School Choice: The Next Step: The State Constitutional Challenge

by Richard Komer and Clint Bolick

Institute for Justice

With the victory of the Cleveland school choice case (Zelman v. Simmons-Harris) and the U.S. Supreme Court favorably resolving the federal Establishment Clause challenge to school choice, school choice advocates need to pay attention to potential state constitutional impediments to school choice. School choice opponents have been routinely including state constitutional claims in their challenges to school choice programs, so IJ already has considerable experience in combating such claims.

Where we have been successful (Wisconsin, Ohio, Arizona and Illinois), it is because we have succeeded in getting state appellate or supreme courts to hold that with respect to the school choice programs before them, the state constitutions impose no greater limitations than the Establishment Clause. When we have been unsuccessful, unfortunately it has been because the State Supreme Court has held that state constitutional language prevents the inclusion of religious schools among those that parents can choose.

With the victory in the U.S. Supreme Court, we now can challenge discriminatory state constitutional provisions as a violation of the First Amendment's requirement of "neutrality" toward religion—and we plan to do just that. IJ is preparing possible test cases to establish a federal statement forbidding states from discriminating against religious options. If we succeed, it will remove yet another major obstacle to school choice.

CONTACT: Institute for Justice, 1717 Pennsylvania Ave., NW, Suite 200, Washington, DC 20006, 202/955-1300, fax 202/955-1329, general@ij.org, http://www.ij.org/editorial/choice_next.html.

Education Certificate Act

Model Legislation, *American Legislative Exchange Council*

The purpose of this bill is to maintain and improve the quality of elementary and secondary education by providing to parents the opportunity for the exercise of parental choice in the selection of schools for the children. Parental choice fundamentally alters the dynamics of the educational system by allowing parents the right to decide what is best for their children. The Education Certificate Act requires the Department of Education to establish a program whereby children with educational certificates, requested by parents, may be admitted to public or private schools participating in the program. It is the purpose of this Act to maintain and improve the quality of elementary and secondary education in all schools in the state by providing to all parents in the state enhanced opportunity for the exercise of parental choice in the education of their school-age children. The Department of Education shall initiate and carry out a program in which the parent of each school-age child receives from the [insert district school board] [insert state board of

"What I see is, the people running [the public schools] don't have any sense of urgency. As a parent, it's too late for you to say, 'Trust me. Give me time.' If my children are already in school, I don't have time to give you."

—Roberta Kitchen, Cleveland parent. Quoted in Trinnietta Gets a Chance by Daniel McGroarty. Published by The Heritage Foundation.

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Reactions and Proposals on School Choice from the Think Tank Community

education], on request, a certificate that may be used for educational services at a participating school selected by the child's parent in accordance with the provisions of this act. Each public school in the state shall become a participating school. The responsible officials for each eligible private school shall decide whether that school shall become a participating school.

CONTACT: American Legislative Exchange Council, 910 17th Street, NW, Washington, DC 20006, 202/466-3800, fax 202/466-3801, http://www.alec.org

The Heartland Plan for Illinois: Model School Voucher Legislation

by Joseph L. Bast

The Heartland Institute

The Heartland Plan for Illinois gives communities the authority to establish a well-designed voucher program that respects local control of education.

The Heartland Plan for Illinois establishes in state law a voucher program that every community in Illinois can "opt into" by voter referendum. Among the plan's key elements:

Communities that choose to participate redirect to parents the tax dollars that currently flow to public schools. The redirected funding would be in the form of scholarships redeemable for tuition and fees at the schools of their choice.

The amount of the scholarships would be based on the current per-pupil spending in the student's district of residence. Federal, state, and local tax dollars would be bundled and "voucherized."

The Heartland Plan would be phased in over seven years, with kindergarten and first-grade students eligible for scholarships in the first year. Students in two additional grades become eligible each year. By the seventh year, all students would be eligible.

Local school taxing bodies would be required to freeze their per-pupil operating tax levy during the seven-year phase-in. Thus, the added cost of tuitioning students already enrolled in private schools is absorbed by a small decrease in per-pupil spending, not by an increase in local property taxes.

Participating schools would be free to charge more or less than the amount of the scholarships. If they charge less, parents can deposit the surplus in Education Savings Accounts to use on education expenses in later years.

Any school may participate provided it does not discriminate on the basis of race, ethnicity, color, or national origin, and does not advocate unlawful behavior or teach hatred of any person or group on the basis of race, ethnicity, color, national origin, religion, or gender. This does not preclude the establishment of same-sex schools or classrooms.

The Plan protects schools from increased regulation by stating that the preservation of private school autonomy is in the public interest, and by placing on the advocates of greater regulation the burden of establishing that the statute or regulation is necessary and does not impose any undue burden.

CONTACT: Heartland Institute, 19 South LaSalle, Suite 903, Chicago, IL 60603, 312/377-4000, fax 312/377-5000, email think@heartland.org, http://www.heartland.org.

A New Direction for Education Reform

by Lawrence W. Reed

Mackinac Center for Public Policy

Many proponents of educational tax credits prefer them to vouchers on the grounds that they entail less government regulation of private schools and less risk of entanglement between church and state because of their indirect nature. Credits, unlike vouchers, do not transfer any money from the state to schools or taxpayers. There's no need to launder anybody's money through a public bureaucracy first before it pays for a child's schooling.

Indeed, because vouchers are funded out of the pool of taxpayer funds, some citizens will always argue that "some of my money will be going to send your child to a school I don't like." Those citizens will want government to regulate how, when, and where their tax money can be used by other people. The legislators who appropriate it and the bureaucracy that dispenses it will be more than happy to oblige.

Because of the prospect of regulation, some private schools will surely not accept vouchers —at first. But over time, it will become very difficult for them to pass up the allure of "free" money and the opportunity to make schooling less expensive for their families. Government shackles will follow government shekels, as they always do sooner or later. With private schools increasingly dependent on voucher revenue, few will be able to wean themselves away when regulation becomes invasive. The initial benefit of competition between schools due to vouchers will diminish as regulation homogenizes all schools into an amorphous blob feeding at the public trough.

Tax credits, on the other hand, don't represent a claim by anyone on someone else's wallet. You don't get the credit if you don't pay tuition or if you don't pay taxes. A credit on your taxes represents your own money, period.

Educational choice is an idea whose time has come, and the universal education tax credit is an idea whose time is about to arrive. It can get the job done and avoid many of the problems inherent in the voucher approach. It will minimize the danger of intrusive government, though private schools will always have to be vigilant under any system. It will galvanize and strengthen civil society by giving individuals and companies new incentive to assist the educational dreams of their fellow citizens. It will bolster the incentives of existing public schools to improve. And perhaps most importantly, it will put choice and responsibility back in the laps of parents from whom such things should never have been taken in the first place.

CONTACT: Mackinac Center for Public Policy, 140 West Main St., P. O. Box 568, Midland, MI 48640, 517/631-0900, fax 571/631-0964, email mcpp@mackinac.org, http://www.mackinac.org.

Competition and Quality in Deregulated Industries: Lessons for the Education Debate

by Jerry Ellig and Kenneth Kelly

Texas Review of Law and Politics

The impact of school choice on the performance of students who move to new schools and students who remain in traditional public schools has been subject to rigorous research. The majority of studies find that school choice improves the academic performance of the students who move to alternative schools, although some studies find no impact on academic performance.

One of the concerns that opponents of school choice have raised is that such programs would weaken the traditional public schools, and thus hurt those students who would remain in them. This does not appear to be the case. Those few studies that have examined the effect of competition on traditional public schools indicate that faced with competition, traditional public schools improve their quality. Most often, competition is found to improve test scores in most subjects for most grades, while having no effect on a few types of scores for particular grades. No study supports the conclusion that school choice harms public schools.

The school choice studies provide a degree of support for the quality-enhancing hypothesis, especially if one considers quality per dollar spent on education. There is no evidence that vouchers, scholarships, or other forms of school choice induce schools to reduce quality in order to reduce costs, or that cream-skimming reduces educational quality for students who remain in the public schools. As Hoxby noted, "It appears that public schools are induced to raise achievement when they are faced with competition and that this effect swamps any effect associated with cream-skimming, reverse cream-skimming, or the like."

Even if we were to accept the least favorable conclusions about the effects of vouchers on school quality, we would conclude that students who transfer from traditional public schools to private schools do not do any worse academically than do students who do not transfer. Since the private schools are able to at least match the performance of traditional public schools with less funding than their government school counterparts, it is not unreasonable to expect that they would be able to outperform the schools were they to receive an equal amount of resources.

CONTACT: Jerry Ellig, Deputy Director, Office of Policy Planning, Federal Trade Commission, jellig@ftc.gov