

Introduction

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Charter schools were born into a hostile environment. For some, they represented an exciting vehicle of school reform; for others, especially those in control of the current public school system, they were a threat.

Charter schools are publicly funded schools operated by independent groups under contract with government agencies. They provide an alternative to traditional public schools, which are all operated by bureaucratically organized school districts. Charter schools are based on freedom of action and choice. Individual schools can use different teaching methods than the surrounding public schools and make innovative use of time, technology, and money. No teacher can be assigned to work in a charter school—schools employ teachers by mutual consent—and no child can be required to attend a charter school.

The first charter schools opened in Minnesota in 1992, but by 2006 they had spread to forty-one states. There are now 3900 charter schools serving nearly a million students—large numbers given how recently the first charter schools emerged and, as we shall see, the ferocity of opposition they generate. But chartering

is still a relatively small element of the nation's public education system, which educates twenty million students in over 100,000 schools.¹

Some state laws make it easy for a group with a new idea to get a charter, while others erect major barriers. Some state laws emphasize creation of charter schools in urban areas and encourage schools to serve poor and disadvantaged students who need options, but others do not. Consequently, charter schools serve disproportionately disadvantaged populations in most states, but not all.

Everyone wants to know, are charter schools working?² And there is an answer: yes, some are, based on the learning rates of students who attend them, but some aren't. Their performance depends on a lot of things including whether they receive as much money as other public schools in their communities or must do with a lot less, and whether they have had enough time for teachers and administrators to learn to work together efficiently. It is very hard to draw generalizations across states with different charter laws, and to reach a bottom-line judgment on a movement whose schools are mostly new. Charter schools also offer an inviting target to critics who can find one or two bad ones to complain about. Though it is unreasonable to expect every charter school to be effective the day it opens (especially in urban areas where half or more of the district-run schools are labeled low performing) opponents are quick to turn localized problems into

1. For rich information about the charter school movement see Greg Vanourek, *The State of the Charter Movement 2005* (Washington DC: National Alliance for Public Charter Schools, 2005), and Robin J. Lake, et al., *Hopes Fears and Reality: A Balanced Look at Charter Schools in 2005* (Seattle: National Charter School Research Project, 2005).

2. For a review of evidence on charter performance, see Charter School Achievement Consensus Panel, *Key Issues for Studying Charter Schools and Achievement, a Review and Suggestions for National Guidelines* (Seattle: National Charter School Research Project, 2006).

indictments of charter schools in general. Unlike district-run schools, bad charter schools eventually disappear and new ones take their place. Even if the average quality of charter schools becomes very high, there will always be some that struggle and might soon close.

Even before definite bottom-line conclusions about charter schools in general can be drawn, some things are evident. The charter movement is alive and well, but facing some serious challenges. Like humans at the age of twenty, the charter school movement is vibrant and promising, but no one can be sure exactly what sort of adult will eventually emerge.

Many of the charter movement's problems are endemic to what it is trying to do. It is not easy to start new schools. New schools must make a functioning team out of adults gathered from diverse places and different experiences. They must define a coherent approach to teaching and learning, so that families know what their children will experience in the classroom and potential teachers will know whether the school is the right place for them. They must figure out how to judge their own performance and when necessary make changes, even in instructional methods that originally defined the school. In addition, a lot of things taken for granted in existing schools must be established from scratch, including basic arrangements for paying the bills, hiring people, attracting customers, and taking care of buildings and grounds.

All these challenges have proven difficult, and many charter schools are taking longer than anyone expected to jell as educational institutions. This is true in part because the school start-up process was poorly understood before large numbers of charter schools started to go through it. Though school districts had started thousands of schools, the fact that they did not have to attract parents and teachers who could choose to go elsewhere

meant that nobody paid much attention to their start-up problems.

“Jelling” problems are also rooted in widespread high hopes about charter schools. Thousands of parents and educators had longed for an opportunity to realize their vision of a good school. Often, people with different visions found themselves together in one school. Working out the conflicts in vision, even to the point of separating into different schools, takes time.

The charter movement has other problems, however, that are not related to the challenges of starting schools. The state laws that allow charter schools to exist can also make it very hard for them to succeed. Charter schools must compete with district-run public schools for students and teachers, but the competition takes place on a decidedly un-level playing field. Most state laws give charter schools less money per pupil than districts get, and require charter schools to pay for important things that district-run schools get free, starting with the buildings they occupy. Charter schools also bear the burden of proof when they seek permission to enroll students and receive funds, and in most states they must be re-authorized every three to five years.

This book focuses on ways state laws create an un-level playing field and suggests how state laws and policies can be amended to give charter schools—and the children they serve—a fairer chance to succeed.

How the Playing Field Was Tilted against Charter Schools

Charter school laws are strongly affected by legislative process. Though the forty-one charter school laws are highly diverse, one thing is true about how they were enacted: only a handful were rammed through the legislature as part of a powerful governor’s defined legislative package. Instead, the vast majority were en-

acted through the efforts of legislative entrepreneurs who had to make many deals and overcome powerful opposition in order to gain votes for passage.

The un-level playing field was built through the legislative bargaining process. Like so many issues that come before legislatures, charter schools had some strong proponents and some opponents, but many legislators were indifferent or nearly so. To get the laws enacted, proponents had to seek votes by making strong claims about how much charter schools would produce and how little they would cost. They also had to assuage the fears of others who were not opposed to charter schools but wanted to make sure key constituencies were protected. At the same time, entrenched opponents supported by teacher union and school board lobbies fought against charter schools and called in political debts to get votes from uncommitted legislators.

School board associations were concerned that competition from charters could take funds away from their school districts, and that board members would be held responsible for the performance of schools they did not control. Teachers' unions feared that growth of charter schools would shrink public school districts and reduce the numbers of jobs available for unionized teachers. Unions also feared that charters would be popular with parents and teachers, leading to demands for schooling arrangements incompatible with teacher collective bargaining agreements.

The need to reassure potential swing voters—who might be willing to vote for charter schools but were also concerned about school boards' and unions' fears—often led proponents to accept provisions that tilted the playing field against charter schools. Relevant provisions can be combined into two loose categories: those sponsored by opponents who preferred to stop charter schools entirely but were forced to accept them in some form, and those introduced by proponents in order to attract swing votes by making the costs seem low and the benefits seem high.

Provisions Introduced by Opponents

Field-tilting provisions encouraged by opponents were the more numerous. In many states, only school districts—which generally opposed charter schools—were allowed to grant charters. Moreover, laws often did not require districts to consider charter proposals at all, or set the standards to use in evaluating proposals if they chose to do so. In states where chartering is left entirely to the discretion of school districts, new charter schools are relatively rare. In Illinois, for example, only Chicago has been open to chartering, and most other districts in the state have rejected all charter applications put before them. Some laws gave school districts a fig leaf—the opportunity to grant charters to some of their existing schools—considered much less threatening than new schools that brought new talent and money into public education.

The picture is very different in states where proponents were able to win multiple routes to chartering—via appeal to the state if a local district arbitrarily rejects charter applications, and if not through the local district, then to another possible authorizer including a state college, mayor's office, or nonprofit. In states with such provisions the charter movement starts more schools, offers more varied options, and serves more children.

Opponents also won restrictive caps on the numbers of charter schools allowed in a state. Caps were set so low in many cases—fifteen in Illinois, twenty-five in Massachusetts—that school districts were exposed to very little financial risk and were unlikely to experience the pressure of competition. When caps keep the numbers of charter schools low, they make it difficult for schools to share expertise, join risk sharing pools to pay for unexpected costs of special education, and develop active constituencies of families that want the choices charter schools provide. Caps also discourage private firms from developing lines of

business providing services—payroll, insurance, lending, employee benefits, and facilities maintenance—that charter schools need.

Opponents also tried to make sure charter schools were isolated one-off institutions, by forbidding for-profit firms from holding charters. This insulated school districts from a kind of competition they feared—for-profit firms able to use investment capital to make major financial investments in their school designs and eager to expand rapidly to exploit economies of scale.

Teacher unions won their own protections at charter schools' expense, in the form of provisions that limit the time a unionized teacher can work in a charter school without losing seniority rights. These arrangements force experienced teachers to choose between working in charter schools and enjoying the benefits they have earned through seniority, and thereby reduce charter schools' access to qualified staff.

Finally, provisions that force charter schools to pay rent out of operating funds put them at a financial disadvantage *vis a vis* district-run schools. Further, requirements that charter schools must pay for services that district schools get free—from health screening to student transportation and teacher training—deepens charter schools' financial disadvantage.

Provisions Introduced by Proponents

Three kinds of legislative provision are compromises made by charter supporters to attract votes. Compromises were necessary; the alternative was no charter law at all. But the compromises had practical consequences, often serious.

The first important compromise was limited funding, often as little as 75 percent of the money school districts would get to educate the same students. This tilts the playing field because charter schools must buy goods and services and hire staff in the

same market as local district-run schools. Lack of money has particularly adverse implications for teacher hiring. Less money means charter schools cannot offer the same total pay and benefits packages as the district-run schools with which they most compete for students. Though charter school teaching is an attractive job for young college graduates on a mission, these individuals turn over quickly as they pursue graduate studies or pursue other missions. Meanwhile, older teachers who pay mortgages and support families must make rational economic calculations. It is hard for charter schools to get and keep such teachers.

The second compromise is limited charter terms. Proponents could tell worried legislatures, “a charter’s term lasts only five (or in some states three) years, and after that if the government agency that approved the charter doesn’t like it, the school must go away.” However, this arrangement has had negative effects on charter schools. Because they are ensured of existing for only a short time, and the basis on which renewal decisions will be made is not always clear, charter schools have difficulty borrowing money and entering desirable long-term leases for facilities. The fixed charter term has also discouraged many school districts and other government agencies from developing a capacity to oversee charter school performance. Instead, some agencies ignore charter schools unless scandals arise, waiting to assess the balance of political support and opposition for a school when its charter comes up for renewal. This changes the basis of charter school accountability, substituting political calculation for assessment of student learning effects.

The third compromise is charter laws’ silence about the duties of school districts and other state agencies designated by law to grant charters. Rather than clarify the duties of authorizers, proponents avoided firing up school districts’ opposition by saying nothing about the standards by which charter proposals should be judged, authorizers’ responsibilities for ongoing oversight, or

what should be done about low-performing charter schools. Consequently, authorizers were left to define their own responsibilities. Though some thought hard about what it meant to hold schools accountable for performance, not compliance, most did not. Some authorizers granted charters and then ignored the schools entirely, leading to preventable disasters in cases of schools that had never developed the basic capacity to manage instruction. Under such authorizers, even the most conscientious charter school leaders did not know for what they would be held accountable.

Once it was possible to assemble enough votes for passage of a charter school law, even one with many problems, proponents had a strong incentive to press for a vote before other issues might cause new controversies. Thus, a great number of questions were left to administrators and school districts to resolve. These included charter schools' access to publicly owned school buildings, rights to special education services for their students, teachers' access to publicly funded pension plans, and claims to services—like transportation and payroll—that school districts normally provide free to public schools.

In practice, these issues were virtually all resolved to charter schools' disadvantage. In most states, charter schools not only received less money per pupil than school districts spend on their own pupils; they also had to pay for things that district-run public schools did not. This included facilities, which district-run schools receive free and are built and maintained from separate capital accounts, not district operating funds, and pensions, for which districts normally receive off the books state subsidies.

Table I.1 illustrates how some of the key provisions that tilt the playing field against charter schools are distributed by state. The table presents a harsh picture. As this is written more than half the states with charter schools have caps that limit or rule out increases in the numbers of charter schools. Of states with

Table I.1 Supply-Limiting Elements in State Charter Laws (bullets indicate elements that tilt the playing field against charter schools)

<i>State</i>	<i>Caps Severely Limiting Growth</i>	<i>Only District May Authorize</i>	<i>Less than Full Per-Pupil Funding</i>	<i>No For-Profit Charter Holders</i>
Alaska		•	•	•
Arizona			•	
Arkansas	•		•	•
California			•	•
Colorado			•	
Connecticut		•	•	•
Delaware				•
D.C.				•
Florida				•
Georgia		•	•	•
Hawaii	•		•	•
Idaho	•	•	•	•
Illinois	•	•	•	•
Indiana	•	•		•
Iowa	•	•		•
Kansas		•	•	•
Louisiana	•	•	•	•
Maryland				•
Massachusetts	•			
Michigan	•			•
Minnesota			•	•
Mississippi	•	•		•
Missouri	•		•	•
Nevada	•	•		•
New Hampshire	•		•	•
New Jersey			•	•
New Mexico		•		•
New York	•		•	•
North Carolina	•			•
Ohio	•		•	•
Oklahoma		•		•
Oregon		•	•	•
Pennsylvania		•		•
Rhode Island	•		•	•
South Carolina			•	•
Tennessee	•	•		•
Texas	•		•	•
Utah	•			•
Virginia		•		
Wisconsin	•			
Wyoming		•	•	•

caps only California still allows room for large numbers of new schools (360)—and even that cap is much too low to allow charter schools to enroll a major share of the state’s students. Districts can still keep a stranglehold on chartering in eighteen states, and the majority of states provide less money for a student in a charter school than in a district-run school. Only four states allow for-profit organizations to hold charters.

As this book documents, however, many charter schools have found ways to fight their way uphill. Schools have coped by improvising, relying on contributed time and money, avoiding the most hostile environments, and taking risks when the needs of children required it. Some schools have also failed at these things.

Charter proponents, including elected officials, philanthropists, and new pro-charter associations, have continued trying to improve charter laws, by lifting caps and creating more equitable funding and regulatory arrangements. However, charter opponents have also remained active, working to hold down the numbers of laws and imposing new regulations whenever a problem in an individual charter school gives them an opening to do so. Teachers unions have also tried to erode charter schools’ freedom to hire teachers on the basis of fit, via efforts, generally unsuccessful to date, to organize charter school teachers.

This Book

Succeeding chapters will discuss ways in which adverse provisions of law and policy create problems for charter schools, and how charter schools have survived and served families well, against the odds. A final chapter will suggest how charter schools can be strengthened by a combination of changes in state law, public investments in performance-based school oversight, and private initiatives supported by philanthropy.

In chapter 1, Caroline M. Hoxby provides empirical evidence

about how legislative provisions affect the numbers of charter schools that emerge. She shows that the supply of charter schools is highly elastic, i.e. that it responds strongly to elements of state law like the funding available to charter schools and the degree to which charters control their hiring, spending, and instructional programs. Hostile or inequitable laws suppress the supply of charter schools, and laws offering a more truly level playing field encourage formation of many strong charter schools.

In chapter 2, Eric Osberg provides an overview of charter school funding and costs. He shows how charter school funding falls short of the amounts available to public school districts, and how the extra costs they must bear puts charter schools at a further financial disadvantage. Osberg considers the value of philanthropy and contributed services, but concludes that charter schools' funding—and thus their opportunities to serve children effectively—are arbitrarily limited by state law and policy.

In chapter 3, Paul E. Peterson, Nat Torinus, and Brad Smith consider the effects of local conditions on the emergence of new charter schools and other schools of choice. They spotlight Milwaukee, where circumstances are especially positive for charters. Based on the Milwaukee experience they conclude, like Hoxby, that the supply of schools of choice is highly elastic. The number and quality of schools of choice depend on official policy and community politics. A locality that sets moderate barriers to entry and creates a stable funding and operating environment for schools is likely to experience rapid growth of new schools. They argue that quality new schools are most likely to emerge in localities with accountability systems that can close low-performing schools, no matter who runs them.

In chapter 4, Chester E. Finn Jr. and Paul T. Hill focus on the problems of public oversight of charter schools. Though every charter school must have a funding and performance agreement with a public agency, the roles of those agencies were poorly

thought through, and their activities have often created major barriers to charter school success. The authors suggest how authorizers, still the weakest link in the whole charter school phenomenon, can build capacity for perceptive judgment of school proposals and responsible performance oversight.

In chapter 5, John E. Chubb considers the problem of scale—increasing the number and quality of charter schools so they more fully serve the groups that need them and put school districts under greater competitive pressure. He examines the relative strengths of nonprofit and for-profit organizations for this purpose, and concludes that state laws permitting more open competition between schools run by districts, nonprofits, and for-profits would increase the number of charter schools and improve the overall quality of options available to families.

In chapter 6, Chester E. Finn Jr. assesses the potential for chartering to foster innovation and experimentation. He notes that innovation was one of four goals of the charter movement, and he disagrees with observers who decry the conventionality of charter schools. He lists ten ways in which charters provide innovation in public education. He concludes that even with the challenges charter schools must face, the charter movement has attracted new educational, organizational, and financial talent into public education. Laws and policies establishing a more level playing field for charter schools would stimulate even more fundamental innovation in years to come.

In the final chapter, Paul T. Hill returns to the analysis of state laws and policies established in this introduction, and suggests how conditions more favorable to charter schools can be created. The goal should not be to create a structural advantage for charter schools, but to create a level playing field such that no publicly funded school is handicapped in its effort to educate children. Acknowledging the limits of policy change, he suggests there is a continuing need for philanthropy to help develop re-

sources that charter schools need and school districts won't or can't provide. But nothing else matters as much as policy change, which must be achieved in the face of political forces that caused the playing field to be tilted against charter schools in the first place. The final chapter sets priorities for policy changes and suggests how charter supporters can organize to make them happen.