducted in 1999 for the Joint Center for Political and Economic Studies found that 53 percent of all respondents, including 60 percent of African-Americans, favored vouchers (versus 40 and 33 percent, respectively, opposed).⁴⁵ A poll conducted in 2001 by the Hispanic Business Roundtable found 73 percent of Hispanic parents supported vouchers, versus only 22 percent opposed.⁴⁶

Among privatization options, only vouchers enjoy significant support among liberal opinion leaders. In an editorial supporting Cleveland's pilot voucher program, the *Washington Post* observed the great injustice of allowing the well-to-do to choose private schools but "it's the poor who get stuck in systems that too often prepare the next generation only for more poverty. In the face of this longstanding and unacceptable inequity, we don't have much patience for those who would block creative experimentation in a search for solutions."⁴⁷

WEAKENING ANTIREFORM INTEREST GROUPS

School vouchers undermine the myths spread by antireform interest groups: that parents are too stupid, immoral, or apathetic to choose the schools their children attend; that private schools cannot be held accountable to parents or taxpayers and therefore cannot be trusted to produce so essential a service as K-12 education; and that religious and independent schools are the preserve of the privileged and the wealthy whereas government schools represent mainstream American values and culture.⁴⁸ Each of these

⁴⁴Mark J. Penn, "A Hunger for Reform," *Blueprint* (Democratic Leadership Council) fall 1999.

⁴⁵David A. Bositis, *1999 National Poll: Education* (Washington, DC: Joint Center for Political and Economic Studies, 1999), 8.

⁴⁶Hispanic Business Roundtable, *The Latino Coalition & Hispanic Business Roundtable National Survey of Hispanic Adults* (Washington, DC: Hispanic Business Roundtable, 24 July 2001).

⁴⁷Editorial, *Washington Post*, 1 March 2002.

⁴⁸Visit the National Education Association's Web site at www.nea.org to see all these myths stated repeatedly in essays and features with such titles as "Don't Believe the Hype! Countering the Myths About Vouchers" and "Why Florida's 'A+' Voucher Plan Gets an 'F.'"

myths must be rebutted before any kind of substantial privatization can take place.

Vouchers weaken financially the most powerful sources of opposition to privatization: teachers unions, government school administrators, and school boards. So long as government schools are protected from competition, these special interests are free to use millions of dollars in union dues and public funds to thwart reform efforts. Reform-oriented candidates seeking positions on school boards and state and national offices always face, in primaries and general elections, opposition that is well funded by unions. The diversion of funds from government to private schools under a voucher plan would diminish the strength of such efforts. Without vouchers or some other plan to defund these interest groups, efforts to achieve substantial privatization are likely to be futile.

School vouchers would create a counterforce to the present government-school establishment in the form of a thriving marketplace for new private schools. Today's private-school sector is small, predominantly religiously affiliated, and not for profit. Lacking real entrepreneurs and owners, they raise only a weak voice for privatization and competition and sometimes even join government schools in opposing voucher plans. With a voucher program in place, the political balance would shift away from unions and government-school defenders and toward parents and the education entrepreneurs seeking to meet their needs.⁴⁹ By helping create such an industry, vouchers would pave the way for further privatization and deregulation.

VOUCHERS PROVIDE A SOFT LANDING

Finally, vouchers would ensure that the transition from government monopoly to a competitive education marketplace would help rather than hurt students now enrolled in government schools and children from low-income families, the latter among the most vulnerable members of society. This soft landing for

⁴⁹See Milton Friedman, "Public Schools: Make Them Private," *Washington Post*, 19 February 1995.

people most likely to be affected by reform addresses valid concerns often exploited by the opponents of reform.

Advocates of complete privatization often seem to ignore the costs that would be borne by some parents, students, and teachers if government schools were suddenly swept away and only today's poorly funded and mostly not-for-profit private schools remained. Few parents are willing to see their children's educations put on hold for a year, or longer, while a national industry involving millions of teachers and administrators is rebuilt from top to bottom. Even fewer government-school employees would be enthusiastic about such a plan.

A school voucher program could gradually diminish tax subsidies to government schools as parents voluntarily choose to send their children to private schools. Government schools would be gradually defunded and converted to private schools without disrupting the schooling of children now enrolled and without massive layoffs of government employees.

By focusing first on serving children trapped in the worst government schools, where public support for market-based reform is strongest, school vouchers could incrementally expand the capacity of private schools and give all the important stakeholders in schooling—elected officials, teachers, taxpayers, and parents—the information and experience they need to prepare for a fully competitive education marketplace.

VOUCHERS VERSUS TAX CREDITS

Proponents of tuition tax credits and vouchers are close allies who must work together if either plan is to win legislative or voter approval. Both strategies are based on the premise that more competition among schools is needed; both would treat parents and students better and private schools more fairly than they are currently treated. It is even possible to blur the distinction between tax credits and vouchers by making tax credits refundable, so even low-income taxpayers and nontaxpayers get the full cost of tuition paid by the government.

The voucher and tax credit approaches differ in four ways:

- Under a tax credit plan, parents pay tuition out of pocket before applying for an annual tax credit; a voucher pays tuition immediately.
- Under a tax credit plan, taxpayers apply to a government agency for reimbursement; under a voucher plan, the schools apply for the reimbursement.
- Because parents have varying incomes and tax rates, the amount of tax support received by each student varies under a tax credit plan; under a voucher plan, all students are funded equally.
- Tax credit plans are likely to raise enough money to move only a small fraction of students from government to private schools; vouchers would move many more.

SHOULD PARENTS PAY FIRST?

Because vouchers ease the financial sacrifice that usually comes with choosing a private school, tax credit proponents fear vouchers may vitiate one of the reasons for the success of private education. Having to save money to pay tuition or helping to raise money at school functions are actions that can create and reinforce a parent's interest in education. Critics contend that by reducing the personal cost of choosing a private school, a voucher plan may make parents less likely to invest the time needed to monitor the schools their children attend.

Voucher proponents doubt whether financial sacrifice is the principal factor, or even a significant one, in explaining the success of private schools. Families, as was explained in Chapter 4, are not miniature marketplaces. Love, faith, and custom are all more important than financial sacrifice in predicting whether parents monitor the schools their children attend.⁵⁰ Private schools offer more opportunities for parental participation and are more accountable to parents because they must compete for students, not because the parents necessarily earn the money

⁵⁰See Jennifer Roback Morse, *Love & Economics: Why the Laissez-Faire Family Doesn't Work* (Dallas: Spence Publishing Company, 2001).

needed to pay tuition. Voucher programs, then, would preserve and expand the incentives needed to improve schools.

Requiring parents to pay out of pocket first and only afterward receive a tax credit or refund makes it more difficult for low- and middle-income parents to choose private schools. These are the very families that need help the most. Having to wait for a government refund check would create cash-flow problems for many poor households.

Tax credit proponents say the cash-flow problem would be minimal if more than one taxpayer were allowed to claim a credit for contributing to a child's education. They also contend that tuition levels at many private schools are low enough to allow students to contribute toward their tuition by working during the summer months and that scholarship programs and loans can ease the burden on low-income families.

Tax credit advocates contend their plans poll nearly as well as vouchers and have not attracted the strong criticism from unions and liberal activists that voucher proposals have. Voucher plans, they say, are unpopular in state legislatures and relatively wealthy suburban communities because affluent suburbanites want to keep inner-city minority children out of their schools. Tax credits, they say, pose no such threat.

WHO SHOULD PETITION FOR THE REFUND?

Tax credit proponents believe their plan would make it more difficult for the state to impose regulations and restrictions on participating schools. Under a tax credit plan, donors and tuition payers bear the responsibility for applying for the tax benefit after they contribute to a school or pay a tuition bill. Tax credit proponents point to the current treatment of contributions to not-for-profit charitable organizations: other than occasional audits, nonprofit organizations usually are subject only to minimal reporting and bookkeeping requirements.

Voucher proponents counter by saying not-for-profit schools can be required to meet standards and abide by regulations regardless of whether they participate in a voucher program. The federal courts have upheld decisions by the Internal Revenue

Service to deny tax-exempt status to schools that do not comply with affirmative action regulations regarding enrollment and staffing.⁵¹ If a tax credit plan has a refundability clause, whereby low-income families qualify even if they pay little in taxes, courts would probably view the program as being no different from an outright voucher program.

Tax credits shift the burden of interacting with government agencies from schools to individual taxpayers, which voucher advocates contend may pose a greater, not lesser, threat to privacy and freedom of choice. Minnesota, for example, significantly expanded the size and scope of its tuition tax credit program in the late 1990s, and in 2000, every parent who claimed the credit was audited by the state's department of revenue. Those parents probably doubt whether shifting the risk of government interference from schools to parents is much of a bargain.

John Coons and Stephen Sugarman, writing about the pros and cons of tax credits versus vouchers some 30 years ago, concluded that "Tax credits can be less intrusive than subsidies to families, or they can be more intrusive. It all depends upon the conditions attached to the claiming of the credit by the taxpayer and how these conditions compare to those which limit redemption of the voucher by the school."⁵² Most voucher proposals now contain language that increases legal protections for the autonomy of private schools, something that is missing from, and would be difficult to include in, tax credit plans.

SHOULD CHILDREN BENEFIT UNEQUALLY?

Does fairness require that per-pupil spending be approximately equal? This question has a significant bearing on the voucher-versus-tax-credit debate.

⁵¹In the *Bob Jones* case, the U.S. Supreme Court upheld the authority of the Internal Revenue Service to deny tax-exempt status to a private, religious university because it did not allow interracial dating on campus. See *Bob Jones University v. United States* and *Goldsboro Christian Schools v. United States*, 461 U.S. 574, 103 S.Ct. 2017, 76 L.Ed. 2d 157 (1983).

⁵²John E. Coons and Stephen D. Sugarman, *Education by Choice: The Case for Family Control* (1978; reprint, Troy, N.Y.: Educator's International Press, Inc., 1999).

Under a tuition tax credit plan, the amount of public funds used to support each child's education would depend on the price of tuition, tax liability of the parents, and voluntary decisions by other taxpayers to contribute to the child's education. The amount would therefore vary from child to child. Under a voucher plan, each child would receive a voucher equal in value to that given to every other child. (If vouchers of unequal amounts are allowed, they would compensate for the higher cost of providing schooling for handicapped or disadvantaged students.) The equality of per-pupil spending achieved by a voucher plan is often a key selling point in states where government-school spending varies greatly across districts.

Tax credit proponents are undisturbed by the inequality of per-pupil spending that would emerge under their plan. They challenge the notion that every family has a right to a certain level of funding for the education of their children. They trace the decline of public education to the historical movement away from schooling as a private responsibility.⁵³ According to them, equality, when applied to education, has produced a stifling uniformity of approach and method that harms children.⁵⁴ Spending does not really matter anyway, they say, citing research showing that spending levels are unrelated to student achievement.

Voucher proponents suspect these arguments will not persuade enough people to win in the political arena. Once the unequal benefits of tax credits are widely reported, they could be used to discredit the whole idea of privatization and choice in education. Tax credit plans can be demonized as elitist or as a subsidy to the wealthy because the lion's share of tax relief under any tuition tax credit plan goes to corporations or to those with higher incomes, giving opponents a handy statistic with which to criticize the effort.⁵⁵

⁵³See Murray Rothbard, *Education, Free and Compulsory* (Wichita, Kans.: Center for Independent Education, 1979).

⁵⁴See Mary Anne Raywid, "The Mounting Case for Schools of Choice," and Joe Nathan's "Introduction" in *Public Schools by Choice*, ed. Joe Nathan (St. Paul, Minn.: Institute for Learning and Teaching, 1989), and David Seeley, *Education through Partnership: Mediating Structures in Education* (Cambridge, Mass.: Allinger Publishing Co., 1981).

⁵⁵Pat Kossan, "School Tax Credits Fail Poor," *The Arizona Republic*, 23 March 2002.

ENOUGH TO MATTER?

Vouchers can be designed to cover part or all of the tuition charged by private schools. The only limit to how much financial relief vouchers can provide to families that choose private schools is the strategic need to avoid raising the ire of taxpayers. By contrast, the financial relief provided by conventional tax credits is limited to the taxpayer's own tax liability. In states where conventional tuition tax credits are in place—Arizona, Illinois, Iowa, and Minnesota—tax credits offset only a small percentage of the cost of private school tuition.

As reported in Chapter 10, a family's state income tax liability may be too small, relative to the cost of private school tuition, to work as the basis for financial relief. For example, in New Jersey, a family earning \$40,000 a year paid \$530 in state income taxes in 1996, about 10 percent of the cost of tuition for one child at a typical private secondary school. A tuition tax credit capped at annual income tax liability would give too little relief to prompt many parents to move their children to private schools. With two or three children of school age, the ratio of tax liability to tuition is 1:20 or 1:30. Because poor people pay very little (or nothing) in state income taxes, they benefit the least under conventional tuition tax credit plans.

Recognizing this problem, tax credit proponents have, for many years, advocated plans that give tax credits not only to parents but also to relatives, friends, corporations, and not-for-profit organizations that contribute toward a student's tuition.⁵⁶ Programs recently adopted in Arizona, Florida, and Pennsylvania and proposed in several other states require that such donations be made to not-for-profit scholarship-granting entities rather than directly to schools.⁵⁷ The scholarship-granting entities are

⁵⁶Martin Morse Wooster, "School Choice," chap. 7 in *Angry Classrooms, Vacant Minds* (San Francisco: Pacific Research Institute, 1994). For specific proposals, see Ed Clark, *A New Beginning* (Aurora, Ill.: Caroline House, 1980), 69, and Joseph L. Bast et al., *We Can Rescue Our Children* (Chicago: The Heartland Institute, 1988).

⁵⁷George Clowes, "Tax Credit Proposals Proliferate," *School Reform News*, April 2001.

then obligated to meet certain regulatory requirements concerning the students and schools they assist.

Such tax credit plans are an improvement over conventional tax credits. But even when designed exactly as their proponents wish, they benefit fewer children than even modest school voucher programs, and they fail to create a competitive education marketplace. A proposed state-of-the-art tax credit plan for New Jersey would enable, at best, fewer than 7 percent of students currently in government schools to move to private schools.⁵⁸ Private charity, even when encouraged with tax credits, is small in relation to the cost of K–12 schooling.

In states that adopt tax credit programs, most people who choose private schools would have to depend on the not-for-profit scholarship funds to pay tuition, which means schools would be chosen by the scholarship funds, not by parents. Middle- or lower-income families are given the option (admittedly, an option they previously did not have) of going to a private charity and asking for its financial assistance or going to the government schools. The scholarships issued by these tax-favored foundations are acts of charity, not the results of producers and consumers meeting in a competitive marketplace. However commendable in other ways, “in philanthropy there’s no need to be externally accountable, and no sanction from the marketplace, so there’s virtually no incentive to improve, individually or as a group.”⁵⁹

CONCLUDING REMARKS ON TAX CREDITS AND VOUCHERS

Differences of opinion between voucher and tax credit advocates can run deep, and they have led to the demise of more than one educational-choice campaign. Both sides need to gauge the depth of public support for their views and the feasibility of getting legislation introduced and passed. Compromises and strategic alliances are necessary if the objective is to change public policy.

⁵⁸Joseph Bast, “Fiscal Impact of Proposed Tuition Tax Credits for New Jersey,” Heartland Policy Study 96, Chicago, The Heartland Institute, 2001.

⁵⁹“Playing the Slots,” *Philanthropy*, January/February 2002, 7.

Voucher and tax credit proponents agree on a fundamental issue: The state should not penalize parents who choose private schools for their children. Other design principles should be secondary. Disagreements over the importance of personal sacrifice, equality, and how quickly a reform agenda can be advanced must ultimately be resolved in negotiation among members of the reform coalition.

LONG-TERM CONSEQUENCES OF VOUCHERS

Many objections to school vouchers focus on the transition from the current government school monopoly to a system characterized by competition and choice. How many children would switch from government to private schools? How would educators make the transition? Would taxes have to be increased? Would parents make the right decisions? Defenders of privatization tend to focus on the transition period, too, perhaps because speculating on long-term changes risks being declared utopian or visionary.

Still, reformers bear the responsibility for laying out what they believe would be the long-term consequences of following their advice. They properly can be expected to sketch a likely scenario that would follow widespread adoption of their plans. What follows is such a scenario.

During the first decade of the twenty-first century we expect a majority of states to follow the lead of Wisconsin, Ohio, and Florida by implementing pilot voucher programs for poor children. Politically, pilot programs are the easiest to pass because they address neighborhoods that have the greatest needs and demands, avoid charges of elitism, give elected officials the opportunity to vote to reform somebody else's schools, and comport with the natural desire of elected officials and others to conduct small-scale experiments before launching a statewide restructuring.

These early voucher programs may limit the number of schools and students that can participate, set voucher amounts too low,

and place restrictions on qualifying schools. But the programs will expand and become more market-oriented over time, as the addition of religious schools to the Milwaukee pilot program exemplifies. The new (often for-profit) schools will help ensure that the direction of reform is toward more, not less, competition and consumer choice.

Once vouchers have been shown to be effective even in the harsh circumstances of the inner city, middle- and upper-income families will press their elected officials for the same freedom to choose their children's schools. Efforts will be focused on urban areas, where population density means the cost of traveling to a school of choice is modest and supply is sufficiently high to enable schools to specialize. A growing number of parents, citizens, and school entrepreneurs will lobby to expand the pilot programs while campaigning against anti-competitive laws and policies that protect the government school cartel.

Pilot programs will soon give way to statewide voucher programs. Some will resemble Florida's A+ plan, extending vouchers only to parents whose children attend the worst government schools, and even then only after the government schools have been given repeated opportunities to reform. Others will be much more ambitious, offering partial- or full-tuition vouchers to all parents. States where teachers unions are relatively weak, where the quality of government schools is especially poor, and where governors are willing to make school choice a priority will lead the way.

In an attempt to diffuse support for vouchers and remain competitive, government schools will begrudgingly expand charter school programs and allow parents more choices among existing public schools. But such appeasement will only fuel vouchers. Greater numbers of families will experience the benefits of school diversity, choice, and accountability, and they will join a growing constituency favoring still more freedom of choice. With every child who switches from a government to a private school, teachers unions and their allies in government-school bureaucracies will find they have fewer resources to invest in politics, while pro-

ponents of unrestricted choice will become better funded and more sophisticated.

Although every state will set its own pace and decide details of policy in its own fashion, most public funding for schooling will eventually be voucherized, and most students will qualify for vouchers. Enrollment in government schools will fall as parents shift their loyalty to superior private schools. Government schools with the worst performance records will close first, and any remaining students will be enrolled in neighboring government or private schools. More accurate reporting of student achievement via curriculum-based examinations will put competitive pressure on even high-spending suburban schools. Provisions that would allow parents to deposit into education savings accounts the difference between the value of a voucher and actual tuition paid would force schools to compete on price and efficiency as well as student achievement and other outcomes.

The new private schools will be smaller, more efficiently managed, and more difficult for labor unions to organize. Effective and innovative teachers will find them more attractive places to work. Having to negotiate with real owners and investors rather than pliable school board members will make it more difficult for union leaders to deliver value to their members, and consequently, they will be able to demand less from them by way of dues and political activism. The unions will lose both members and political power, ending their ability to veto substantive reforms and stop further privatization measures.

Thanks to a wide array of partnerships between information technology businesses, hospitals, universities, museums, and existing and new schools, education will undergo a rapid evolution toward new and more effective teaching methods and school organizational forms. Long-disputed notions of the best class sizes, textbooks, number of days of attendance, teacher training, and appropriate locations will finally be resolved thanks to market tests. Innovation will finally be rewarded and replicated—not for its own sake, which characterizes many of

the teaching fads that periodically sweep through government schools today, but to improve student achievement and satisfy parents.

With fewer government schools to manage, many government school superintendents and administrators will return to classroom teaching, retire, or find employment elsewhere. Some will be successful entrepreneurs and administrators in private schools and, together with new entrants into the field, will be pioneers in the discovery of new educational techniques. Many will fail, but some will be wildly successful and become models for the success of others.

Local school boards, where they continue to exist, will be reinvented to reflect the interests of all stakeholders—parents, students, teachers, and taxpayers—rather than only government-school employees. They will no longer be responsible for both collecting tax dollars for education and running government schools because parents and taxpayers will no longer tolerate so obvious a conflict of interest. Government schools will be managed by new public-private partnerships shorn of taxing authority, sold to private investors or employees, or closed. Many government schools will lease or sell space to private schools, becoming incubators or (less glamorously) landlords for a new generation of private schools.

The new role of school boards will be to issue vouchers to parents and oversee the distribution of test scores and other performance-based consumer information. Interventionist school boards might insist on inspecting schools and influencing curricula. It will be up to local voters to decide if that is necessary or desirable. In states where local taxes are still relied on to fund schools, school board members would vote on budgets that determine the amount of the vouchers.

After two or three decades, marketplace competition will have sorted out winners and losers. K–12 schools will have risen in productivity to match other American industries and be able to recruit the best and brightest to work for them. In international academic competitions, U.S. students will be equal to or better than students of other nations.

At some point, vouchers will have outlived their usefulness as a vehicle for breaking up the government school monopoly, and the final form of privatization—the free market—will come to the fore. Demographic trends, such as an aging population and declining birth rate, are already reducing public support for tax funding of schooling and will continue to do so.⁶⁰ Innovations that make education faster and less expensive plus a continued rise in the standard of living could, two or three decades from now, lead some communities and states to limit eligibility for school vouchers to only the needy.

The argument would be compelling: Why collect school taxes to finance a service that the vast majority of people do not use or can readily afford to pay for themselves? Why not allow families simply to purchase schooling on the open market and give vouchers only to those who otherwise could not afford to educate their children? School vouchers would then be no different from welfare checks, food stamps, housing vouchers, or Medicaid benefits. They would be part of a social safety net, not a middle-class entitlement.

Although government spending on schooling would decline, overall spending on education, including schooling, would probably increase. One reason is that additional spending by the newly efficient and competitive schools will buy better academic results, unlike today's wasteful government schools that discourage some voters from supporting optimum spending levels in some communities.⁶¹ Moreover, the lower taxes made possible by the greater efficiency of schools will enable people to keep a larger fraction of their income, making it available for spending on additional services, such as productive education, that they value.

⁶⁰See Myron Lieberman, *Privatization and Educational Choice* (New York: St. Martin's Press, 1989), for a compelling discussion of these trends.

⁶¹See Eric A. Hanushek et al., *Making Schools Work: Improving Performance and Controlling Costs* (Washington, DC: The Brookings Institution, 1994), for the latest evidence showing no relationship between spending and student achievement.

Eventually, it will seem as strange for a middle- or upper-income family to expect someone else to pay for the schooling of their children as it is now for them to expect their children to be fed, housed, or clothed at public expense. Schooling will have come full circle, back to being financed the way it was prior to the middle of the nineteenth century when private schools were the rule and government schools the exception, when only the poor received tuition assistance and literacy and public spiritedness were commonplace.

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