

THE ROAD TO SCHOOL VOUCHERS IN CLEVELAND: POLITICS, INTEREST
GROUPS, AND RELIGION

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The debate on the utilization of school vouchers to fund private and parochial education is one of the most contentious debates in recent memory. Supporters believe vouchers will be a panacea for students in failing schools in predominately poor black communities because they would provide them with the opportunity to enroll in another school of their choice. Critics believe vouchers are a way of jettisoning public schools from the communities while adhering to the shift to a more privatized and marketized form of schooling. This dissertation examines the role of politics, interest groups, and religion in the formulation of school voucher policies in general, but in Cleveland in specific. By interviewing elite stakeholders in Ohio, this researcher found that political ideology, social interest, and religion were critical to the formulation of voucher policies. The idea of vouchers, originally proposed by economist Milton Friedman in 1955 illuminates the problems with the public school system, however, it also illuminates the political and ideological differences in how those problems should be addressed. Also, it was found that the voucher debate is delicate and is often handled with “kid-gloves” politically and sometimes socially. However, the delicate nature of the issue creates opportunities for puzzling alliances.

DEDICATION

This dissertation is dedicated to my mother Margaret Asongwed, the strongest woman I know.

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1. CHAPTER I

1.1. INTRODUCTION

Education stripped of all rhetoric is above all else political. The process of education policy making is complicated and not devoid of personal goals and ‘moral’ beliefs. Epps 1975 states, “the first complication stems from the fact that there are so many sources of influence, there are multiple special interest groups competing for influence; business, labor, political, ethnic and racial groups all seek to make their objectives and goals the guiding force behind education policy” (p. 308). Sipple, 1997 adds, “throughout the 20th century, educators, policymakers, foundation representatives, and religious and business leaders have repeatedly attempted to influence the structures, content, and assessment of the public education system” (p. 1).

This dissertation, by examining the evolution of school vouchers in the United States, and coming to a better understanding of who the “sources of influence” are, hopes to discover the role special interests groups, politics and religion in the formulation of school voucher policies in the context of the Cleveland Scholarship the Tutoring Program.

Over the years, public schools have come under intense scrutiny for not properly educating our young. Public schools, particularly public schools in depressed communities serving a predominant minority population have in part been chastised for not providing quality education to its students.

Some interest groups and many conservative politicians have used the ‘idea’ of failing schools as a method of pushing forth an agenda on how schools should be governed and contravene the common school ideology. Kennedy puts the issue most succinctly by stating:

Rather than arguing about whether public schools are deficient and, if so, in what respects, and rather than debating the merits of

one “reform” over another, opponents now take sides over whether America should continue to support a system of free, publicly controlled schools or whether government’s educational role should be reduced to dispensing vouchers to families that enable the to “buy” educational services in the marketplace. It is a classic political confrontation, engaging partisan strategies and implicating political ideologies (Kennedy, 2001).

1.1.1. The Origin of School Vouchers and Voucher Politics

The issue of school choice (vouchers) has been, and continues to be an issue that triggers passionate opinions and theories among educators, parents, researchers and policy makers. It is an issue that over the years has galvanized citizens to re-examine the true meaning of education reform. The recent Supreme Court decision in *Zelman v. Simmons-Harris* that upheld the Cleveland Scholarship and Tutoring Program (henceforth CSTP) as constitutional is considered by many to be the most transformational ruling in the Supreme Court pertaining to education since *Brown v. Board of Education* in 1954 which outlawed school segregation.

In 1955 economist Milton Friedman set out to reexamine the “existing activities of government and to make a fresh assessment of the activities that are and those that are not justified” (Friedman, 1955, p. 123). Friedman openly questioned why, in a country that is predominately free enterprise in organization and in philosophy is education “paid for and almost entirely administered by governmental bodies?”

In a society where freedom of the individual, or more realistically the family is the ultimate objective, Friedman argued that in such a “free private enterprise exchange economy, government’s primary role is to preserve the rules of the game by enforcing contracts, preventing coercion, and keeping markets free” (Friedman, 1955). Friedman maintains there are only three major grounds on which government intervention is to be justified: (1) “natural monopoly” or similar market imperfection which makes effective competition (and therefore thoroughly

voluntary exchange) impossible; (2) is the existence of substantial “neighborhood effects,” i.e. the action of one individual imposes significant costs on other individuals for which it is not feasible to make him compensate them or yields significant gains to them for which it is not feasible to make them compensate him-circumstances that again make voluntary exchange impossible; (3) derives from an ambiguity in the ultimate objective rather than from the difficulty of achieving it by voluntary exchange, namely, paternalistic concern for children and other irresponsible individuals.

Friedman’s position stems from his displeasure with governmental involvement with the administration of education policies. This displeasure led Friedman to suggest, “governments could require a minimum level of education which they could finance by giving parents vouchers redeemable from a specified maximum sum per child per year if spent on ‘approved’ educational services; parents would then be free to spend this sum and any additional sum on purchasing education from an ‘approved’ institution of their own choice; the educational services could be rendered by private enterprise operated for profit, or by non-profit institutions of various kinds” (Friedman, 1955). Due to the nature of and its close proximity to *Brown v. Board* in 1954, some scholars have suggested that the voucher proposal was an attempt by Friedman to somehow circumvent the Supreme Court’s ruling on *Brown* and maintain school segregation at some level. Molnar, 1996 posits “when private school choice plans were proposed in the U.S. in the late 1950’s and early 1960s it was not the alleged virtues of an educational market that motivated their sponsors, the first efforts to create private school choice in America were part of an openly racist response to court ordered-desegregation.” Molnar also points to the 1956 “tuition-grant” program and the 1960 “scholarship” plan passed by the Virginia legislature which provided students with tax dollars they could utilize to pay tuition at any qualified non-sectarian school in

their district as “freedom of choice” plans passed by “southern legislatures to help maintain segregated school systems in the wake of the 1954 U.S. Supreme Court’s *Brown v. Board of Education* decision.”

Friedman’s aim as is the current aim of the majority in the Republican Party was to introduce the idea of less government in the education arena. He suggested a shift of control from the government and more towards the individual and private business, thus limiting the government’s role in education and jettisoning the government from all administrative duties.

At its inception, the idea of school vouchers met with little opposition, Salganik explains, “during the 1960’s vouchers seemed to have no opponents, supporters included economist Milton Friedman, Liberal school critic Mario Fantini, and sociologist Christopher Jencks” (1981, p. 272). Voucher opponents were non-existent primarily because vouchers were seen as a method through which to provide various educational opportunities for this country’s citizens. It wasn’t until the idea of school vouchers became viewed as a pawn used by politicians to put forth their agenda that opponents began surfacing and challenging its premises. There soon arose ideological and philosophical differences on what purposes vouchers should serve and how they should be implemented. “It soon became obvious the support for vouchers was related to different and sometimes conflicting goals; some regarded vouchers primarily as a mechanism to increase equity through reallocation of resources; others hoped vouchers would result in increased efficiency and a more individualistic system; still others believed vouchers would provide a way to introduce greater diversity of values and educational philosophies into schools” (Salganik, 1981, p. 273).

In the late 1960s the voucher program still had little opposition from social critics of public education and liberal academics because the chance to “craft so-called ‘regulated’ voucher

plans- insuring that the poorest recipients got the largest vouchers appealed to many on the left.” President Lyndon Johnson’s Office of Equal Opportunity (OEO) developed a voucher proposal that was subsequently embraced by President Richard Nixon’s administration. However, President Johnson’s plan had such a modicum of support that seven out of the eight proposed pilot cities rejected the opportunity to participate. This would seem to indicate that although liberals and conservatives alike agreed on a voucher system, there clearly was disagreement as to the manner in which any such plan would be implemented. The only city that agreed to participate in the Johnson’s plan was Alum Rock, California which had a population of 15,000 students, 55 percent Hispanic and 12 percent black. This ratio would seem to support the argument made by some opponents that voucher plans in their true and altruistic forms would not garner enough support from its proponents to aid the truly deprived, especially in communities where the truly deprived are not the majority.

The period of the 1970s was filled with trial and error voucher programs due to varying ideas of what vouchers should aim at accomplishing. The 1960s spirit of social experimentation to increase equity was a mere memory, and “vouchers had become identified instead with increasing individual options and halting the rapidly rising cost of public education” (Salganik, 1981, 273).

In 1971 the Nixon administration’s Presidential Commission on School Finance proposed an idea termed “Parochiaid,” which was a plan to allocate public money to fund religious schools. This plan encountered widespread public opposition, and it was at risk of being ruled unconstitutional. Molnar (1996), states, the Supreme Court erected a difficult hurdle for advocates of tax dollars going to religious schools; in its 8-0 ruling in *Lemon v. Kurtzman* in 1971 the Supreme Court held that to be constitutional the plan had to meet three standards:

1. its purpose is non-sectarian
2. its main effect is to neither advance nor inhibit religion
3. it does not excessively entangle the state with religion

Seemingly on a deserted island without support, proponents of the “Parochialism” idea of school funding were desperate to seek alternative methods that would garner some public and political support, and not be considered unconstitutional. Hence, in 1983, 1985, and 1986, the Reagan administration tried unsuccessfully to move some form of voucher legislation through Congress, however, the 1985 effort was of great significance because it attempted to re-establish the link between vouchers and empowering the poor that had attracted progressives in the 1960’s and 1970’s by “turning the federal government’s Chapter 1 program (which provides increased resources to school districts serving large numbers of poor children) into an individual voucher program” (Molnar, 1996).

This was an extremely clever tactical switch because it began to focus the attention on *public school choice*, which transformed school choice into a strategy to reform rather than a strategy to dismantle the public school system. Many strategists and intellectuals suggested that by shifting the discussion from vouchers to public school choice, the Reagan administration seemed to separate the idea from its racist and religious roots.

During the Reagan era of the 1980s the communist ideology of the former Soviet Union presented the United States with its staunchest competitor and its greatest threat to world domination ideologically, economically and militarily. Education was seen as the mechanism through which these battles would be won, and the U.S. education system was viewed by many as failing in comparison to most of the world, particularly to the Soviet Union. Furthermore, the world economy was beginning to shift its base from industry to technology, it was feared that the

U.S. would be incapable of competing in the world markets without vast improvements in its education system.

On August 26, 1981, at the behest of President Reagan, Secretary of Education Terrell H. Bell created the National Commission on Excellence in Education (henceforth NCEE). The NCEE was directed to present a report on the quality of education in America within eighteen months. In April of 1983 the NCEE submitted a report *entitled A Nation At Risk*. This report painted an extremely bleak picture regarding the state of education in America. It stated “our Nation is at risk, our once unchallenged preeminence in commerce, industry, science and technology innovation is being overtaken by competitors throughout the world-what was unimaginable a generation ago has begun to occur-others are matching and surpassing our education” (NCEE, 1983). The NCEE goes on to add “if an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war-as it stands, we have allowed this to happen to ourselves-we have squandered the gains in student achievement made in the wake of the Sputnik challenge, moreover, we have dismantled essential support systems which helped make those gains possible, we have in effect been committing an act of unthinking, unilateral educational disarmament.”

Needless to say this report left the Reagan administration and the entire country in a state of near panic concerning the state of education in the United States. The report also brought about a sense of urgency as to the need for immediate reforms in the educational system. Once again, the debate was not the objective; rather, it was in the method.

Many on the conservative right viewed the nation’s education problem as an institutional one. They proposed, as Friedman did previously, a shift away from a system of schools

controlled directly by government through “politics and bureaucracy”-to a system of indirect control that “relies on markets and parental choice.” They argued that less fundamental reforms have yet to turn American education around. Less fundamental reforms referred to how school reforms had traditionally occurred, where more money, more teachers, more equipment, smaller class sizes were seen as ways of improving the quality of education.

Current voucher supporters argue that “during the 1980s, governments responded to these pressures with handsome increases in funding-the problem is that, common sense notwithstanding, there is no evidence that increases of even this magnitude stand to have important effects on school performance-in fact, the relationship between resources and performance has been studied to death by social scientist, and their consistent conclusion has been that resources do not matter much, except perhaps in cases of extreme deprivation and gross abundance” (Chubb & Moe, 1990).

Also during the 1980s vouchers were viewed as a method of improving the quality of education in America, thus allowing the U.S. to maintain its status as the predominant Nation in the world. Vouchers supporters contended vouchers would introduce the concept of free market into the education system. This, proponents argued would serve several purposes:

- 1 It would allow parents to choose where their children attend school
- 2 It would provide competition for public schools, hopefully galvanizing them to improve all aspects of the system (e.g. organization, curriculum, teaching methods, etc.)
- 3 It would improve student achievement for student in those schools that are failing to provide adequate and quality education for them.

1.1.2. What is Under Study

In 1990 the nation’s first voucher program was enacted in Milwaukee. Prior to this enactment the debate on school vouchers occurred primarily on a theoretical and ideological platform.

However, after the inception of Milwaukee's program, powerful educational and political groups had a practical platform upon which to forge their arguments and put forth their agendas. School reform arguments became steeped in revolutionary proposals for market-based school choice as a redistributive measure for African American families trapped in poor communities and poor schools.

Under these proposals, families in poor school districts and poor achieving schools would be provided with public vouchers that could be utilized for private education or participating public schools. As the merits of school vouchers continue to be debated by scholars, educators and policymakers, other external stakeholders emerged to claim their stake on the issue.

Interest groups and think tanks supportive of a marketized system of schooling have joined politicians in becoming champions for the cause. Bracey, 2002 cites a brochure distributed by the investment firm Lehman Brothers to its clients which stated "we've taken over the health system; we've take over the prison system; our next big target is the education system" (p. 6).

Also, conservative politicians have continued to advance certain political agendas by advocating for school vouchers as a method of redistributing equality to underprivileged African American parents and their children. Conservative politicians, who are staunch supporters of market-based school choice, contend public schools would greatly improve due to the 'competitive' nature of school vouchers. The trend of conservatives aligning themselves with disadvantaged populations to promote market-based school choice Moe asserts represents "the new politics of education, in which the progressives defend the failing status quo and the conservatives battle for change on behalf of the poor" (1993, b3).

Also advocating for school vouchers are religious conservatives, who, as Bracey states “promote vouchers and tax-credits in hope of funding schools that can use tax dollars to teach religion without worrying about the First Amendment” (2002, p. 11). Bracey continues, “Catholic school officials have for the most part discretely refrained from public comment on the war, but it is hardly a secret that many would like to see vouchers provide money to their financially ailing schools” (ibid).

This dissertation hopes to examine the roles of interest groups, politics, and religion in the formulation of school voucher policies in Cleveland. It will strive to gain further understanding of these roles by addressing three relevant questions.

1.1.3. Question

1. What types of groups (political, economic, social, religious, etc.) advocate for school vouchers?
2. What are the expressed outcomes held for African American students in poor achieving schools by voucher proponents?
3. What other outcomes aside from the expressed appear to result from vouchers for the proponents and external stakeholders?

This research will address these questions in the context on the CSTP which was created in 1995 to provide students in the Cleveland school district with public vouchers to use at private or participating public schools.

The CSTP is relevant and crucial to this research due to the aforementioned Supreme Court decision. The impact of the decision could have far reaching implications for the future of public education and education reform.

1.1.4. Theoretical Framework: A Political Economy Approach

The framework that will guide this study in the examination and analysis of the role of politics, interest groups, and religion in the formulation of school voucher policies in Cleveland is grounded in a political economy approach. Political economy is the study of the role of economic process in shaping society and history (Gabriel, 2002). Political economy, Tozer, Violas, and Senese (2002) state, is a durable, flexible concept that includes the social, cultural, economic, political, and demographic dimensions of society. They continue, to study the political economy of a particular society is to examine how that society is organized—how its structures, processes, and physical and mental resources give it its character and distinctiveness. Thus, the political economy approach is most commonly used in interdisciplinary studies that draw on economics, law and political science in order to understand how political institutions and the political environment influence market behavior. According to Bicker and Williams the political economy approach makes three assumptions:

1. Human behavior is purposive (Utility Maximizing)
2. People's behavior is shaped by incentives and constraints (rational)
3. People are intelligent and creative (strategic)

Examining this issue utilizing a political economy approach affords the researcher an opportunity to analyze the social, cultural, economic, political, and demographic factors that drive voucher policies in Cleveland. This would include seeking a more thorough understanding of the process and stakeholders involved in determining voucher policies and policy implementation. This is done with the understanding that these policies are not created in a vacuum. They are subject to political and economic conditions and determinants that involve stakeholders and the policy decision-makers who formulate these policies.

This framework will be aided in small part by some tenets of critical thought. However, it is not the intention of this study to illustrate or demonstrate any particular theory. Its purpose is to find out through a historical analysis utilizing a political economy approach what types of groups advocated/advocate for school vouchers in Cleveland; what are the expressed outcomes held for African American students in poor achieving schools by voucher proponents; and what other outcomes aside from the expressed appear to result from vouchers for the proponents and external stakeholders. Critical thought assists this framework in that it maintains certain assumptions utilizable with political economy approach in that all thought is fundamentally mediated by power relations that are socially and historically constituted; that facts can never be isolated from the domain of values or removed from some form of ideological inscription; that the relationship between concept and object and between signifier and signified is never stable or fixed and is often mediated by the social relations of capitalist production and consumption (Kincheloe & McLaren, 1994, p.139).

Critical research in the context of this research serves multiple purposes. First, it allows the author to interpret the acts and symbols centered on interest groups, politics, and religion in order to come to a better understanding of the ways in which these segments operated in the Cleveland voucher process. Second, it allows for the incorporation of the controversies and power struggles embedded in the fight for school vouchers. Third, it allows for the questioning and challenging of the “seemingly obviousness, naturalness, immediacy, and simplicity of the world around us, and, in particular of what we are able to perceive through our senses and understand through the application of our powers of reason” (Nowlan, 2001). Furthermore, critical theory allows the researcher to question and challenge the passive acceptance of “the way things are” or “the way things seem.” Thus, the primary focus of this research is not to ascertain

whether or not vouchers work, this research is primarily concerned with the power relationships that exist in the center and its impact on those on the periphery.

Employing these characteristics in the context of the CSTP will afford this researcher an opportunity to properly analyze factors that drive school voucher policies, particularly in Cleveland.

1.1.5. Limitations of the Study

This study presents some limitations, given that the majority of the data collected were collected through interviews with elite figures and documents written by highly educated people who at times were at the periphery, the research is devoid of the local voice, which are the voice of the parents, the teachers, and the students who live and breathe in the Cleveland school district. Also any hint of researching an issue from a critical perspective comes with its own set of limitations, the least of which is subjectivity in the analysis of the data. Meaning, the data collected could be interpreted differently if one were to utilize for example functional theorist approach to data collecting, interpretation and analysis.

The sources of evidence also has its limitations in this study thus could be problematic at times. Documentation and Archival methods of collecting the data has weaknesses in that retrievability can be low, biased selectivity if collection is incomplete, and access to certain information can be deliberately blocked for privacy or other legal reasons.

2. CHAPTER II

2.1. REVIEW OF LITERATURE

The issue of school choice, specifically vouchers has been and continues to be an issue that triggers passionate opinions and theories among educators, parents, researchers and policy makers. Given that the political arena today is composed of a highly diversified group of stakeholders in a complex system and operates under certain rules and norms, citizens have been galvanized to re-examine the true meaning of education reform and its impact on stakeholders at multiple levels. The recent Supreme Court decision that upheld the CSTP as constitutional is as critical a transformational ruling in the Supreme Court pertaining to education as *Brown v. Board of Education* in 1954 which outlawed school segregation. This ruling is transformational in that it has grave implications for public schools and paves the way for deliberate steps toward the privatization and marketization of public education. This literature review will first present a brief synopsis of how the issue of school vouchers came to dominate the school reform debate and how various external stakeholders (e.g. interest groups and politicians) were able to find space at the debate table. The review will then examine the question, what is urban school reform as explicated by various scholars and intellectuals. The subsequent sections of the review will explore the more generalized relationship between politics and school reform; and interest groups and school reform. Finally, a brief examination of school vouchers as a mechanism for reform will bridge the gap between the more generalized concepts of politics and interest groups as they pertain to school reform in a broad sense and their roles in the formulation of school voucher policies in Cleveland specifically.

2.1.1. A Debate is Born

In 1990 amidst a cry for public school reform, the Milwaukee Parental Choice Program (MPCP) was established. The program was intended to provide publicly funded private school tuition for low-income children in Milwaukee. As of the 1999-2000 school years approximately 8,000 pupils were enrolled in 91 private schools.

Subsequently in 1995 the Ohio Legislature approved a plan to establish the CSTP. The program provides parents within the Cleveland school district the opportunity to apply either: (1) for tutoring grant to be used to obtain additional academic assistance for their child who continued to attend the Cleveland Public Schools (CPS) or (2) for scholarship (i.e., tuition voucher) that could be used to defray the cost of private school enrollment for their child. Of the 43 private schools participating in the scholarship program; 32 are catholic, 8 of other Christian denominations, 1 Islamic and 2 non-religious. These two voucher programs were established during heated debates and under a contentious political climate.

At its inception the debate on whether to utilize public vouchers as a method of funding private education and school choice took place among educators, school critics and sociologists. When originally proposed in 1955 by Friedman, the issue of school vouchers was seemingly devoid of political interference because many felt the debates in the education arena should be left up to those within the fields of education. Bailey (1975) explains that an attentive American public has wanted somehow to ensure that education was not subjected to national political domination on one hand or to courthouse patronage on the other. He continues, “in consequence, the myth was further cultivated that politics and education do not mix, a myth supported by those town and city fathers and mothers who, for high motives, wanted politics kept out of the classroom and who, perhaps for more complex motives, wanted teachers kept out of politics.”

However, as the debate on school vouchers became increasingly popular and began dominating dining room and teacher lounge conversations, politicians and interest groups began to take notice. Thus, many politicians to the *right* with a strong challenge from the *left* began using the issue of school vouchers as a platform on which to gain positions in local, state and federal governments. It was also at this point that many interest groups began to also pay close attention to the issue. Knowing that their voices and votes would be coveted by politicians, interest groups began realizing the level of influence they possessed as a unit, and how they too could benefit from policies that allowed for the utilization of public funds to fund private or parochial education.

Interest groups over the years have played pivotal roles in the enactment of certain policies. Interest groups have championed causes ranging from the Democratic National Committee (DNC) which was established in 1848 and serves the function of planning the Party's quadrennial presidential nominating convention; promotes the election of Party candidates with both technical and financial support; and works with national, state, and local party organizations, elected officials, candidates, and constituencies to respond to the needs and views of the Democratic electorate and the nation; To the Republican Jewish Coalition (RJC) founded in 1985 to “foster and enhance ties between the American Jewish community and Republican decision makers.” Moe (1980) states “it is now commonplace observation that interest groups are important and even necessary components of Democratic politics” (p. 1). Also, “groups of various descriptions are ever-present in the legislative process, acting as agents of influence, channels of representation, sources of information and expertise, and communicators to specialized sectors of society” (ibid).

Groups that foster and promote educational causes are not distinct from “traditional” interest groups. Although these groups put forth their motives as being more altruistic than “regular” interest groups, Moe quoting Olson’s *The Logic of Collective Action* points out that “if the members of a large group rationally seek to maximize their personal welfare, they will not act to advance their common or group objectives unless there is coercion to force them to do so, or unless some separate incentive, distinct from the achievement of the common or group interest, is offered to the members of the group individually on the condition that they help bear the costs or burdens involved in the achievement of the group objectives.” Moe continues to say that “when individuals have a common interest in achieving a political goal, the latter characteristic takes a form of a collective good.” That is, “once a goal is achieved, its benefits can be enjoyed by each individual in the group, regardless of whether or how much he has contributed toward that end.”

Recently, vouchers have dominated educational debates within the political spectrum. President George W. Bush has overtly voiced his support of a voucher system for local school districts, and has further moved education reform toward that end by enacting the No Child Left Behind (NCLB) doctrine. Jeb Bush (President’s brother), governor of the State of Florida, has the only statewide voucher program in place. Interest groups such as the Heritage Foundation, the Milton and Rose Friedman Foundation, Catholic Diocese and the conservative think tank Citizens for a Sound Economy just to name a few, have passionately pushed for school vouchers.

Given that politics and interest groups are becoming more involved in educational issues, it is becoming more difficult to distinguish between rhetoric and reality. The purpose of this study is to examine the role that political, religious and interest group proponents of school vouchers play in getting voucher policies passed. This will be accomplished by focusing on the

CSTP as a case in point, to examine the extent to which politics, religion and interest group participation played a role in getting the program passed in Cleveland, and what have been the expressed and unexpressed outcomes. It investigates the “separate incentive, distinct from the achievement of the common or group interest” (Olson) that galvanized politicians and interest groups to push for a voucher program. Aside from the goal of “wanting poor black children to have a choice of schools so they can do well,” what else was at stake?

Since the Supreme Court’s decision on *Brown v. Board of education* in 1954 which deemed “separate but equal” schools were “inherently unequal,” school reform debates particularly reform concerning the urban community have been a mainstay in our day-to-day dialogue as we attempt to deal with the issue of inequality, more precisely the issue of educational inequality that exists between blacks and whites. Various reform initiatives such as charter and marketized schools have been proposed as possible panaceas for the poor achievement of African American students in urban schools. For the purposes of this research the focus will be on what is considered the most controversial of the reform initiatives, which is the utilization of public vouchers as a method of funding private and parochial school choice initiatives. .

In order to better understand an isolated discussion on the role of politics and interest groups as it pertains to the CSTP and school reform, a more comprehensive examination of what roles politics and interest groups play in day-to-day policy making and reform is warranted.

2.1.2. What is Urban School Reform?

To understand urban school reform we must first attempt to understand the reasons behind initial efforts to reform schools without regard to demographics. During different periods in our history there have been various reasons why school reforms were necessary. Tozer, Violas, and Senese

(2002) point out those citizenship goals dominated the discourse of colonial period school reform, socialization and economic goals dominated school reform agendas during the late 19th and early 20th centuries. After World War II, America experienced yet another wave of school reform, this time, however, it was motivated largely by fear of an external military and political threat (Tozer et. al., 2000). This fear was connected to the fact that the Soviet Union had successfully launched Sputnik. What was born from this fear was a “massive investment in defense-oriented school reform:

Defense related subjects such as math, science, and foreign languages became the focus of the new “core” curricula that sprang up around the country. Simultaneously, comprehensive high schools sponsoring new, advanced curricula for students scoring high on standardized achievement tests began appearing. Reform leaders were concerned with the development of elite students capable of shoring up the national defense, Tozer et. al., 2000.

In the subsequent periods other issues, such as civil rights, necessitated a push for school reform. There was a shift from education reform as a good for national security to education reform as a method of combating inequality and improving achievement for students in urban communities, particularly black students. This shift has occurred for many reasons. Hill, Campbell, and Harvey (2000), posit that people came to view education as a sort of Archimedean lever that could be applied against the forces of racism, reaction, and the status quo to create a society free of illiteracy-free, indeed, of want and hunger. Others like Latanison (1995) believed that an educational system should serve our children in at least two important ways: it should provide the means for each child to reach his or her intellectual potential and it should prepare young people to take a place in an increasingly technologically advanced society (p. 1). Latanison contends that the current educational system is failing in both respects, illuminating the fact that “the nationwide high school drop out rate is 20 percent, approaching 40

to 50 percent in urban population centers” (1995). Uhlenberg and Brown (2002) stress the existing gap in achievement as a warrant for reform, stating, the achievement gap along with its possible causes and its potential solutions, has become one of the central issues in public education in general and urban education in particular (p. 493).

The promotion of urban school reform is also largely due to what some perceive as defacto segregation and institutional racism that still holds our society hostage. In his book *Savage Inequalities*, after visiting and researching six urban schools, Kozol (1991) reported that the “Supreme Court decision in *Brown V. Board of Education* 37 years ago, in which the court had found that segregated education was unconstitutional because it was “inherently unequal,” did not seem to have changed very much for children in the schools I saw, not, at least, outside of the Deep South.” Kozol adds that “most of the urban schools I visited were 95 to 99 percent nonwhite; in no school that I saw anywhere in the United States were nonwhite children in large numbers truly intermingled with white children” (1991). Kozol also warns against making comparisons between education and the other social issues that plague our society, stating that although “liberal critics in the Reagan era sometimes note that social policy in the United States, to the extent that it concerns black children and poor children, has been turned back several decades, is an accurate assertion as a description of some setbacks in the areas of housing, health and welfare,” this assertion however, he cautions, is not adequate when speaking about the present-day reality in public education. As he puts it “in public schooling, social policy has turned back almost one hundred years” (1991). Henig, Hula, and Orr (1999) assert that “while many schools are delivering a mediocre product that sells their students short, for some children, especially those living in large central cities with high minority populations and heavy concentrations of the poor, the tale is much more tragic.” Furthermore “broad economic changes

are putting a higher and higher premium on educational attainment, yet these students languish in decrepit school buildings where many of the teachers lack the skills and training they should have, the resources to meet their special challenges, and/or the enthusiasm and faith that might once have led them to consider education their mission and not simply their job” (Henig, et. al., 1999). Consider some startling statistics presented by Tozer et. al., 2002 on educational attainment in the mid 1980s, a period subsequent to what many considered the most concentrated effort on school reform. The high school completion rates among 19- year old students were slightly above 60 percent for blacks, conversely the rates for white students were above 75 percent. Hill and Celio (1998) argue that efforts to reform big-city school systems have followed the pattern of incrementalism and fragmentation established by federal aid to education in the 1960s. There have been, as they contend, no revolutionary efforts to reform schools. All reform initiatives have taken a “wait and see” approach, thus change then becomes a product of incremental effort. “In trying to improve the performance of their public schools, the leaders of big cities face problems of two kinds, intellectual and political, intellectual problem is the absence of a guiding philosophy of reform; the political problem is the difficulty of building and keeping a coalition strong enough to overcome the resistance to change that is endemic to a large organization whose constituency comprises contending interest groups and civil service employees” (Hill & Celio, 1998).

As has been posited by the preceding literature, low academic achievement seems to be endemic to urban schools. Furthermore, it seems to be universally agreed upon that the antiquated ways in which schools in urban communities are functioning need to be reformed. Also, the education available for students in those schools is derisory in the grand scheme of “societal” things. The literature would further seem to indicate that students in urban schools are

not being adequately prepared to compete as functioning members of society due to their education, or lack there of, thus will forever keep be subjugated. Therefore, the question is not whether or not reform is necessary, the question is in the method in which these reforms will be administered, and who has the privilege of deciding.

2.1.3. Politics and School Reform

In recent years, education has become an important issue for campaign managers (Spring, 1998). “Politicians, including presidential, congressional, gubernatorial, and state legislative candidates, find educational topics appealing because they project the image of a person who cares about human values” (ibid). Periodically, politicians have attempted to propel their political careers by hanging on the coattail of education as a method of ascending politically, Schattschneider states, “in politics as in everything else it makes a great difference whose game we play; the rules of the game determine the requirements for success, resources sufficient for success in one game may be wholly inadequate in another” (1960, 9.48). Given that the rules of politics had changed and education had become a pressure point for political debates, politicians wasted no time in altering their game plan.

Reform movements of the 1980s plunged education even more in the political mainstream, “in many states, reform proposals were picked up and used by elected officials, including governors, in their political campaign” (Mawhinney & Lugg, 2001).

The educational posturing by politicians continued. The issue of education as a hotbed of discussion in the political arena made for some strange bedfellows. In 1982 after successfully recapturing his seat as Arkansas governor, former President Bill Clinton (Democrat) was joined by Tennessee Governor Lamar Alexander (Republican) and South Carolina Governor Richard Riley (Democrat), both of whom successfully emulated Clinton’s educational platform to win

their respective races, to form the National Governors Association and creating Goals 2000. Goals 2000 was at the request of then President George Bush Sr., in his quest to be anointed the “education president” (Spring, 1998). Goals 2000 was adopted by the President and the Governors in 1990. In speaking about Goals 2000 Bush announced, “There will be no renaissance without revolution.” Bush’s plan for Goals 2000 lived on in the Clinton administration, On March 31, 1994, President Clinton signed into law the Goals 2000: Educate America Act. “This Act, P. L. 103-227, was consistent with several of the central themes of the school reform movement begun in the 1980’s” (Tozer, et. al., 2002). The impetus for Goals 2000 was the idea of statewide education standards for educational reform. The plan called for eight strategies which the leaders felt would ameliorate the educational ills of the Nation:

2.1.4. The National Education Goals of P.L. 103-227: Goals 2000 (1994)

1. By year 2000, all children in America will start school ready to learn.
2. By year 2000, the high school graduation rate will increase to least 90 percent.
3. By year 2000, all students will leave grades 4, 8, and 12 having demonstrated competency over challenging subject matter including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography, and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation’s modern economy.
4. By year 2000, the Nation’s teaching force will have access to programs for the continued improvement of their professional skills and opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.
5. By year 2000, U.S. students will be first in the world in mathematics and science

achievement.

6. By year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
 7. By year 2000, every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
 8. By year 2000, every school will promote partnership that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.
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As many educational initiatives before it, Goals 2000 was ephemeral, if not non-existent. Children in America's school still are not achieving at the levels predicted by the initiative. School violence is at the highest it has been in recent history; children have more access to firearms than ever before. The prevalence of drugs in schools is staggering, U.S. students are not first in the world in science and mathematics. Obviously not every adult American is literate, the high school graduation rate is nowhere near 90 percent. Tozer, et. al. (2002) noted, "now that the year 2000 has passed, it is clear that not a single one of the goals was achieved, with the possible exception of the very softly worded Fourth goal." The big question is why? It has been argued that most of these proposed plans for education reform put forth by elected officials are not plans for American education, rather, they are plans to position the official for re-election.

Not to be left out, in 2001 President George W. Bush passed the No Child Left Behind Act (NCLB) of 2001 which mandated a schedule , target populations, and reporting procedures

for high-stakes testing and academic standards. Its goals were not as exact as those of Goals 2000. Quite the contrary, the goals of NCLB were quite nebulous and non-committal. The seven goals ranged from (1) By 2002-2003, states must provide annual reports cards containing, (a) student achievement scores, (b) performance by school districts; to (7) By 2007-2008, states must implement science tests once during elementary, middle, and high school. Of course each state was left to its own discretion as to how they wanted to interpret the mandate.

One crucial assumption that possibly led to the downfall of Goals 2000 and will inevitably lead to the downfall of NCLB, was the assumption that all of these goals could be met by applying them to a heterogeneous society, a society in which citizens are divided by many institutional and cultural factors. Apple (1996) writes, “One of the most crucial aspects of politics is the struggle to define social reality and to interpret people’s inchoate aspirations and needs” (p. 21). Apple (1996) continues, “education is deeply implicated in the politics of culture, the curriculum is never simply a neutral assemblage of knowledge, somehow appearing in the texts and classrooms of the nation, it is always part of a *selective tradition*, someone’s selection, some group’s vision of legitimate knowledge.”

Why has education stepped to the forefront of political discourse and debates? Some argue that the overtly pernicious way in which politicians formerly conducted themselves has given way to a more ethical manner, one that resonates with society’s idea of “good politics.” Spring has suggested that education is the most conservative form of reform and least likely to affect the power structure. Others such as Gutman and Thompson (1997) state, “one reason for some of these changes is, no doubt, that politicians have discovered that moral talk, and sometimes even moral action, helps them win or stay in office.” Switching focus to ethical and moral issues for the sake of pleasing constituencies rather than for the sake of true ethical and

moral convictions has led many politicians to enact policies that are more rhetoric than reality.

These reform initiatives become rhetorical when they fail to transform the current state of affairs.

Wiener (2003) puts it well:

Leadership, authority and power become transformative when they are directed towards the service of emancipating systemically entrenched attitudes, behaviors, and ideas, as well as instigating structural transformations at a material level. This means that under the authority of transformative leadership, structures of government, education, business, and healthcare become the objects of Democratic intervention and innovation. Transformative leadership must be intent on ‘formalizing’ its innovations and interventions by establishing Democratized structures that reflect its leadership. (p. 93)

If politicians are not galvanized by moral convictions, then what is it that motivates them to put forth these policies auspiciously based on ethics and morals?

2.1.5. Interest Groups and Reform

In his study *The Government Process*, David Truman coined the term Interest groups for their shared attitudes that bind members together to make claims on other groups or organizations in society (Truman, 1971). The critical element in this definition as noted by Mawhinney and Lugg include “membership on the basis of some shared interest that compels a group to seek to have an impact on public policy or become active in the political process” (2001, p. 7). These shared interest as Berry suggests leaves “little doubt that the central underlying catalyst in the development of this sector was the social and political unrest of the 1960’s, although the seeds of the 1960s would not fully flower until years later, this period is the foundation of citizen group advocacy today” (1999, p.25). Over a century prior to the 1960s citizen involvement in group activity for a single purpose was prevalent in politics and policy, group activity of this nature caused James Madison to warn in *The Federalist*, Essay No. 10 that “mischiefs of faction may result in citizens engaging in group activity to pursue narrow and selfish interests, with little

thought to the broader public interest” (Cigler & Loomis, 2002, p. 38). Nowhere was this foreshadowing more evident than when business and civic leaders became involved in school reform during the rudimentary stages of the common school movement, in which Horace Mann, working as Massachusetts Secretary of Education of the newly created state board of education in 1837 sought to set up an overall education system in the state to educate children of diverse backgrounds which would be public, tax supported, and non-sectarian (DiConti, p. 3). The involvement of business and civic leaders in school reform was then as it is now part of a much broader municipal reform movement. Berry Notes that when the National Education Association (NEA) gave its first presidential endorsement to Jimmy Carter in 1976, association officials made it clear to Mr. Carter that they wanted a Department of Education created to give education more visibility in the cabinet (1997, p. 53). Over the years interest groups have become so closely identified with one political party on issues that there is no longer a need for pretense that they are nonpartisan organizations. Berry points to a congressional district race in Oklahoma 1994:

The Republican candidate, Steve Largent, had 800 to 900 volunteers during the campaign. Most of them came from Largent’s fundamentalist church and Oral Roberts University, a local Christian college. Largent actually had more volunteers than he could use (p. 53).

Ainsworth (2002) contends, “shared attitudes lead to the common interests that are fundamental to interest groups” (p. 12). Furthermore, “the claims upon others make it clear that that the groups pursue their narrow, self-interested goals even at the sake of others’ well-being” (ibid). Therefore, individual concerns and individual choice must be incorporated into the analysis of interest groups. Individual concerns and individual choice are problematic because

they contribute to the paradox inherent in group systems. As Baumgartner and Leech (1998) see it “the group system is seen simultaneously to be a route for popular representation and a threat to good government because of the biases it allows” (p.83). Nowhere are these biases clearly exhibited as they are in education policy making.

The politics of education in the United States has changed in recent decades from one approximating professionally dominated subgovernments to issue networks, which are characterized by more ideational, macropolitical interest groups as well as shifting and unstable coalitions (Cibulka, 2001). Who sways committee votes, who gets phone calls returned-what they want from government-has always been of interest to political observers, (Thomas & Hrebener, 1999). Interest Groups play a pivotal role in determining what causes are championed by politicians. Knoke (1986) defines associations as “a formally organized named group, most of whose members-whether persons or organizations- are not financially recompensed for their participation.” However, “whenever associations attempt to influence governmental decisions, they are acting as interest groups” (ibid). DiConti states:

Nowhere is the impact of competing interests on public policy more evident than in American education policy. Interest groups hoping to set education public agenda for their own purposes have fueled the dramatic and numerous changes in the public education system since its inception in the early 19th century. In the educational policymaking arena, the alignment of various competing interest groups routinely present alternatives for change. 1996, p.3.

DiConti continues, “recent changes in education policy provide a further illustration of the influence that interest groups can exert on public schools in the hope to change the function of education” (1996, p.8). Bailey adds:

There are those interested in the relevance of education to specific issues: for example, poverty, civil rights. There are religious interests that cut across all levels of education; there are also

religious interests divided according to level of education. There are research interests of all kinds, including research about education itself. There are those interested in the education of veterans, of blacks, of Indians, of Mexican-Americans, of the aged (1975, p. 7).

The vast array of representation gives some indication that interest groups are increasingly important to Americans and thus to our legislative process (Opfer, 2001). According to Opfer, the best available data with regard to the number of interest groups operating in the Washington, D.C. area show a remarkable increase, from 4,000 in 1977 to more than 17,000 in 1999 (2001). Opfer argues that education interest groups continue to influence education legislation in Washington and have been able to do so by mobilizing member participation in the legislative process (p. 136). Stone (2001) asserts that “the term *interest group* is closely associated with the idea that politics is fundamentally about struggle among contending collectives, we understand such struggle as a form of power in which a group’s effort to dominate or gets its way is often met by counter efforts.” Stone adds, the “interest in interest group is also troubling because it implies something fixed and largely determined by one’s place in the socioeconomic order” (p. 153). Despite increasing federal participation in informing education policy, and nationalizing trends in education, Cibulka (2001) argues that implementation of reforms is dominated by local politics, where micropolitical interests often frustrate reformers. The widespread belief that the politics of education in the United States has changed considerably in the recent decades has been attributed to the alleged negative role of special interest groups by those who foster this position. Cibulka (2001) posits that “according to this logic, the growth of interest groups has made educational policy making visibly political.” Interest groups, as it concerns education policy making and school reform is viewed by many as a way of the strong to enforce their will upon the less powerful. Mawhinney and Lugg (2001)

note the “paradox that a group system is simultaneously a means of popular representation and a threat to the greater good because of the biases it allows.” Also, “this paradox is the thread running through the study of interest groups as the analytic focus on them has waxed and waned and waxed again in popularity among political scientists, sociologists, and students of the politics of education” (ibid). An extensive study conducted by Marshall, Mitchell, and Wirt in 1989 to examine the relative influence of big business, teacher unions, and other interest groups in state policy making concluded that education policy between 1982 and 1985 was influenced by interest groups near the circle of policy, including teacher unions. The evolution of interest group participation in education policy making was also reported by Mazzoni (1995), by the early 1990s, state education policy systems, he stated, had become “enveloped and interpenetrated by national organizations and connecting networks, an expansion of influences that had been evolving for decades” (p. 65). After carefully reviewing interest group activities, Mazzoni concluded that the “policy eruption of the 1980s accelerated as well as reflected the pluralism, politicization, and openness of state education policy systems” and that these systems had become “arenas for political confrontation between contending national organizations and networks” (1995, p. 68). Mawhinney and Lugg (2001) posit that “the involvement of interest groups in these arenas reflects continuity in American political experience that has been matched by the ambivalence with which interest group activities have been viewed historically” (p. 7).

Collective action as Knoke (1988) sees it is a “recurrent problem for citizens of mass societies” (p. 311). However, it is seen as a “necessary evil” because in a “complex political economy, where huge organizational entities are prime movers, individuals, by pooling their resources in organizations, can achieve objectives that they would be unable to produce through their individual efforts” (ibid). This ability to achieve collective objectives that would not

otherwise be available to a single individual acting as a lone entity is not without cost. Knoke warns, “group members must trade personal control over their resources for the ‘multiplier effect’ of collective action” however, “for many, the benefits gained from collective action outweigh the loss in personal autonomy” (1988, p. 12). There are multiple ways in which members of a collective-action organization can contribute, money, in-kind services, time, and psychological commitment. Knoke states, once it has acquired control over such resources, an organization may allocate them to three basic types of actions or goals: (1) direct material services to its members; (2) normative legitimation through information and public relations program; and (3) political efforts to influence public-policy decisions (1988, p. 12). Hildreth (1994) in her study of the Sanctuary Movement examined the role of incentives in the participation decisions of individuals facing a group action. She indicated that individuals at different levels of commitment to the action responded to a different mix of incentives (p. 447). She also noted that “economic disincentives discourage participation for some, yet purposive incentives provide powerful motivation to participate for many” (ibid).

2.1.6. School Vouchers and Reform:

A war is being waged on America’s public schools. They are under siege. Sometimes the war doesn’t look like a war because it is a war waged mostly in the polite language of academic debates (Bracey, 2002).

This is precisely how many view the issue of school vouchers, as a mechanism through which to jettison public schools from American society. Proponents argue that vouchers are not intended to destroy public schools, rather, they are intended to provide quality education to children living in communities where they are not afforded those opportunities. Bracey (2002) disagrees, he advises that by “following the money,” meaning, observing the source for research funding that support vouchers, will provide a clear indication as to the true purposes of the push for school

vouchers. He points to a report in 2000 which found that African American students using vouchers apparently scored higher than matched sample remaining in public schools (p. 4). However, Bracey noted “the authors credit a virtual who’s who of conservative foundations for funding the study” (2002, p.4). The list of foundations that fund for voucher research does seemingly read like a who’s who of conservative ideals and thoughts: the Achelis Foundation, Bodman Foundation, Lynde and Harry Bradley Foundation, William Donner Foundation, David and Lucille Packard Foundation, Smith-Richardson Foundation, Spencer Foundation, and Walton Family Foundation. However, the foundation most associated with pushing for voucher initiatives is the Milton and Rose Friedman Foundation which was created precisely and solely to promote vouchers, an idea put forward by Milton Friedman in 1955 (Bracey, 2002).

Others have argued that vouchers are a way of injecting new life into the once declining enrollment rates of Catholic schools. In Supreme Court document papers in *Zelman v. Simmons-Harris* (the case that questioned the constitutionality of the CSTP), it was noted that in the 1999-2000 school year, 82% of the participating private schools had religious affiliation, none of the adjacent public schools participated, and 96% of students participating in the scholarship program were enrolled in religiously affiliated schools.

Ridenour, Lasley, and Bainbridge (2001) state that education is being transformed at a rapid pace because of a variety of political and social forces, from this belief they argue that one of those forces is an increased emphasis on market-based policy and practices, pointing out that “school reform advocates in general and political conservatives in particular see the market approach as one that can and will positively affect education practices” (p. 66). For this precise reason some school voucher proponents have been accused of championing the cause because it brings them one step closer to a fully marketized form of education, where private industry will

position for the rights to have control over schools in certain districts, if not certain states.

According to many opponents this is where the real danger lies. Ridenour et al. (2002) state that a universal program of school competition is based on a premise of winners and losers and ultimately of forcing losers out of business, they argue that “those students most in need, not the schools they attend, will be the “losers” if market approaches are implemented on a widespread basis (p. 77). Similar arguments have been made regarding vouchers. Vouchers, many argue, would ultimately punish those students “most in need” that are left behind, rather than punishing the schools or the school systems.

Some argue that there are more surreptitious reasons as to why so many conservatives promote choice specifically voucher initiatives. Meeks, Meeks, and Warren (2000) explain:

With the apparent end of court-ordered desegregation, the avenues of escape for White parents from enrolling their children in largely minority and poor schools have been identified as choice options. The most prevalent of these include magnet schools; vouchers; privatization of public schools or private, for profit-schools; and home schooling. These choice options initiated in the 1970s present an alternative to forced busing. (p. 90).

There is no denying that reform is required in urban education and our failing schools, as Check (2002) illustrates, in “1995-96 America’s 100 largest districts represented less than 1 percent of the districts in the nation, but educated 23 percent of all public school students and employed 21 percent of the nation’s teachers” also, he noted, “with urban dropout rates hovering between 30 and 40 percent and test scores well below national averages, it is clear that we desperately need to get better at educating urban children” (p. 4). However, instead of contemplating ways in which to better reform our schools, conservative groups and right wing politicians have used the suffering of many parents who have children in poor and failing schools

as a method through which to put forth their political ideologies about markets, privatization and education.

Multiple studies have been conducted that evaluated the CSTP mainly reporting on issues such as parental satisfaction, test scores, student achievement and student migration from public schools, (Hess & McGuinn, 2002; Green, Howell, & Peterson, 1997; Schiller, 2001). However, this study seeks to examine the role of politics, interest groups and religion in influencing legislation pertaining school vouchers in Cleveland.

The theoretical framework proposed in chapter one has laid out a foundation for a methodological exploration that will illuminate the role of politics, interest groups and religion in the formulation of voucher policies in Cleveland.

3. CHAPTER III

3.1. METHODOLOGY

To this point, this researcher has presented a brief overview of the history of school vouchers and some of its stakeholders, internally and externally. Research on this topic, such as the one conducted by Peterson, et al. in 1999, has primarily focused on the question of whether or not vouchers are effective in increasing student achievement, thus, focusing their scholarly analyses of school vouchers strictly on quantitative methods of analysis. Furthermore, no study that this researcher is aware of has explored the political contradictions of its conservative supporters when it pertains to redistributive programs to African American families, therefore, this research will explore some of those contradictions when examining the unexpressed outcomes resulting from the implementation of the CSTP. Also, the argument that supporters prey on the fears of African American parents, thus capitalizing on their hopes and desperation for better schooling, is one that has not readily been explored.

In light of these research gaps, this dissertation will examine through, qualitative research using a historical approach to research, the role of interest groups, politics and religion in the formulation of school voucher policies in the context of the CSTP.

Given the complex nature of this study, a *historical account* of the CSTP, will be the guiding force for this study.

3.1.1. The Role of Interest Groups, Politics, and Religion in the Formulation of School Voucher Policies in Cleveland: The Research Questions.

1. What types of groups (political, economic, social, religious, etc.) advocate for school vouchers?
2. What are the expressed outcomes held for African American students in poor achieving schools by voucher proponents?
3. What other outcomes, aside from the expressed, appear to result from vouchers for the proponents and external stakeholders?

3.1.2. Qualitative Research

Qualitative research examines the way in which people make meaning of their lives and it is grounded in the notion that people and institutions are embedded in social structures, relationships, and individual context (Merriam, 1988; Becker, 1988; Maxwell, 1988). Thus, the motivation for doing qualitative research as opposed to quantitative research can come from the observation that, if there is one thing which distinguishes humans from the natural world, it is our ability to talk (Myers, 1997). Denzin and Lincoln (1994) define qualitative research as multimethod in focus, involving an interpretive, naturalistic approach to its subject matter, this means qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them (p. 2). Furthermore, qualitative research methods are designed to help researchers understand people and the social and cultural context within which they live (Myers, 1997). This study, utilizing a qualitative methodology, primarily a historical account based upon the perspectives of selected key

stakeholders and relevant documents, will attempt to explain to a higher degree the relationships between social structures, people and institutions in the context of the CSTP. The data collected will be used to further illuminate the social phenomenon of school vouchers.

3.1.3. Qualitative Method: A Historical Account

Krathwohl citing Fischer states “a historian is someone who asks an open-ended question about past events and answers it with selected facts” (1993, p.802). Thus Krathwohl sees the logic of history as neither inductive nor deductive, rather “it is adductive reasoning, where adducing means leading out the answer...to specific questions so that a satisfactory explanatory fit is attained” (ibid). It is the aim of this research to employ adductive reasoning while collecting and analyzing relevant data for this study.

Qualitative research operates in a complex historical field that crosscuts five historical moments (Denzin & Lincoln 1994, p. 2). For the purposes of this research the period defined by the authors as the postmodern or present moments which dates from 1990 to present is the period from which all historical data will be retrieved. Therefore some portions of the data would seemingly be an account of history as it occurs.

Allison (1995) posits that a historical inquiry begins when some event, development or experience of the past is questioned (p. 17). Therefore by definition, an historical problem cannot be pursued empirically, that is, you simply can not go back in time and experience the events taking place. It is necessary, therefore, to rely on sources other than oneself (ibid). These sources Allison speaks of are classified as primary or secondary sources.

3.1.4. Primary Sources

Researchers make use of primary sources in order to understand and reconstruct the past (UNC Chapel Hill, Manuscript Research Tutorial). Main uses of primary research are:

- 1 Confirm or contradict perceptions of a time or event;
- 2 Understand the cultures and values of people in the past;
- 3 Discover relationships between people; and
- 4 Investigate past social, political, and economic conditions.

Due to the relative newness of the CSTP, interviews with key players during the process of attempting to implement a voucher program in Cleveland are imperative. Fortunately for this historical study, many of the key players involved with the process are still alive. Elite interviews will be the most appropriate for this research project. Interviews with leaders of the Cleveland Diocese will provide information as to the positionality of the Diocese and the Catholic community during the rudimentary stages of the proposal until the program's inception. David Berkholz (former VP of the Gund Foundation) will be interviewed as the Gund Foundation was(is) a key funder of education projects in Cleveland, he, will be able to provide information as to the perspective of both the proponents and opponents. Former Mayor Michael R. White will add valuable insight as to the political strategies and counter-strategies of the actors and the context in which the action took place. Also, an interview with council woman Fannie Lewis will provide valuable information as to the impetus for the black community's involvement in the debate. Interviews with leaders at the Cleveland Teachers Union will provide information as to the teachers position as to the opposition of school vouchers in Cleveland. Finally, an interview with David Brennan is essential to the information gathering process of this research. Brennan, an Akron businessman, was appointed by former Ohio Governor George V. Voinovich to head the Commission on Educational Choice in 1992 which promoted a state funded voucher program pilot initiative. This interview will provide a platform from which to examine the political impact in Ohio. These interviews along with any nominated persons recommended by the interviewees will be vital primary sources of information.

3.1.5. Secondary Sources

CSTP is pivotal in any discussion about school vouchers due to its merits being challenged at the Supreme Court level. Therefore Supreme Court documents filed in *Zelman v. Simmons* will be an import source of secondary information to support or confirm information gathered from the interviews. Lawsuits filed by opponents such as the American Federation of Teachers to prevent a voucher program in Cleveland will be given close attention, as will other legal challenges, rulings and counter-rulings that took place at the Franklin County Common Pleas Court, the 10th Ohio District Court of Appeals, and the Ohio Supreme Court as pertinent secondary sources of information on the incremental evolution of the debate until its appeal to the United States Supreme Court. To gain a comprehensive understanding of the different variables involved in the decision making process at the time, particular attention will be given to the political affiliation of the judges and the decisions the made as the process maneuvered through the Ohio court system to the U.S. Supreme Court. Not only will specific cases be pertinent to the information gathering process, public documents as well as all other legal and public documents kept by the courts and government offices will also be utilized and viewed as essential resources. Archival records will revolve around service records such as those showing the number of students served in the CSTP over a given period of time and where they attended school. Organizational records, such as organization charts and budgets, maps and charts of the geographic area and demographics of the Cleveland Public School District (CPSD) will be used in the context of examining the makeup of the district which is being studied. The latter will be supplemented by the use of survey data such as census records and data previously collected about the CPSD.

3.1.6. Procedures

To supplement interviews of key persons and to come to a more comprehensive understanding of how the idea of school vouchers gained prominence and became intertwined in politics, interest groups and religion in Ohio, particularly in Cleveland, this researcher will focus on Ohio's Commission on Educational Choice and its initial efforts to adopt a school choice plan in Ohio. Furthermore, Governor Voinovich's support for legislation to institute a pilot scholarship program in Cleveland which led to the 1992 school choice bill that died with no hearing and no votes in the Ohio Legislature will be examined. Further examination will concentrate on the 1994 School choice bill hearings that occurred in both chambers of the Ohio Legislature and subsequently led to the enactment of the CSTP on June 28, 1995.

To better understand the challenges to the CSTP an examination of a lawsuit filed by the American Federation of Teachers (AFT) challenging the constitutionality of such a program will be imperative. In addition to an examination of the AFT lawsuit, the decision by the 10th Ohio District Court of Appeals which stated that including religious schools, the voucher program violated both state and federal constitutions will be examined and its impact to the religious community will also be studied. Despite this ruling voucher schools were allowed to continue operations pending ruling by the Ohio Supreme Court. On May 27, 1999 the Ohio Supreme Court sided with the 10th Ohio District Court of Appeals, ruling the CSTP unconstitutional due to a procedural flaw in how the program was enacted but did not violate federal precedent regarding the separation of church and state. Thus, on June 29, 1999 The Ohio General Assembly reenacted the program with recommendations of the Attorney General to ensure it met all state constitutional requirements. An examination of the changes that led to the programs reenactment will shed some light on the details that initially caused the program to be deemed

unconstitutional. The roller coaster of suits and countersuits continued, the ACLU and Teacher Unions filed suit against the CSTP alleging that the program did violate the separation of church and state. An examination of the documents in this case is essential to this study because it led to a temporary injunction being granted, that closed the program pending full hearing. This decision, for all intent and purposes started the movement toward an appeal to the U.S. Supreme Court in connection with the previous *Zelman v. Simmons* case. A study of this case and a reputational analysis of all of the Supreme Court judges and how they voted on the issue will contextualize how highly political the issue of school vouchers has become.

Although most of the information required for this research can be acquired from remote locations, visits to Cleveland and Akron (to interview David Brennan) will be necessary to gather many of the primary data through interviews.

As previously noted this research approach is guided by principles that assert that facts can never be isolated from the domain of values or removed from some form of ideological inscription; that the relationship between concept and object and between signifier and signified is never stable or fixed and is often mediated by social relationships of capitalist production and consumption; that language is central to the formation through subjectivity (conscious or unconscious awareness); that certain groups in any society are privileged over others and, although the reasons for this privileging may vary widely, the oppression that characterizes contemporary societies is most forcefully reproduced when subordinates accept their social status as natural, necessary, or inevitable (Kincheloe & McLaren, 1994, p. 139). These principles will be applied in the context of the CSTP during the analysis of the data to ascertain the degree to which some of the unexpressed outcomes perpetuate the power relationships in Ohio, specifically in Cleveland.

3.1.7. Method of Analysis

Given the complicated nature of the issue being studied, coupled with the vast philosophical differences of stakeholders, Yin's analytical tool termed *explanation-building* will be utilized as an appropriate method of analysis for this research.

The goal of *explanation-building* is to analyze the case by building an explanation about the case (Yin, 1994, p.110). One of the fundamental elements of this technique states, to explain a phenomenon is to stipulate a set of causal links about it. However, the links in most studies may be complex and difficult to measure (ibid). The complex and difficult nature of the relationships forged by the different external and internal stakeholders during the process of starting the CSTP is precisely why *explanation-building* is relevant to the analysis of the data collected. Furthermore, explaining the causal links may reflect critical insights into education and public policy, and the proposition if correct, can lead to recommendations for future policy actions.

4. CHAPTER IV

4.1. THE OHIO SCHOLARSHIP PLAN

4.1.1. The Governors Commission on Educational Choice

This chapter explicates The Ohio Scholarship Plan, from which the CSTP was born. This chapter also details the CSTP, both in its policies and its implementation.

For years education reformers have explored various educational initiatives in an effort to alter the traditional ways in which public education was conducted. In 1990, Milwaukee took a revolutionary step in education reform by becoming the first city in the United States to offer publicly funded school vouchers that could be redeemed non-parochial private school. Given that other states were also contemplating ways in which to reform their education system, Milwaukee's voucher program served as a platform from which discussion and planning could begin.

Thus in Ohio, The Governor's Commission on Educational Choice formed at the invitation of then Ohio Governor George V. Voinovich and Chaired by Akron businessman David L. Brennan began its work in April of 1992. The Commission was composed of executives representing some of Ohio's leadership in business and corporations; the Commission was also comprised of two classroom teachers, a former head of the Ohio PTA organization, two school district superintendents and several school board members. In total there were 28 Commission members. The Commission's task was to "develop an alternative method of educating Ohio's k through 12 student population, based on the concept of parental choice" (The Governors Commission of Educational Choice, 1992). The Commission stated:

The choice issue is grounded on the basic premise that the child's parents or guardians are best suited to choose the school which will develop the highest potential of the individual child. Choice, then, acknowledges the right of parents to make that decision (1992).

With parental choice as their primary tenet, The Commission set out to develop a plan to implement choice throughout Ohio, with the belief that “for choice to be successful, the parent ‘customer’ must find a marketplace of selection,” the continue “therefore, it is based on the emergence of new schools that will not only serve as the catalyst for thoughtful change throughout the education industry, but also produce the necessary selection options” (p. 5). It was also the opinion of The Commission that the Ohio Choice Plan would create “an improved and revitalized public school system throughout the state, better focused and positioned to serve those students who elect public education” (p. 5). The Commission received assurance from Governor Voinovich that its recommendations would receive high priority in the state’s plan for education reform.

The Commission proposed two Plans, Plan A and Plan B. Plan A permitted public school students K-12 to transfer to private schools with a scholarship if they lived in any of the 12 largest school districts in the state of Ohio. Plan B limited participants to those entering the first grade, adding one additional grade per year.

Major Premises for Plan A and Plan B: Ohio Scholarship Plan

1. A Scholarship Plan must be sufficient in amount to make it possible to create new schools.
2. Such a Plan must be substantially tilted in favor of low income parents and children.
3. Such a Plan must be funded without any increase in overall public education costs, including scholarships for current private school students.
4. Any pilot program must provide for open admissions to private schools. The only

exception is to permit admissions to be restricted to a single gender, provided that is no unconstitutional. A sectarian school is permitted to prefer children of the sectarian sponsoring group over outsiders, once the low income quota has been filled. In other words, there can be no preference to the sectarian group for the low income portion of the student body.

5. Learning disabled students must be eligible for admission to private schools. However, private schools are not required, but are encouraged, to admit handicapped students. Funding for such students will follow the student.
6. Auxiliary services will continue to be provided to private schools in the same fashion as currently implemented; that is, auxiliary service funding will follow the student. In addition, special education funds for public school students will continue to be provided to private schools in the same manner, that is such funding will follow the student.
7. All participating private schools shall use the same academic proficiency examinations utilized by the public schools.
8. A pilot public school district will continue to collect both state and local funds annually, as would have been collected if there were no Scholarship Plan in that district.
9. Pilot Plans for the entire school system K-12 shall be limited in number. We suggest only two major cities and ten other districts.
10. As to pilot Plan B, being the First Grade Scholarship Plan, we recommend that that there be no limit to the number of district that could adopt this portion.
11. Our final plan includes an economic impact study as to each of the two pilot plans we

are proposing.

12. If any portion of this Plan is deemed to be unconstitutional, that will not cause the reset of the Plan to be deemed unconstitutional. The above provisions are separable one from another and should be treated as separate items, not conditioned one upon the other.

Being overly optimistic that their Scholarship Plan would be adopted by the state, The Commission stated as a mandate that “initially until the academic year beginning in September 1998, no more than two of the following city school districts (Cleveland; Akron; Toledo; Columbus; Cincinnati; and Youngstown) may implement the Ohio Scholarship Plan for the entire school district or a portion thereof.”

Ultimately, neither Plan A nor Plan B was adopted by the Ohio Legislature. However, according to David Zanotti of the Ohio Roundtable and School Choice Committee “the ideas stimulated debate in the General Assembly and encouraged lawmakers to step into the waters of school choice.” From which the outflow was the Cleveland Scholarship and Tutoring Program.

The impetus for The Commission shifting its focus from a statewide choice initiative to a local one as Brennan sees it, was because “at the time, the lawmakers had such little hope that anything could fix the Cleveland schools, they were willing to take the risk—it was the best offer available that could get enough votes to pass” (Brennan, 2002, p. 9). The Commission stated seven objectives and regulations for the operation of pilot programs:

- Any public school district in Ohio can adopt the Ohio Scholarship Plan for parents and children living within the confines of that district by an affirmative action of the Board of Education for that district;

- In addition, voters in that district can, by referendum, vote to establish an Ohio Scholarship Plan for residents of that district;
- A referendum will be placed on the ballot at the next general election, provided that petitions have been signed by at least 10% of the number of persons who voted in the Governor's election within that district during the most recent election for Governor;
- Such action by the Board of Education, or such referendum, will specify the academic year for which the Ohio Scholarship Plan will be implemented;
- There is no limit to the number of districts that can adopt the Ohio Scholarship Plan for the entire school district or portion thereof;
- Once a pilot program has been implemented by a district, repeal of the Scholarship Plan can only be effected by a vote in the district of a majority of the voting residents who actually voted in that district, at an election called for that purpose, or a general election;

The Ohio legislature cannot reduce funding available under this Plan without two-thirds affirmative vote of both the House and Senate

4.1.2. The Cleveland Scholarship and Tutoring Program (CSTP)

Enacted in 1995, the CSTP was a pilot program intended to permit parents to choose for their child/children a public, private, or parochial school and have any required tuition paid for with a tax-funded scholarship. The program began in 1996-97 school year, it provided parents of students enrolled in one of 50 participating private schools with a voucher worth either \$1875 or \$2250 depending on family income, to be used toward tuition. The overall tuition charged may

not exceed \$2500. Families with income below 200 percent of the poverty level received 90 percent tuition, while those with income above that level received 75 percent of tuition. In the program's first year, participation was limited to students in kindergarten through third grade.

Currently, the nine-year old Program allows students grades K-10 to receive scholarships to attend private nonsectarian or religious schools. Scholarships also may be used at public schools in participating adjacent districts, though no public schools currently choose to participate. In addition to providing vouchers as scholarships, the CSTP provides tutoring grants for students in public schools. The scholarship portion of the program has grown from 1,994 students in 1996-97 to 5,675 in 2004-05 (SchoolChoiceInfo.org). To date, priority is still given to families below 200 percent the federal poverty level (see Figure 1 for poverty index).

Table 1: 2004 HHS Poverty Guidelines

Size of Family Unit	48 Contiguous States and D.C.	Alaska	Hawaii
1	\$ 9,310	\$11,630	\$10,700
2	12,490	15,610	14,360
3	15,670	19,590	18,020
4	18,850	23,570	21,680
5	22,030	27,550	25,340
6	25,210	31,530	29,000
7	28,390	35,510	32,660
8	31,570	39,490	36,320
For each additional person, add	3,180	3,980	3,660

SOURCE: *Federal Register*, Vol. 69, No. 30, February 13, 2004, pp. 7336-7338

Families not falling below 200 percent of the federal poverty level are eligible only if appropriated funds remain available. While new recipients are welcomed to apply, no more than half of new recipients may be children previously enrolled in private schools. As previously stated, the maximum scholarship had been \$2,250 since the programs' inception, however, in the 2003-04 school year, the per pupil figure increased for the first time, to \$2,700. Supporters of the voucher program contend that even with this increase, per pupil spending for the CSTP is substantially lower than the per pupil cost in Cleveland Municipal School District (Figure 2).

Table 2

Cost per Student and Total Spending, CSTP & Cleveland Municipal School District

School Year	Maximum Scholarship Amount per Student	Cleveland Municipal School District Cost per Student	Annual Cost of CTSP	District's Total General Operating Fund Expenditures
1996-97	\$2,250	\$7,970	\$4,961,218	\$559,694,893
1997-98	\$2,250	\$7,097	\$8,461,961	\$513,727,054
1998-99	\$2,250	\$7,719	\$6,903,244	\$564,500,933
1999-00	\$2,250	\$7,833	\$6,910,846	\$606,446,851
2000-01	\$2,250	\$9,405	\$7,657,386	\$675,250,045
2001-02	\$2,250	\$10,352	\$9,946,139	\$725,463,233
2002-03	\$2,250	\$10,889	\$12,362,256	\$750,160,768
2003-04	\$2,700	\$11,121	\$14,154,128	\$670,623,856
2004-05	\$2,700	N/A	\$17,901,887*	\$667,007,063*

*Budgeted

SOURCE: ODE Office of Budget and Governmental Relations (cols. 2 & 4), ODE Information Management Services (cols. 3 & 5, 1996-97 through 2003-04), Cleveland Municipal School District Budgets & Planning Division (cols. 3 & 5, 2004-05). 1996-97 Cleveland Municipal School District expenses include significant one time costs due to debt restructuring and other factors.

The estimated average family income for scholarship recipients is \$18,750 (Metcalf, 1999). According to Metcalf (1999) approximately 74% of scholarships are from racial or ethnic minority groups, similar to that of the Cleveland Public School District (Figure 3). A comparison of the racial makeup of private schools with public schools in metropolitan

Cleveland conducted by Jay Greene a Senior Fellow at the Manhattan Institute found that nearly a fifth (19%) of recipients of a voucher in Cleveland attend private schools that have a racial composition that resembles the average racial composition of the Cleveland area. However, he observed that only 5.2% of public schools students in the Cleveland metropolitan area are in comparably integrated schools. More than three-fifths (61%) of public school students in metropolitan Cleveland attend schools that are almost entirely white or almost entirely minority in their racial composition. According to Metcalf (2003) “students who receive and use a scholarship through the CSTP are proportionally less likely to be African-American and are more likely to be Hispanic and Multicultural than students who attend public schools.

Table 3

Race and ethnicity of CSTP scholarship recipients

<u>Race or Ethnic Group</u>	<u>Percentage</u>
Non-Hispanic White	26.6%
African American	60%
Hispanic and other racial or ethnic minorities	13.4%

Source: Kim Metcalf, "Evaluation of the Cleveland Scholarship and Tutoring Grant Program, 1996-99," Indiana Center for Evaluation, September 1999.

Figures from Ohio Department of Education (ODE) indicate the CSTP experienced continuous and steady enrollment growth since its inception, with scholarship students attending 45 different private schools in 2004-05. Experiencing enrollment drops from the previous year only in 1999-00 and 2004-05.

Table 4

CSTP Student Enrollment

School Year	Scholarship Students	Tutoring Grants
1996-97	1,994	124
1997-98	2,914	909
1998-99	3,674	1,391
1999-00	3,406	2,421
2000-01	3,797	1,997
2001-02	4,523	2,313
2002-03	5,278	2,913
2003-04	5,887	2,736
2004-05	5,675	N/A

SOURCE: Ohio Department of Education (ODE), Office of Cleveland Scholarship and Tutoring Program. For 1996-97 through 2003-04, the number of scholarship students is based on an end of year count. The 2004-05 count is from a Dec. 1, 2004 e-mail from the Director.

5. CHAPTER V

5.1. FINDINGS

I believe choice is paramount. Many people choose public schools. God love them, that's what they're there for. For those for whom it does not work, what possible rationale is there to make them go there? I don't understand that. I've never heard anybody convince me or come close to- they give a rational explanation as to why I should be forced to go to a government school, when I can choose to get my haircut, my Doctor, any university I want. I'm in charge of where I live. Everything else in American society involves the concept of choice about how I involve myself in society, about where I spend my money. But, for some reason education is considered different (Brennan, 2004).

This chapter presents the findings of the study. As previously mentioned these findings are qualitative due to the fact that they were derived from documentation content analysis and interview data. These findings utilize data that detail the issue of school vouchers nationally, but are then contextualized locally in the Cleveland case.

The first research question asks, "What types of groups (political, economic, social, religious, etc.) advocate for school vouchers?" To address this research question, a careful examination of voucher proponents was undertaken involving groups that have championed the cause of voucher programs in general, but particularly vouchers in Cleveland.

Due to increasing concern that the public school system is failing to properly educate students, there has been an outcry for the use of public vouchers to remove students from their community public schools and place them in private or participating public schools. The controversial nature of this issue has sparked heated intellectual debates between voucher

proponents and opponents. Both sides offer conflicting claims as to how these reforms would work out in practice. The major question that has risen from this debate from challengers is *should public funds be used to support nonpublic and religious education?*

Advocates of private school vouchers argue that private schools do a better job of educating students than public schools. They affirm that private schools are unencumbered by bureaucracies, unions, and burdensome State rules and regulations. Voucher proponents also maintain that the resulting competition among and between public and private schools will improve the quality of public schools. Given the choice, proponents say poor parents would prefer to be given an option (meaning given vouchers) to educate their children as they see fit, which means sending them to private schools where they would presumably receive a “better” education than they would at their community public school. A three-year study conducted by researchers at Harvard University, Georgetown University, and the University of Wisconsin of Black students in three cities who made the switch to private schools from public school found that the average performance of black students who converted to private schools was six percentile points higher than that of students who stayed in public schools. The study, which followed students in voucher programs aimed at children from poor families in New York City, Washington DC, and Dayton, Ohio found no significant overall gains among students in other ethnic groups who moved to private schools from public schools, (no reason was given for the lack of improvement by other ethnic minorities). This study in a sense justifies proponents push for a voucher system because their primary targets are poor African American families. Since libertarian economist Milton Friedman first proposed a utilization of vouchers in the 1950s, choice initiatives of various kinds has been actively supported by conservatives, Republicans, the religious right, and multiple political factions. So a common stereotype today, not surprisingly,

is that these groups provide the bedrock of a political support for school choice (Cookson, 1994). Although there is some truth to this, the fact is that poor and minority people are among the strongest supporters of voucher and choice (Moe, 1995). In the 1992 Gallup poll, the concept of vouchers was supported by 70 percent of Americans overall but by 85 percent of African Americans and Hispanics. In the eyes of the proponents of vouchers, this goes a long way in dispelling the myth that supporters of vouchers are rich white suburbanites whose intent is to dictate how their dollars are being spent. Proponents see vouchers as a means to an end, many parents may not only be examining the educational aspect of vouchers but rather view vouchers as a way of emigrating their children from violence riddled institutions and place them in situations that are more conducive to learning and less prone to violence. Supporters also argue that what is at the core of this issue is a parents right to choose rather than to being “forced” to educate their children in what they deem undesirable and unproductive environments.

From the perspective of voucher opponents, vouchers are seen as assisting in the collapse of the public education system. Adversaries maintain that not only does the system take away funds from the public schools, it does not deliver on the educational promises that it makes. Many opponents see vouchers as threatening the religious liberty of every American because they would compel all taxpayers to contribute involuntarily to the support of religious institutions. The overwhelming majority of nonpublic elementary and secondary students attend pervasively sectarian or denominational institutions, (Swomley, 1996). Opponents also maintain that vouchers would provide public subsidies for schools that commonly select/and or attract students and teachers along lines related to religion, ideology, ethnicity, academic ability, handicaps, etc., forms of selectivity not allowed in public schools. Opponents often point to James Madison’s 1785 Memorial and Remonstrance Against Religious Assessments:

It is proper to take alarm at the first experiment on our liberties...Who does not see that the same authority which can force a citizen to contribute three pence only of his property for support of any one establishment, may force him to conform to any other establishment in all cases whatsoever.

This was written as opposition to a bill by Patrick Henry to provide tax support for teaching religion. In essence, opponents believe vouchers force citizens to do just that, pay taxes for the purposes of teaching religion. Opponents also state that although parents are given vouchers to cover the cost of private schooling it never truly covers the cost, given that most quality private schools costs between \$6,000 and \$15,000 per year. Proponents say vouchers are intended for low-income families who cannot afford to send their children to private schools; however, opponents argue, the monies tend to be of more use to those families that can supplement the additional costs. Meaning, those who benefit most from the vouchers are families who would have ultimately enrolled their children in private schools regardless of the availability of vouchers. Opponents also contend voucher programs claim to provide parents a choice, in reality, they argue, they give parents the option to be chosen by a private school. Opponents point to the fact that private schools have always had admissions criteria that public schools do not, noting private schools do not have to accept all students who wish to attend. The screening criteria typically include personal interviews, grades, and analysis of behavioral patterns, (Coleman, Hoffer, and Kilgore, 1982). A research conducted by Corwin (1993) found that nearly all catholic schools, which represent the largest proportion of private schools in the United States, require test scores for admission, in addition to strong academic records (61% of sampled schools), recommendations of elementary school principals (73%), and successful completion of the previous school year (98%). About one-half require interviews with parents and students.

5.1.1. What Types of Groups (political, economic, social, religious, etc.) advocate for school vouchers?

The groups championing the cause of school vouchers in Cleveland can be categorized into three distinct areas. First, there are market-based groups that are avid supporters of school choice and school vouchers, specifically Education Management Organizations (EMOs). Second, there are social groups, groups that champion the cause under the auspices of social good. Third, there are the politically minded supporters who champion the cause in order to further the groups' partisan agenda. This chapter thoroughly examines all three elements of support for voucher program.

5.1.1.1. Education Management Organizations: Market Based Operations

Public Schools often contract with private providers for services like transportation, food services, textbooks, maintenance, instructional programs, and professional development. The new twist in recent years is that private contracts are entered with EMOs to operate the entire school, school, including the "core" educational mission. EMOs hire and supervise teachers and school staff, set the curriculum, determine school organization and decision making, and assess student progress. Such contracts are increasing among charter schools as well as conventional public schools operated by school districts (Levin, 2001).

Due to the utilization school vouchers to fund education and the emergence of many choice initiatives, the trend in activity of EMOs has taken a drastic change from organizations that aid and assist public schools, to organizations that replace them. Supporters of market based education view this change as an issue of supply and demand, with the role of consumer being played by the students and the product being education. Schneider states, "increasing levels of parental information about schools is important, informed consumers should make better

choices, and better-informed consumers should increase the efficiency of the market” (2001, p. 81).

Most EMOs are members of the National Council of Education Providers (NCEP) based out of Washington, DC. NCEP is comprised of six EMO; Charter Schools USA, based in Fort Lauderdale, FL; Edison School, Inc., New York, NY; Imagine Schools, Arlington, VA; Mosaica Education, Inc., New York, NY; National Heritage Academies, Grand Rapids, MI; and White hat management, Akron, OH. These EMOs serve over 155,000 students in 333 schools 22 states and the District of Columbia (Table 1).

Table 5: Number of NCEP Students across the Country

STATES	NUMBER OF NCEP STUDENTS
Arizona	3,498
California	5,677
Colorado	3,737
Delaware	1,238
Florida	18,484
Georgia	1,194
Illinois	3,852
Indiana	2,633
Iowa	400
Maryland	2,273
Massachusetts	1,322
Michigan	31,369

STATES	NUMBER OF STUDENTS
Minnesota	769
Missouri	4,999
Nevada	6,360
New York	7,871
North Carolina	3,708
Ohio	22,360
Pennsylvania	21,862
South Carolina	4,829
Texas	701
Washington, DC	4,903
Wisconsin	1,759
TOTAL	155,795

Given that this research question is specifically directed at finding who and what types of groups supported the voucher initiatives in Cleveland, primary focus will be given to David Brennan’s EMO, White Hat Management, based in Akron Ohio.

As previously mentioned, Brennan is an Ohio entrepreneur chosen in 1992 by governor Voinovich to head the Governor’s Commission on Educational Choice. Brennan submits that the commission was not formed to debate whether there should be a school choice plan, The Commission was charged only with designing a plan. It would then be in the hands of the

legislature to determine if there would be a choice plan. The Commission was formed, Brennan posits, because “prior to the formulation of The Commission, there had not been submitted to the legislature in the Governor’s opinion, sufficient discussion about the issue to justify his getting behind it.”

Chubb and Moe (1990) state that Market-based school theorists operate under three general tenets:

1. schools do indeed perform better to the extent that they possess the effective school syndrome of organizational characteristics-to the extent, in other words, that they have such general qualities as clear goals, an ambitious academic program, strong educational leadership, and high levels of teacher professionalism.
2. the most important prerequisite for the emergence of effective school characteristics is school autonomy, especially from the external bureaucratic influence.
3. America’s existing system of public education inhibits the emergence of effective organizations. This occurs, most fundamentally because its institutions of Democratic control function naturally to limit and undermine school autonomy.

These fundamental beliefs were galvanizing factors which led Brennan to form White Hat Management (WHM), LLC, Ohio’s largest full service EMO. White Hat Management offers a “full complement of education management and school operation services.” These services include general operations management, human resources, financial reporting, student data reporting to state education authorities, and many others. WHM currently operate four unique types of schools:

- **HOPE Academies** are traditional K-8 elementary schools.
- **HOPE Academy High School** is a high-tech high school in Cleveland, Ohio, that serves grades 9-10 utilizing leading edge technology in the delivery of curriculum.

- **Life Skills Centers** are alternative high schools that help high school dropouts between the ages of 16 and 22 get back to school and gain a state-recognized high school diploma, plus valuable job experience.
- **OHDELA and PDELA** provide educational resources and support to parents who educate their children at home in Ohio and Pennsylvania.

WHM contracts with non-profit corporations holding charters or contracts to open and operate community or charter schools, and is the largest charter school operator in the state of Ohio.

Prior to 1999, Brennan’s Hope Academies were voucher schools, however, in 1999 Brennan converted them into charter schools. According to Meryl Johnson of the Cleveland Teacher’s Union, the switch was a calculated one, “David Brennan was the first one that jumped on the voucher schools, but, see, he was only getting \$2500 per child. So the legislature, when they created charter schools, Dave was like ‘oh, well I’m going to make my voucher schools charter schools’ and it was in the law that you were not supposed to do that, but they created a loophole for David Brennan so that he was able to immediately change his voucher schools to charter schools and went from getting \$2500 per child to getting \$5000 per child” (interview, 2004). Johnson continues “when you’re running a business, and you’re an entrepreneur, your main goal is to make money, so you’re going to cut all kinds of corners to make sure that you’re making the kind of profit you should make.” Former Cleveland Mayor Michael R. White submits that although the primary motives of voucher supporters may never be fully known, “no one can deny that there are not political (partisan) and financial issues at play...”

Brennan considers EMOs the solution to “a monopoly.” Brennan coins a fable from a meeting of the Heritage Foundation:

Envision a law that required you to buy a Buick every three years. And, whether you wanted on or not, you had to pay a Buick tax

even if you declined to take the car. That didn't prevent you from buying a Chevrolet or a Plymouth (if these alternatives existed), but you still had to pay the Buick tax. What would happen to quality of Buicks under this scenario? What would happen to the cost of Buicks with this lock on the market? Brennan, 2004, p. 52.

As Brennan parallels this query to education he surmises that the two predictable things would happen, "the cost of Buicks would keep going up, the quality of Buicks would keep going down" (Brennan, 2004, p. 52). As Brennan sees it, public education is forced upon the citizens of the United States. Even those who choose not to enroll their children in public schools still have to pay taxes in that school district. This monopoly, Brennan argues, keeps the cost of education high while the quality of the product continues to decline.

Surprisingly, Brennan opines that academics are not paramount to parents' decision making process when deciding whether or not to remove their children from public schools in Cleveland and place them in voucher or charter schools. Brennan states that the number one reason for parents placing their children in alternative schools is the issue of safety; number two he states is classroom discipline. Academics are the third or fourth reason, he surmises this is how parents choose where their child goes to school. The reason for this chronology being as he puts it, "their theory is, without being safe, in a civil environment, they can't learn, and they're right; and choice is really based on not on what you think is the right parameter of measurements for what a good choice is, your opinion and my opinion is irrelevant as to their children."

Brennan continues:

So the issue choice is should the government decide where my kid goes to school, or should I decide where my kid goes to school? If my kid goes out the door every morning crying because he's scared shitless about going back to that building, going to get beat up everyday, what parent has the callousness to insist that child continue to go back to that school? That is the principle reason why choice is exercised. It has to do, not that the school is unsafe, but that the child feels unsafe in that school. Those are two

different things. Having recognized that, it highlights what we've debating. All good debaters try to spin the topic to their viewpoint. How they look at it, and that's what this debate over academic achievement and school choice is all about. It should not be to determine whether or not you should be allowed to send your child to a given school, that's crap. The government has no right to say that, they should never have the right, not in this country (Interview with David Brennan, 2004).

Brennan's support for vouchers not only stems from his belief in the free market but also in his belief in the limitations to government in the education arena. He shares this belief with Friedman that government dominates education, and that government-run programs do not work. Brennan states,

What government doesn't ruin, it makes worse. Well meaning people can't make the system work. Public education is state socialism at it best. The Eastern European system failed because it didn't work...When there is a choice, you'll get better schools. Suburban areas are a classic example of choice. People can move. Where there is choice, there are good schools. Because we elect our school boards, we think it's a democracy and benevolent. Government, no matter how it's formed, is not. The answer is to experiment (Brennan, 1998).

5.1.1.2. The Catholic Church and Vouchers in Cleveland

In 2001, of the approximately 75,000 students in the Cleveland system, nearly 4,500 participated in the program. At one point, 99 percent of students were using vouchers at religious schools. Forty six of the fifty schools participating in the program last year were religious schools. For the 2001-2002 school year approximately \$8.1 million was distributed through vouchers, with \$220,410 going to secular schools, \$6,622,657 going to catholic schools, and \$1,298,251 going to other religious schools (Hessler, 2002).

The battle for school vouchers in Cleveland was seen by opponents as a method of not only funding private schools, but also a method of funding private religious schools, specifically catholic schools. Opponents readily held this position because historically, funding for religious schools has long been an issue in Ohio. Since the late 1960s, the state has funded busing,

textbooks, and guidance counselors for catholic schools. In 1996, Ohio spent on average \$599 per pupil on private schools, \$197 more than any other state. \$15 million was spent on transportation, \$35 million on administrative expenses, and \$85 million on textbooks, science equipment, and remedial services (McKenna, 2001, p. 119). Although Pennsylvania, New Jersey, New York, Minnesota, and Louisiana also provide significant state support for private and catholic schools, Ohio spends the most (American Atheist, 1997).

For the past decade and a half the Ohio legislature has discussed subsidizing the cost of tuition, not only auxiliary services. In 1967, then Republican governor James Rhodes initiated a tax credit program that would give each non-public school \$30 for each student. Although it was ruled unconstitutional by the courts, it led to the Auxiliary Service Program that provided transportation money to private school. During the early part of the 1970s Governor Jack Gilliah a Democrat, proposed a tuition tax credit. Although his proposal also subsequently failed to gain acceptance, it too, led to additional funding for auxiliary services.

With the state's history of strong support for the utilization of public funds to aid private and religious schools, it stands to reason that opponents would view catholic schools as being the biggest beneficiaries thus the staunchest supporters of the voucher movement in Cleveland. Meryl Johnson, First Vice President, and Director of Community Engagement for the Cleveland Teachers Union (CTU) notes: "Ohio is number one in private school donations from public tax dollars; and number fifty in the conditions of its public schools" (2004). Many also point out that the church has a direct financial interest in school choice. All over country catholic schools have had fiscal difficulties, forcing many to shut their doors. Declining enrollment and rising costs have contributed to these problems (Hicks, 1996). Critics charge that Cleveland's parochial schools could use the additional revenue that vouchers would provide (McKenna,

2001, p. 120). Given that the initial monies allocated for vouchers was only \$2,500 maximum per pupil, catholic schools became the only viable option for students utilizing that alternative. Nobody else wanted them; they were only getting \$2,500 (Johnson, 2004). Johnson continues, “they were either catholic schools, or there were a couple of Lutheran schools, that was the game that was played---I mean the main reason they (vouchers) were started was to be used for parochial schools, but they said they could use them for any private school, just to try to make it seem like they weren’t being used mainly for parochial schools” (ibid). Opponents also argue that voucher supporters in Ohio were not interested in “true” school reform. They point to the DeRolph case filed in 1991 when over 500 of the state’s 611 school districts formed an organization called the Coalition for Equity and Adequacy for School Funding. The Coalition filed a suite against the state challenging the constitutionality of the state’s method of utilizing property taxes for funding schools. The Court sided with the plaintiffs. However, the ruling was appealed by the state, during which time the Ohio Supreme Court again sided with the plaintiffs and ordered the state to overhaul its entire education system; and not place such a reliance on property taxes to fund education, for it was unequal for those living in school districts with low property value, that the quality of a child’s education should not be determined by their geographic location. The case was appealed four times, in 1997, 2000, 2002, and 2003. The legislature still did not “do what they were ordered to do” (Johnson, 2004). What the legislature did however was they made it possible for districts to pass bond issues, which would create millions of dollars to improve school facilities. To further exacerbate the issue in the state of Ohio, in 1976, then state legislator Voinovich assisted in passing House Bill 920. 920 stated that whatever the tax rate was at the time of the passing of a particular levy, the school district would get the same amount in future years regardless of inflation. The Cleveland Teachers Union

charge that this made it impossible for schools to get more money as value increased. For this reason, Johnson submits, “the school district’s levy which passed in 1996 is still receiving the same amount of money in 2004.” The impact of House Bill 920 was felt most harshly by urban districts, however, its impact is also being felt by all the districts including suburban districts that have had to look to their communities for levies that have failed, “here we have a struggling state as far as funding of education, and instead of doing everything they can to make sure that our public school system is the best it can be, our legislators keep creating ways for children to leave the system and go to private schools” (Johnson, 2004).

It would seem then that given the climate of educational maneuvering in the state of Ohio, the Catholic Church would be overwhelming supporters of school vouchers. Not so fast, McKenna (2001) explains, “despite this tradition of state funding to parochial school and their financial interest in increased public support, there is some evidence that the Church in Ohio was divided about the benefits of school vouchers” (p. 120). Majority of the state’s Bishops were not in support of the voucher legislation. Their interests were geared more towards increased funding for auxiliary services than a voucher plan. The Governor’s plan garnered support only from Bishop Pillar from Cleveland. He was committed to revitalizing city parochial schools, unlike other church leaders in this country who have decided to close their city schools and open more profitable schools in the suburbs (Newman, 2000). Vouchers failed to garner overwhelming support from church officials because they were not provided with significant funding. The Catholic conference of Ohio posited that vouchers are not “cash cows”, and that it is not interested in seeing the public schools close. Without extolling the virtues of school vouchers, the Church was able to maintain a low profile on the issue. The Catholic Church never took an active position in the voucher battle (Mckenna, 2001). Strategically, Church leaders did

not want to coin vouchers as a catholic issue. Cincinnati Archbishop Daniel Pilarczyk, head of the Ohio Council of Bishops, to Voinovich the Catholic Conference of Ohio was prepared to testify on the behalf of vouchers and pledged to organize a grass-roots support campaign through their parochial schools. However, Brennan urged that the Catholics stay out of the voucher debate. Quoting Brennan's comments from the Cleveland Diocese's Catholic Universe Bulletin newspaper Oplinger and Willard wrote "while Brennan admits the voucher system would be an enormous boost for the catholic schools, the death knell of the idea would be if it is identified as a Catholic movement, the public distrusts of all of this because of the religious involvement, but that is the very thing we have to restore in education" (1999). Mary Lou Toler of the Cleveland Diocese stated "it's not about the diocese being against public education---we're for education of every single student, and if parents want to choose our educational environment, we believe they should have that choice" (2004). Toler also challenges the notion that catholic schools are "getting rich" off of vouchers:

Tuition doesn't even come close. It comes close to the cost but the voucher and what we get from it is by no means making these schools rich. As a matter of fact, our enrollment has dropped. Our costs continue to rise. In no way are we making money. No school is making money off of this program (2004).

According to the diocese, public educators are against vouchers because of perception, perception being that the Cleveland program is strictly a voucher program, excluding the tutoring portion of the program. Toler states "they don't even think of the tutoring side of this---this program has two parts; money for kids who want to choose schools other than public schools, and, it's got money for kids who choose to stay in at public schools, nobody ever talked about that" (2004). True, the Cleveland program does have a tutoring component to it; however, this component is utilized by very few students or families. Opponents view the tutoring portion of

the program as a mere camouflage, Johnson suggests “they try and dress it up, it’s the Cleveland voucher program” (2004).

Zehr (2003) says vouchers in Cleveland have not been a financial boon to private schools. Catholic educators argue it has been a net drain on the resources of voucher schools and Parishes that run them. At least three catholic schools, some with 60% or more of their enrollment made up of voucher students, closed their doors at the end of the 2001-2002 school year citing declining enrollments or financial difficulties.

Some have noted that challenges of the constitutionality of school vouchers and public funding of private and religious schools are moot because public funds are already flowing through such institutions, with government approval. Robinson, citing MacKanal noted “in at least seven states, public schools have formal programs to send ‘at risk’ youth or special education children to private schools” (1997). Furthermore, although school choice plans in Wisconsin, Ohio, Maine and Vermont have been challenged on grounds they violate prohibition of establishment of religion, the Supreme Court ruled in 1993 that the constitution does not bar a school district from paying the costs of a sign-language interpreter for a deaf student in a religious school” (ibid).

Aside from Catholics, other religious groups played a minor role in Ohio’s voucher politics. Though Ohio has a sizeable population of Christian groups, they were not staunch supporters of vouchers. As in other parts of the country, these groups preferred to home school their children or set up their own schools. The impetus for this was to maintain autonomy, lest they be forced to abide by governmental regulations. However, due to the appeal of vouchers and options they present, some have noted that conservative Jewish organizations have become

supportive of vouchers (Bernart, 1999). Still, there was no evidence that they had a major impact in affecting the passage of vouchers in Cleveland.

5.1.1.3. Organizations and Foundations in Support of School Vouchers

The voucher movement draws a large portion of its support from conservative groups that share ideals put forth by Milton Friedman in 1955; these ideals are stated in the Milton and Rose Friedman Foundation's mission statement:

The Milton and Rose D. Friedman Foundation for Educational Choice was founded upon the ideals and theories of Nobel Laureate economist Milton Friedman and economist Rose D. Friedman. They envisioned the concept in the 1950s, far before the need was perceived by most Americans in an example of forward-thinking intellectualism that has characterized the Friedman's work through the years. The Friedman Foundation strives to educate parents, public policy makers and organizations about the desperate need for a shift of power to the disenfranchised parents of America who have limited choices and voices in the education of their children. The Foundation serves as an indispensable resource for parents and community groups who want parental choice in education, and are ready to fight for it. Educational choice means that parents are given back a basic American ideal of freedom to choose as it applies to the education of their children. Yes, given back, for America's system was not founded in public education (Friedman Foundation).

As mentioned in chapter one, Friedman's premise for proposing vouchers in 1955 was that the government was entirely too involved in education. At that time he stated that government should play a very limited role in education, with the responsibility of making certain that the system was devoid of a monopoly. Choice and privatization is seen by Friedman

as a way of limiting government's role in education and allowing the education system to operate and possibly thrive under free markets and parental choice.

As previously mentioned, in 1955 Friedman set out to reexamine the "existing activities of government and to make a fresh assessment of the activities that are and those that are not justified" (Friedman, 1955, p. 123). Friedman openly questioned why, in a country that is predominately free enterprise in organization and in philosophy is education "paid for and almost entirely administered by governmental bodies?"

In a society where freedom of the individual, or more realistically the family is the ultimate objective, Friedman argues that in such a "free private enterprise exchange economy, government's primary role is to preserve the rules of the game by enforcing contracts, preventing coercion, and keeping markets free" (Friedman, 1955). Friedman maintains there are only three major grounds on which government intervention is to be justified: (1) "natural monopoly" or similar market imperfection which makes effective competition and (and therefore thoroughly voluntary exchange) impossible; (2) is the existence of substantial "neighborhood effects," i.e. the action of one individual imposes significant costs on other individuals for which it is not feasible to make him compensate them or yields significant gains to them for which it is not feasible to make them compensate him-circumstances that again make voluntary exchange impossible; (3) derives from an ambiguity in the ultimate objective rather than from the difficulty of achieving it by voluntary exchange, namely, paternalistic concern for children and other irresponsible individuals.

Essentially, Friedman's argument centers on his "neighborhood effects" theory, which he defines as "the gain from education of a child accrues not only to the child or to his parents but to other members of society" (Friedman, 1955). Friedman explains that because of the

“neighborhood effects” of education, government would only be justified to require that each child receive a minimum amount of education of some kind. Although Friedman can justify the mandatory imposition of a minimum level of education, and can also, to some degree, find justification for the financing of that education by the State because of the previously mentioned “neighborhood effects”, he is hard pressed to find justification for the actual administration of educational institutions by the government in what terms the “nationalization” of the bulk of the “educational industry.”

Friedman’s displeasure with governmental involvement with the administration of education led him to suggest that “governments could require a minimum level of education which they could finance by giving parents vouchers redeemable for a specified maximum sum per child per year if spent on “approved” educational services; Parents would then be free to spend this sum and any additional sum on purchasing educational services from an “approved” institution of their own choice; The educational services could be rendered by private enterprises operated for profit, or by non-profit institutions of various kinds” (Friedman, 1955). This process, Friedman contends, would limit the role of government in education. The governments role would be limited to assuring that the “schools met certain minimum standards such as the inclusion of a minimum common content in their programs, much as in now inspects restaurants to assure that they maintain minimum sanitary standards” (Friedman, 1955).

It can be surmised that at the beginning of the school choice debate, Friedman’s aim was to introduce the idea of less government involvement in education, and to shift more of the control and decision making powers to the individual, more precisely to the family. His purpose for less government was to limit the government’s role in education and to jettison the government from all administrative duties.

This, he argued, would lead to the denationalization of education. Nationalization, Friedman contended, is a mechanism through which the government dictated the “common requisite for social stability.” Friedman acknowledged that although denationalization would provide families with the opportunities to attend different types of schools, it might also lead to children learning different values. As he explains, “schools run by different religious groups will, it can be argued, instill sets of values that are inconsistent with one another and those instilled in other schools; in this way they convert education into a divisive rather than a unifying force” (Friedman, 1955).

Friedman’s ideas are shared by many individuals and organizations. One such organization is the Heritage Foundation, a research and educational institute founded in 1973 whose mission “is to formulate and promote conservative public policies based on principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense” (Heritage Foundation). Rush Limbaugh once stated, “some of the finest conservative minds in America today do their work in the Heritage foundation” (2000). Groups like these have utilized their vast resources to expand the voucher movement and put forth choice initiatives in many cities, with Milwaukee and Cleveland being their most successful endeavors to date. Stanford University’s Hoover Institute is another organization that supports vouchers due to its principle beliefs of individual, economic, and political freedom; private enterprise; and representative government. The Institute seeks to “secure and safeguard peace, improve the human condition, and limit government intrusion into the lives of individuals.” The newly formed Alliance For School Choice (formed in May of 2004), shies away from the political language of school choice and vouchers, it states its mission as being “to improve our nation’s system of K-12 education by advancing public policy that empowers parents,

particularly in low-income families, to choose the education they determine is best for their children” (Alliance For School Choice). Berkholz of the Gund Foundation, a Foundation that did not support the Cleveland program spoke as to why his Foundation did not support vouchers and why many do:

The Cleveland Foundation was basically there, but because of the nature of its board, and the pressures on it, it was making contributions to the Diocese Scholarship Fund, and to the urban community schools, and other places that were sending a different kind of message. Nobody here got in bed with the voucher program, which is not to say foundations around the country didn't. I mean the foundation is more to the right, in Milwaukee and other places. So it depended on the political persuasion of the foundation, and what was going on in the local community (2004).

Oftentimes these organizations garner support by positioning themselves as attempting to return America to its core value system. They often say they are saddened by what they view as the erosion of the public school system; positing that public schools have been failing to provide children, particularly poor African American children with the quality of education necessary to become functioning members of society. Berkholz, opines that these types of organizations are able to garner such wide ranging support because “there is something about schooling that provokes so much angst on the part of parents and non-parents, everybody's been through it-everybody thinks they know what works and what doesn't work, so it's not like it's some new area of concern-and you do have this incredible somewhat justified damning of the public process-the level of disdain for government has increased so greatly over the last thirty years, some of it justified, but I would say most of it is not” (2004).

Wisconsin State Representative Polly Williams, a Democrat, who sponsored the Milwaukee school choice legislation, understands the issue as one of bringing to a collapse a deeply rooted bureaucratic system that has been failing for years, she states, “if we can accept the

fact that communism can fall after seventy-some years, I do not see why we cannot stand and fight a bureaucracy that is doing a terrible job, that is harming our children, and that is hurting this whole country” (1992). Because of her experience with the Milwaukee program, Williams was an instrumental figure the drafting of the Cleveland voucher plan.

Although many on the periphery have been misled into believing that voucher supporters are primary white conservative Republicans and white conservative organizations, the movement has a vastly growing constituency in the black community. Lee H. Walker, President of the Chicago based New Coalition for Economic and Social Change states:

School choice is much more likely than other more timid, reforms to leave blacks better off four years from now and 40 years from then. School choice gets knocked as being an attempt to put tax dollars into private schools. But far more importantly, school choice is foremost an attempt to give underprivileged students opportunity to attend any school that will best meet their needs—whether that school is private or public. The charge by Democrats and unions that school choice paves the way to private school doors for rich kids is demagoguery at its worst. Don’t affluent children already have access to private schools? Poor children—who are admittedly often black—are the ones who don’t have that access. If black Americans are concerned about the education their children are receiving, they should consider school choice as a part of school reform when they vote (2004).

A powerful grass-roots movement is slowly gathering force that may transform the politics of American education; its human face is not white but black; its resources few but its determination strong; and its goal is freedom (Shokraii, 1996). The belief that academic achievement is the key to economic independence, many black parents have gone in search for schools that involve them in their children’s education while imposing standards and strict discipline. Shokraii attributes the flight of blacks from the public schools to what they see as “a dismal educational record and indifference to parents.” Just as the feeling was strong that if vouchers in Cleveland were seen as a Catholic issue it would not pass, the feeling was also as

strong that without support from the black community vouchers had no chance in passing. To this end, Brennan and his cohorts enlisted the help of Council woman Fannie Lewis. Ms. Lewis, a black woman, women represented Ward 7; one of the poorest neighborhoods in Cleveland says “the issue of most importance is the children.” Ms. Lewis led a march to the steps of the State House in Columbus with hundreds of black families she had gathered. Ms. Lewis says those who challenge the voucher program are “people who don’t understand the need and are afraid of stepping out of the box” (2004). She continues, “It’s like a burning house. You know, what do you do, let the house burn down and kill everybody, or go in there and save who you can? And that’s what the voucher’s about” (2000). Ms. Lewis pays little credence to the separation of church and state argument, she says:

People send their children to Catholic schools because they're looking for a better education. They're looking for discipline. They're not looking for religion, you know? I know that my grandchildren went to Catholic school. I was not looking for religion. Christianity is taught at home. They're going there for education. And that's basically what most people are sending their kids there. Some people go, and they become Catholic, but you know, I don't care, you know, what school, as long as it has a principal, it has discipline, and it has safety. That's what people are looking for. But people are using this church and state thing- I mean, that's nothing but a cop-out (Lewis, 2000).

Many opponents have argued that Ms. Lewis was used as a political pawn by Brennan and his cohorts in order to garner support from the black community thus legitimizing their efforts.

White posits “Brennan used Fannie but in the end it was his relationship with the governor that won the day, Fannie was just a nice cover for the effort” (2005).

The Black Alliance for Educational Options “actively supports parental choice to empower parents to increase quality educational options for black children” (BAEO). The BAEO is an informational organization whose purposes are to:

1. Educate and inform the general public about parent choice initiatives on the national level;
2. Educate Black families about the numerous types of educational options available;
3. Create, promote, and support efforts to empower Black parents to exercise choice determining options for their children's education; and
4. Educate and inform the general public about efforts to reduce or limit educational options available to parents.

5.1.1.4. Partisan Politics and School Vouchers

As previously stated, at the rudimentary stages of the voucher proposal, there was support from both sides of the political spectrum. Activist and academics, including Christopher Jencks, Jack Coons, Stephen Sugarman, William Clune, and TheodoreSizer were convinced that vouchers would solve these problems” (McKenna, 2001, p. 54). The Coleman report which studied the impact of environment on academic performance and experience with vouchers in housing and higher education were added impetus for voucher support. The prescribed objective for vouchers was the same for both Parties, however, when it became evident that methods of implementation were drastically in competition between the two Parties, Democratic support for vouchers began to wane.

5.1.1.5. Compassionate Conservative: Modern Day Reagan Democrats

As Reagan was proposing his voucher initiatives, it was imperative that he and his administration garner support from working-class Democrats, particularly those in the Catholic Church. These Democrats, commonly referred to as “The Reagan Democrats” were taken with Reagan's conservative and populist message. Some were so taken by his message that they switched

tickets to vote for him, many became permanent Republicans. Today that Reagan's philosophy has created a new following known as the "Compassionate Conservative."

During his 2000 presidential campaign and later as President, George W. Bush, self proclaimed "Compassionate Conservative" proposed that "faith-based organizations should be allowed to compete for federal funds—regarding education, Bush proposed funding after-school activities operated by faith-based organizations" (Spring, 2002, p3). In reference to federal after-school programs of the 21st Century Community Learning Centers program originally created during the Clinton years, Bush suggested "introducing legislation to open 100 percent of the 21st Century Programs' funding to competitive bidding—to allow youth development groups, local charities, churches, synagogues, mosques and other community faith-based organizations to compete for these federal funds on equal footing with schools" (ibid). Bush's "Compassionate Conservative" title was derived from University of Texas professor Marvin Olasky. Siding with Reagan era ideology, Olasky held government welfare programs responsible for worsening the moral conditions of the poor and, as a result, perpetuating poverty in the United States. Olasky's answer to helping the poor was returning welfare programs to faith-based organizations (Spring, 2004). This would in-turn ensure the teaching of traditional moral values to America's poor.

The desire of the religious right to gain control of schools is "based on the belief that ideas determine social conditions" (Spring, 2004, p4). Spring, quoting former Secretary of Education William Bennett: "I have come to the conclusion that the issues surrounding the culture and our values are the most important ones---they are at the heart of our resolution of the knottiest problems of public policy, whether the subject of education, art, race relations, drugs, crime, or raising children."

This ideology has led to a flow of support from the black community which can be attributed to a concerted effort by the Republican Party to connect with the black community through the black church. The Republican focus on a moral agenda is what draws socially conservative blacks to the Republican Party. In a meeting of more than 100 black churches in Los Angeles, a “Black Contract with America on Moral Values” was unveiled. Loosely based on the “Contract with America” put forth by Newt Gingrich in 1995, the Black Contract called for “Bible-based” action by government and churches to promote conservative priorities. A separate group with ties to Gingrich announced a “Mayflower Compact for Black America” which included plans to organize in key states ahead of the 2006 and 2008 elections. The Heritage Foundation has plans to cosponsor a gathering of black conservatives in Washington designed to “counter dominance of the America hating black liberal leadership” (Hamburger & Wallsten, 2005), and attempt to focus African American voters on moral issues. If successful the meeting would “foster a political realignment that, if successful, would challenge the Democrats’ decades-long lock on the loyalty of black voters” (ibid).

This effort seems to be paying dividends for the Republican Party, it was this effort, many believe, that helped Bush to increase his black support in the pivotal state of Ohio from 9% in 2000 to 16% in 2004, and helped him win the election outright. Quoting Bishop Harry R. Jackson Jr. a registered Democrat from suburban Washington who voted against Bush in 2000 but backed him in 2004, Hamburger and Wallsten state “he was drawn, he said, to the GOP’s social conservatism that he thought reflected the true values of black America.”

Aligning with the GOP has allowed Jackson and many others to gain access to Washington’s power structure. Such as White House political strategist Karl Rove, Republican National Committee chairman Ken Mehlman and other senior Bush administration officials.

Reverend Eugene F. Rivers of Boston who attended the Los Angeles of Black Churches was quoted as saying “the post-election period marked the beginning of a significant transformation among African Americans, a clear move toward the GOP.” The Democratic Party vows to fight back by renewing its commitment to investing in the black neighborhoods. However, regaining the black churches already lost to the GOP might prove to be an insurmountable task. The Bush administration’s faith-based initiative which provides churches with federal aid to combat social problems such as drug use, prison recidivism, divorce and teen pregnancy is seemingly far too attractive for the churches to relinquish. Conservative blacks are enamored with the Republican emphasis on traditional marriage, school vouchers and reduced reliance on government.

To further illuminate the political climate within which the voucher battle is taking place, in May of 2003 D.C. Mayor Anthony A. Williams, a Democrat, endorsed vouchers as a way to “both improve education offerings for D.C. schoolchildren and to transform the lagging fortunes of the public school system” (Timburg & Blum, 2003, p1). Williams’ signature of support came after weeks of discussion with Bush administration officers who “hope to turn Washington, an overwhelmingly Democratic city, into a laboratory for an initiative that has topped Republican agendas for many years” (ibid). Williams’ sudden switch of position sent D.C. Democrats into an uproar. Delegate Eleanor Holmes Norton said the Mayor’s change of mind smacked of a deal and accused him of “selling out.” The Bush administration was obviously pleased with Williams’ change of heart; Dan Langan a spokesman for Secretary of Education Rod Paige stated “Secretary Paige is pleased that Mayor Williams today expressed such strong support for the Bush Administration’s proposal to expand choice in the District of Columbia.” During a Q & A session with the Associated Press, Democratic Presidential candidate John Kerry was asked if he would allow parents in areas that are poor or with bad schools to use tax money to help send

their children to private schools, Kerry adamantly responded “I have never supported vouchers, I understand why parents want more choices and I believe they should have more choices and I believe they should have more choices in public schools—but public schools need resources and support and vouchers rob them of both—our inner-city schools and our rural schools need better buildings, more textbooks, higher paid teachers, the best principals, and smaller classes” (AP, 2004). Both parties are still in agreement that public schools are in desperate need of reform, it is obvious however that the method is where the agreement stops.

5.1.1.6. Politics and the Courts in the Cleveland Voucher Movement

The battle lines on choice and vouchers in Cleveland were drawn on the beliefs that not only had the government controlled public school system eroded the quality of education, but that it had also eroded or ignored the traditional value system on which this country was founded. The dominant leadership theme on the Republican side has been pro-choice, and I think the principle reason has to do more with individual empowerment versus government decisions for us (Brennan, 2004). 0

The voucher bill crafted by Voinovich and Brennan, both Republicans, attempted to ease the division within the Republican party by limiting the program to Cleveland’s poorest families:

Voucher proponents were aided by a growing support among minorities for school vouchers and a need for urban reform. Responding to this opportunity, new voucher rhetoric was crafted that tapped into the dissatisfaction among urban parents with the quality of their education and appealed to those who wanted relatively inexpensive urban reform. Minority support for this issue gave the issue legitimacy and served to divide Democrats and unite Republicans (Mckenna, 2001).

Although there is a strong two-party competition in the State of Ohio, voters have traditionally voted Republican since WWII. Given that the Governor has been granted

institutional powers (Beyle, 1996), Voinovich's influence on the voucher initiative was very noticeable. Voinovich and Brennan, chiefly Brennan, who was also Chair of the Ohio Republican Fundraising Committee, and has significant connections and power, are seen as the main architects of the Ohio voucher bill. Brennan believes that vouchers are the answers to inner-city problems; he opines that equity would be achieved with a voucher system, given that all students would receive equal funding for education regardless of family income.

The political debate (this researcher uses the word debate very loosely, fight would be a more appropriate term) over school vouchers in Cleveland became so entangled in partisan politics that it became very evident that only through the court system would the issue ever be resolved. Although opponents posed many reasons why vouchers would not be good policy, such as it depletes funds from the public school system, or that parents would not have true choice, the only question that was at the core of the debate, and the only question that would be heard in the Ohio court system and the U.S. Supreme Court was the question of whether the Cleveland voucher program violates the Establishment Clauses of the Ohio and the U.S. constitutions.

Before the many court challenges that would ensue because of the Ohio voucher proposal, there had been several cases heard before the U.S. Supreme Court pertaining to the separation of church and state in some form or another. In the 1925 *Pierce v. Society of Sisters*, the Supreme Court overturned a 1922 Oregon nativist initiative requiring all children between ages 8-16 to attend public schools. It also established the right of nonpublic schools to exist and the right of parents to have the ultimate say in their children's education. However, this ruling did not address the issue of funding. In *Everson v. Board of Education of the Township of Ewing* in 1947, the Court ruling involved a New Jersey program that reimbursed parochial

school parents for school transportation costs. This ruling was revolutionary in that it was the first high court decision to incorporate the Establishment Clause under the Due Process provision of the 14th Amendment, thus applying it to the states and not just the federal government. In *Levitt v. CPERL*, the court invalidated a New York statute which reimbursed parochial schools for expenses the incurred administering tests that the state itself required. Although the Cleveland case was not the first of its kind to be heard in the Supreme Court, it had the potential to be the most transformational. Before the Cleveland case could be heard in the Supreme Court, it had to navigate its way through the state of Ohio's court system.

After the CSTP was enacted through the Ohio legislature in 1995, a lottery drawing was held in January of 1996 for 1,500 scholarships to be awarded. That same month the American Federation of Teachers filed a lawsuit challenging its constitutionality and asked for an injunction. The injunction was heard by Judge Lisa Sadler "who assumed the bench after working for Gov. Voinovich" (People for the American Way). Judge Sadler ruled the program did not violate the Ohio or United States constitution. This ruling, which was inevitably appealed, allowed 1,944 students to utilize the scholarships for '96/'97 school year. The appeal was heard by the 10th Ohio District Court of Appeals, which ruled that including religious schools violated both state and federal constitutions. Nevertheless, the program was allowed to continue while the case was pending before the Ohio Supreme Court. During the legal challenges, students utilizing the scholarships increased from 1,994 in the '96/'97 school year to 3,744 in the '98/'99 school year.

In August of 1999, three months after the Ohio Supreme Court had ruled the program unconstitutional due to a procedural flaw in how the program was enacted (a flaw that was corrected with the recommendation of the state Attorney General, thus immediately reinstating

the program), federal Judge Solomon Oliver granted a temporary injunction, shutting down the program until full hearing. In his ruling Oliver stated “the program appears to have primary effect of advancing religion, allowing it to continue would cause an even greater harm to the children by setting them up for a greater disruption at a later time.” Three days later Oliver was singing a different tune, he amended his decision to allow previously enrolled scholarship recipients to return to school. This move infuriated many voucher opponents who saw the move as a political face-saving tactic. Cleveland Teacher’s Union president Richard A DeColibus stated “the latest decision was prompted by ‘scathing’ criticism from news media and public officials—the decision should be based on law, and I don’t think the constitution has changed in the last four days” (1999). Other opponents called the move a “backpedaling” (American Atheist).

In December of 2000 the three-judge panel of the Sixth Circuit Court of Appeals ruled against the vouchers. This decision prompted the state to request, in March of 2001, that the U.S. Supreme Court hear the case by May 29, 2001.

5.1.1.7. Zelman v. Simmons-Harris: The Supreme Court Case

Since the Sixth Circuit Court of Appeals denied the state’s en banc (heard by all the judges of the court) request, the state was left with no other option but to ask the U.S. Supreme Court to hear its case. The Supreme Court decided to hear the case on February 20, 2002 as a combination of three cases, Hanna Perkins School et al. v. Simmon-Harris; Taylor et al. v. Simmons-Harris; and of course Zelman v. Simmons-Harris. The case became known as Zelman, Superintendent of Public Instruction on Ohio, et al. v. Simmons-Harris et al. Simmons-Harris were community members who were against the voucher program and were supported and represented by People

for the American Way (PAW), Ohio Education Association, ACLU, and Americans United for the Separation of Church and State.

In a 5-4 ruling on June 27, 2002, the Supreme Court reversed Ohio's Sixth Circuit Court of Appeals decision which deemed the voucher program unconstitutional. The Supreme Court held that the program does not offend the establishment clause because:

- (a) The program was enacted for the valid secular purpose of providing educational assistance to poor children in a demonstratively failing public school system; the question is whether the program nonetheless has the forbidden effect of advancing or inhibiting religion—under such program the government aid reaches religious institutions only by way of the deliberate choices of numerous individual recipients—the incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributed to the individual aid recipients not the government, whose role ends with the disbursement of benefits.
- (b) This instant program is one of true choice consistent with *Mueller* (*Mueller v. Allen*, says it's ok for citizens to direct government aid to religious schools wholly as a result of their own genuine and independent private choice) and thus constitutional—it confers educational assistance directly to a broad class of individuals defined without reference to religion and permits participation of all district schools-religious of nonreligious-and adjacent public schools—nor is there evidence that the program fails to provide genuine opportunities for Cleveland parents to select secular educational options—the Establishment clause question whether Ohio is coercing parents into sending their children to religious schools must be answered by evaluating all options Ohio provides Cleveland schoolchildren. (Supreme Court of the United States, June, 27, 2002).

As expected this ruling was met with mixed and passionate reactions from proponents and opponents. President Bush called it a “landmark decision and a victory for the American family.” Others had more to say:

- “Private school vouchers may pass the constitutional muster, but they fail the test when it comes to improving our nation's public schools. It's flat wrong to take scarce taxpayer dollars away from public schools and divert them to private schools, despite the courts

ruling, vouchers are still bad policy for public schools, and congress must not abandon its opposition to them,” Sen. Edward Kennedy, D-Mass.

- “Historic and a great victory for parents and children across America, particularly for many minority, low-income students who have been trapped in failing public schools,” then Attorney General John Ashcroft.
- “The Cleveland program being declared constitutional, states and school districts will have available another tool in their efforts to improve education and deal the education challenges that in many instances the current system has been unable to address,” Sen. George Voinovich, R-Ohio, former Mayor of Cleveland, and former Gov. of Ohio.
- “Disappointed, not surprised by the decision, it will lead to the devastation of our public schools,” Meryl Johnson, Vice President, Cleveland Teachers Union.
- “This is probably the worst church-state case in the last 50 years, it really brings a wrecking ball to a part of the wall separating church and state,” Barry Lynn, head of Americans United for the Separation of Church and State.
- “This is a great day for the children of America---the Supreme Court decision opens the way for a new expansion of programs enabling parents to choose the schools their children attend—the resulting competition and innovation will bring improvements in quality that have been brought in every other area and that have been so clearly lacking in education,” Milton Friedman, Friedman Foundation.

- “In affirming the constitutionality of the Cleveland voucher program, the Supreme Court has disarmed the opponents of full and fair parental choice in education—this is a great victory for the 4,000 children and their parents and an encouraging sign of hope for the thousands of families whose children are trapped in schools they did not choose—now that the constitutionality debate is over, advocates and opponents of school choice will focus exclusively on the public policy question: is it wise or foolish for government to support the decisions parents of modest means would like to make about schools in which their children are educated? We believe it is not only wise, but just,” Michael Guerra, President, National Catholic Education Association.

Given that the Supreme Court has a make-up of seven Republican judges and two Democrat judges; it should come as little surprise that the decision was overturned. The surprise however, should be that it was a close 5-4 decision. Justices Rehnquist, O’Connor, Scalia, Kennedy, and Thomas, all Republicans voted with the opinion of the court. Judges, Breyer and Ginsburg, both Democrats were one half of the dissenting opinion. The other half of the dissenting opinions were from Republicans Souter and Stevens. Stevens, a Ford nominee and a registered Republican is commonly known as being “allied with neither the liberal or conservative wings of the court, maintaining a moderate and independent voting record.” In his dissenting opinion Stevens wrote:

First, the severe educational crisis that confronted the Cleveland City School District when Ohio enacted its voucher program is not a matter that should affect our appraisal of its constitutionality. Second, the wide range of choices that are available to students within the public school system has no bearing on the question whether the state may pay the tuition for students who wish to reject public education entirely and attend private schools that will provide them with a sectarian education. The fact that the vast majority of voucher recipients who have entirely rejected public

education receive religious indoctrination at state expense does, however, support the claim that the law is one “representing an establishment of religion.” Third, the voluntary character of the private choice to prefer parochial education over an education in the public school system seem to me quite irrelevant to the question whether the government’s choice to pay for religious indoctrination is constitutionally permissible (Stevens, dissenting, 2002).

Other opponents of vouchers like Berkholz see it as the failure of the opponents during the trial to put forth a winnable case, although he concedes that the make-up of the Supreme Court had a lot to do with the positive verdict for vouchers. He states:

Well, look at the Supreme Court, it’s basically conservative. I think the fact of the matter is-it is my understanding that the opponents of the vouchers presented a very weak case. The got hung up on issues that had nothing to do with the core substance because the court got confused about whether this was added at the public schools or a separation kind of endeavor, and they saw it as being one of the number of public school options, and it isn’t (2004).

Brennan, speaking of the Zelman decision says “the minority, particularly in the words of Souter, forcefully said, if we change the make of this court, the first case we’re going to have reversed is this decision, I mean, they’ve been very specific on that--I acknowledge that, and if it happened, I’d live with that” (Brennan, 2004). We go with what the Supreme Court said; the Supreme Court said this program in no way violates the separation of church and state, the money is not being given to the school, it’s being given to the parents (Toler, 2004).

5.1.2. What are the expressed outcomes held for African American Students in poor achieving schools by Vouchers?

In the long history of the United States, the relegation of blacks to second-class citizenship status could be attributed to overt de jure and covert de factor institutional racism. Racism and racist attitudes were felt by blacks in many factions of American society, with employment and education being the most illuminating forms of black marginalization. At one point in the colorful history of this country, it was illegal for blacks to learn how to read. Being forbidden to read meant that blacks were relegated to intellectual positions of subservience, qualified only for menial tasks, tasks that were considered unworthy of the educated white majority and accepted by many blacks as how things are and will always be. In summarizing the basic difference between Booker T. Washington and W.E.B Du Bois, and the basic dissonance between blacks, Dudley Randall wrote:

“It seems to me,” said Booker T.,
It shows a mighty lot of Cheek
To study chemistry and Greek
When Mister Charlie needs a hand
To hoe the cotton on his land,
And when Miss Ann looks for a cook,
Why stick your nose inside a book?”

“I don’t agree,” said W.E.B.
If I should have the drive to seek
Knowledge of chemistry or Greek,
I’ll do it. Charles and Miss can look
Another place for hand or cook.
Some men rejoice in skill of hand,

And some in cultivating land,
But there are others who maintain
The right to cultivate the brain.

Given that many whites are the beneficiaries of what is termed by many scholars as the unearned white privilege (McIntosh, 1989; Gorski, 2000) afforded them by their forefathers, it is not far fetched to fathom that many blacks today suffer from the cross-generational burden bore by their forefathers. Given that education was viewed as the privilege of whites, many white parents understood the intricacies of schooling and the educational system thus were better able to assist their children, e.g. helping them with their homework and teaching them how to read. This in-turn led to their children being able to read and assist their own children, thus perpetuating the pattern. A pattern was also perpetuated in the black family, parents who were not allowed to learn how to read, in-turn could not assist their children once they were a part of the generation that could be schooled, thus their children did not learn as fast or as well as their white counterparts. Again, a pattern of cross-generational illiteracy was perpetuated. Even when blacks were allowed to attend schools, governments used the Plessy v. Ferguson case which allowed separate facilities for blacks and whites to transcend trains and bathroom facilities and become part of the separate “but equal” schools.

Fast forward to present day America, decades after Brown v. Board of Education deemed separate schools for blacks and whites inherently unequal, black students still suffer from the residue of the pre-Brown days. Decentralization of schooling and the utilization of property taxes as a method of funding public education still relegates quality of education the privilege of the rich (mostly white) and poor education the burden of the economically disadvantaged (mostly black) citizens. Various efforts of education reform have been made in an attempt to balance the scales, some strides have been made, however, education reform has been akin to

driving up an icy hill without snow tires, consequently leaving education for blacks stagnant.

Viteritti puts it well:

Nearly Half a Century has passed since parents of a little black girl from Topeka, Kansas entered a federal court room to argue that every child in America has an equal right to a decent education. Since then the political process has conjured up a remarkable array of schemes to demonstrate the nation's commitment to that ideal, but the results have been unimpressive. We have sent children on long bus rides into hostile environments; we have poured money into faltering programs; we have tinkered on the edges of institutional reform; and we have experimented with several forms of school choice---some to promote racial integration and others to improve the academic opportunities available to disadvantaged children (1999, p1).

Black children continue to lag behind their white counterparts academically, being ill-prepared educationally can have dire future consequences. Jackson (2004) states, without a good education, many black children are being prepared for the streets, the drug culture, violence, unemployment, prison and death (p. 89). Furthermore, Jackson continues, "black children will be unable to compete with the best and brightest students from all parts of the world for jobs in America, without a good education, black children are not much better off than the slaves they might be studying during black history month" (ibid).

Studies have documented that poor children and children of color consistently have less-well qualified teachers than white and middle class kids, this, Chenoweth states can be correlated to what he calls the "resegregation" of schools, "that is the increasing racial isolation of Blacks, Whites and Latinos during the past decade or so of post-desegregation, years in which court-ordered busing and other measures were taken to desegregate schools" (2004, p. 41). The schools not only have larger concentrations of poverty and children with chaotic lives---they usually have fewer resources at their disposal, demonstrating the truth of the old phrase used by those seeking school integration "green follows white" (ibid).

The *Schott Foundation for Public Education* published a State Report Card based on public education and black male students. The report indicated in the years 2001/2002 the graduation rate for black males was 36% and 73% for white males a black/white gap of 37%. In a ranking of school districts with black male enrollment of 10,000 or more Cleveland graduated 19% of its 25,973 black males making it one of the least successful districts nationwide.

Table 6: Inequities in Graduation Rates

2001/2002 Graduation Rates

State/District	Black Males	Black Male	White Male	White/Black Gap
OHIO	154,384	36%	73%	37%
Cincinnati	15,340	19%	32%	13%
Cleveland	25,973	19%	24%	6%

Source: The Schott Foundation for Public Education

Table 7: Inequities in Discipline and Special Education

Inequities in Discipline and Special Education

Cleveland Students Sex and Race (Non-Hispanic)	Number of Students			
	Female		Male	
	Black	White	Black	White
Enrollment	25,160	6,545	25,770	7,140
Out of School Suspensions	2,330	450	3,765	880
Total Expulsions	10	5	50	5
Total Mental Retardation	1,020	245	1,535	325
Emotional Disturbance	105	15	545	130
Specific Learning Disability	610	260	1,500	535

Source: The Schott Foundation for Public Education

Race gaps test scores are also undisputable facts on a national scale, national reading scores show that Black students at age 9 average close to 10.9 standard deviation below white students, whereas Hispanic students at this age close to 0.722 standard deviation below white

students (Nation' Report Card, 1999). This persistent gap in educational achievement perpetuates the already vast division between white students and minority students, thus exacerbating the hierarchical state that exists in this country. Given a chance at educational equality, many scholars believe blacks will not only perform to the level of their white counterparts, but in some cases surpass them. A 2001 National Center on Educational Statistics (NCES) study concluded that for young adults with similar levels of prior educational achievement, blacks were more likely to attend college than whites; among college attendees with similar levels of prior educational achievement, blacks college completion rates were as high as, or higher than, the college completion rates of whites. This unrealized potential is what troubles many parents, educators and policy makers alike who have attempted various methods of reform, to no avail. This unrealized potential, voucher supporters say, is what galvanizes them to push for school choice, particularly school vouchers as a method of aiding children whose potentials are being suppressed by what they see as bureaucratic perpetuation of poor underachieving schools and school systems. Voucher proponents believe vouchers have limitless possibilities for poor African American children living in desperate school districts. Also, Greene states, "the vast majority of public school students in the Cleveland metro-area attend schools that are almost entirely white or almost entirely minority in compositions" (1999, p. 7). Supporters say vouchers would help to integrate students and thus somewhat eliminating segregated schools.

5.1.3. What Vouchers Aim to do for African American Students

As a group, poor people exercise relatively little choice, when it comes to deciding what schools their children attend. Beyond that social science evidence, we know that to be true because it is

inconceivable that so many parents would send their children to the kinds of schools typically attend if they had an alternative. From the perspective of educational equality, these are the most compelling arguments for choice; the fact that some Americans have it and some do not; the realization that the availability of choice is very much a function of economics and social class; the sad admission that the lack of choice has consigned an entire segment of the population to schools that most middle-class parents would not allow their sons and daughters to attend; the constant reminder in the polls that many of those who do not enjoy choice really want it for their children (Viteritti, 1999, p. 12).

Status and Trends in the Education of Blacks conducted by the United States Department of Commerce indicates:

- Most Black students attend public schools where minorities represent the majority of the student body. Seventy-three percent of Black 4th grade students were enrolled in schools with more than one-half of the students eligible to receive free and reduced lunch price;
- Blacks have higher dropout rates than Whites but lower dropout rates than Hispanics;
- In 1998, Black students were less likely than White students to take advanced mathematics courses and some advanced science courses and less likely than Hispanic students to take foreign language class.

Obviously, whether or not these multitudes of issues facing Black students in America beg for reform is not the question; the question remains steadfastly the methodology. Ryan, in a study conducted in 1999 noted, only 25% of the students enrolled in the largest forty-seven urban districts were white, (nationwide, whites made up 70.7% of student enrollment); 42.1% were African American and 26.5% were Hispanic. The enrollment figures for some cities are even starker. In 1995, 100% of the students in East St. Louis, Illinois, and Compton, California were minority, as were 96% of the students in Washington, D.C. and Camden, NJ, for black students,

then, much more that for white students, educational opportunities are intimately connected to inner-city districts in the largest metropolitan areas (1999, p.273).

With Cleveland being one of the largest populated black metropolitan school districts, voucher opponents argue that this is precisely the reason why public schools need to maintain every available resource. They argue the public schools need more money to gain access to better facilities and educational resources. Choice advocates note that while that may be true, public school educators have had ample opportunity to revamp the educational system, and have failed miserably in doing so, thus relegating those students in those schools to a lifetime of subservience because of poor educational achievement. To this end, voucher supporters argue that vouchers would function as a mechanism through which African American students would have the opportunity to “break the chains” of poor achieving schools. A study conducted by *Policy Matters Ohio* indicated that during the 1999-2000 school year, 4,306 students dropped out of Cleveland schools, the year before that the number was 4,278. The researchers point out that “there are tens of thousands of young adults in Cleveland who dropped out of school without getting diplomas; and while the number of Clevelanders without diplomas continues to grow, data gathered by PMO indicates that wages for workers with lower levels of educational attainment are falling precipitously” (2002).

Table 8: Dropout Rates Per Grade Level

Dropouts Per Grade Level, Cleveland Municipal School District				
	1996-97	1997-98	1998-99	1999-2000
12 th Grade	704	595	357	580
11 th Grade	616	714	630	756
10 th Grade	978	990	904	919
9 th Grade	1,880	1,853	1,984	1,617

8 th Grade	356	191	248	261
7 th Grade	351	149	155	173
Total	4,885	4,492	4,278	4,306

Source: Cleveland Municipal School District

Table 9: Hourly Wages by Education

Ohio Hourly Wages by Education (2000 Dollars)				
	1979	1989	2000	Change 1979-2000
No HS Diploma	\$11.98	\$ 9.28	\$ 8.00	-33.2%
HS Diploma	\$ 12.78	\$ 11.10	\$ 11.00	-13.9%
1-3 Years Post-HS	\$ 13.15	\$ 12.49	\$ 12.00	-8.7%
College Graduates	\$ 15.71	\$ 16.65	\$ 18.00	14.6%
Postgraduate Education	\$ 18.20	\$ 20.46	\$ 23.07	26.8%

Source: Policy Matters Ohio

This is disturbing for African American families because as this research has shown only 36% of black male students graduate from Cleveland School District. Supporters contend that vouchers in Cleveland would serve several purposes in the attempt to right the sinking educational ship.

Voucher supporters present four arguments as to why vouchers would be of tremendous assistance to African American Students. The first, they posed in what they call the *education theory* which supports the notion that parental choice is a key factor in determining parental involvement in a student’s education, and parental involvement is powerfully linked with student achievement. This argues that if parents have a choice, they would be able to jettison the public schools that have been failing their children and place them in schools where they feel their children could be better educated. This would also force the public schools to elevate the quality of their product, which in-turn would serve those students that remain well. Second, is the

economic theory which supports the notion that vouchers would deliver higher quality services, more customer satisfaction, and lower prices. “Support for vouchers is widespread among economist, including at least five recent Nobel laureates; people who understand even rudimentary economics tend to support vouchers because of their promised efficiency gains” (Cato Institute, 1997). Third, the *political theory* supports the notion that services the performance of which is often highly subjective and interpersonal are poor candidates for political oversight and management. In those areas, bureaucracies and regulations engage in fruitless attempt to achieve accountability. Fourth, voucher proponents point to **public polls** which they say reveals that substantial majorities support a parent’s right to choose; “most parents would choose a private school over a government school if they could afford to; and most parent believe government schools are doing a poor job with the resources they are given” (Cato, 1997).

5.1.3.1. Educational Theory

As stated, supporters of educational vouchers argue that providing inner-city parents with school choice is the best way to improve student achievement. Speaking at the Manhattan Institute, former Baltimore mayor Kurt L. Schmoke had this to say about choice:

I believe in giving parents choice about where to educate their children. My support of school choice is founded in the common sense premise that no parent should be forced to send a child to a poorly performing school. Unfortunately, however, countless parents, especially in the inner-cities, are now forced to do just that. Parents in middle-and upper-class communities have long practiced school choice. They made sure that their children attended schools where they would get the best possible education. There is no reason why this position should be closed to low-income parents (1999).

Not only would vouchers provide choice, supporters say they would force public schools to become more accountable, given that there would be consequences for a school’s poor

performance. Those consequences would be the ability of parents to pull their children out of poorly performing schools and enroll them in an alternate school. If parents were to exercise this option it would lead to a mass exodus from certain underachieving schools, which would cause those schools to either improve, or close their doors due to declining enrollments. Furthermore, supporters say vouchers would empower parents to select schools, government or private, for their children. This would in-turn lead to the destruction of three myths now preventing further privatization: (1) parents are too stupid to intelligently choose the schools their children attend: (2) private schools cannot be held accountable to the parents or taxpayers and therefore cannot be trusted to offer curricula that are in the public interest: and (3) private schools are the preserve of the privileged and the wealthy, while government schools represent mainstream American values and culture (Cato, 1999).

African American students and families will further be helped by vouchers because utilizing vouchers would weaken the influence of the most powerful sources of opposition to privatization which are the teachers' unions and government school administrators. Proponents claim these groups "spend hundreds of million of dollars each year opposing privatization efforts and undermining efforts to increase parental involvement and accountability" (ibid). They suggest that by weakening the opposition, vouchers clear a path to further privatization.

A study conducted by the Clearinghouse on Educational Policy and Management at the University of Oregon noted that African American students may indeed have the most to gain from private scholarship programs. In a comparison of test results for scholarship programs in three cities (New York; Dayton, Ohio; and the District of Columbia) researchers found positive effects for school vouchers on the average test performance of students from African American backgrounds, "Black students who switched from public schools in the three cities scored after

two years, on average, approximately 6.3 percentile points higher on the Iowa Test of Basic skills that comparing Black students who remained in public schools (CEPM).

This evidence would seem to support the notion that given a choice, parents would choose to enroll their children in private schools and their children would be better served by those schools.

5.1.3.2. Economic Theory

Economic theory deals with the idea of market-based education. This theory supposes that the ability for parents to choose their schools and for schools to compete for their attendance would raise standards and lower costs, just as it had in every area of our lives.

Market-based education, supporters argue, would rid the society of the educational monopoly that has been in place for years. A monopoly, they say, has allowed schools to perform at a low level for years with impunity, and a system that has also come to accept mediocrity as a way of life. Economic theory also favors the notion that funds will be efficiently utilized in a voucher system. As it stands now, supporters contend, failing public schools are not providing parents with a product worthy of the money parents are paying; the continued delivery of this inadequate product perpetuates itself because parents have no other recourse other than to continue to send their children to the same failing schools. This lack of academic choice, supporters argue, allow for the continuous misuse of funds and thus exacerbate the problem of schools failing to put forth a quality product for they have no fear of losing clients (students) or money. Schmoke states, “any corporation that tolerated mediocre performance among its employees, unresponsive to the complaints of its customers, and the promotion of a large number of failed products, would not be in the marketplace very long; what is true of corporations should be true of poorly performing and poorly run schools” (1999).

Economic theory also supports the idea of less government involvement in education. The idea of market-based solutions comes from the Republican belief that problems of all kinds are best solved by allowing the mechanisms of market-based economy to operate with restriction. The idea is that many social problems including education can be addressed by allowing people in a free market to decide how much it is worth for those problems to be addressed.

Free market approach would allow for parents to direct government funds to the institution they feel best meets their needs. Teitlebaum states “denying parents the right to educate their children in accordance with their values and traditions is no less discriminatory than denying a job or housing for racial or religious reasons (2003). Political theory and Public polls state the obvious, that the current education system is riddled with bureaucracies and bureaucratic red tape, and that the people in charge of this system more often than not are incapable of producing a fair and objective product. This is partially because they are in some way invested in the system. Public polls, state that the majority of the public supports vouchers. So for fear of sounding repetitive these two theories were not given as much attention.

5.1.4. What other outcomes aside from the expressed appear to result from vouchers for the proponents and external stakeholders?

Depending on which side of the voucher argument your allegiance lies, the Cleveland voucher program can either be viewed as a great success or a disastrous failure. Supporters say that the

program has met and continues to meet its stated objectives, one of which was to serve poor and low-income African American families. To this end they point to Peterson, Howell, and Greene's (1999) research which states "survey results indicate that it is possible to develop choice programs which serve low-income recipients; the average family income of scholarship recipients significantly less than that of families whose children were attending public schools." Also, parental satisfaction, which many use as the best measure of the quality of the product, private and public schools, is at a very high level. Opponents who argue that the program is not a success point to Metcalf's 2001 study which says there is no evidence indicating an educational advantage for voucher students. Regardless of one's position, it is indisputable that vouchers have resulted in some unexpressed outcomes for proponents and external stakeholders.

5.1.4.1. The infusion of voucher students into catholic schools

Although many voucher supporters state that the issue of school vouchers is not one of public vs. catholic schools, an 'unintended' outcome has been the influx of voucher recipients into catholic schools thus making catholic schools one of the biggest beneficiaries of school vouchers in Cleveland, "the voucher has instead become a subsidy to the Roman Catholic Church" (Oplinger & Dillard, 2000). According to records stored at Ohio University, the Catholic Conference of Ohio and the Catholic Diocese of Cleveland in particular won tremendous school aid from the state during the Voinovich years. Hanauer (2002) says of the Cleveland program "in the program's first year –1996-1997—76.8 percent of participating pupils attended religious schools, since then, the proportion attending religious schools has risen steadily to 79.1 percent in 1997-1998; 84.9 percent in 1998-1999; 99.0 percent in 1999-2000; and 99.4 percent in both 2000-01 and 2001-02" (p. 2). Of the 4,200 students in the Cleveland program only twenty-five attended

non-sectarian schools, this is down from a total of 609 non-religious students at the peak of secular enrollment in 1997-98 (Hanauver, 2002).

The proportion of secular enrollment has dropped every year of the program; this should come as no surprise given that:

- More than 99 percent of students participating in Cleveland's voucher program are enrolled in religious schools. A percentage that has steadily increased since the programs first year, when 76.8 percent of participants were in religious schools;
- The number of non-religious schools participating in the program has declined from eleven at its peak in 1998-99 to just three in the 2002 school year;
- Only one in five voucher students attended Cleveland public schools in the year prior to enrolling in the program; and
- One in three participants already attended private school in the year prior to enrolling.

Although non-religious private and public schools were invited to be participating voucher schools, opponents argue “the face value of vouchers—maximum of \$2,250 per student—has attracted mainly religious schools, whose tuition rates are often kept low by subsidies from churches or other institutions, as a result voucher parents’ choices are limited largely to religious schools” (People for the American Way, 2001). Charney (2001) puts it more unswervingly “the main beneficiaries of the voucher program has clearly been the Cleveland Catholic Diocese, whose schools had been in severe financial straits following the flight of white ethnic working class to surrounding suburbs” (p. 2). According to Oplinger and Willard, by the end of the 1999 school year “Cleveland’s Catholic Schools were educating children than before the arrival of vouchers but receiving an additional \$3.3 million in state tax money.” Furthermore, rather than bringing about a shift in children from public to private schools, the

voucher program merely slowed an exodus from Cleveland's Catholic schools to the city's public schools.

As the evidence suggested earlier in this chapter the Catholic Church was not heavily involved in the promotion of school vouchers in Cleveland, they have, however, become one of the unexpressed outcomes of the Cleveland voucher program. In 2000 one in three children sitting in K-5 Catholic School in Cleveland was using a state Voucher, according to state data.

5.1.4.2. The Rise of EMOs and Charter Schools

Large-scale market-based reforms in education tend to privilege the interests of individual parents and children. Yet any education system has many stakeholders with different interests---the legitimate interests of various stakeholders might well conflict, and so, by privileging one set of interests over others, the market approach to education fails to achieve an appropriate balance (Ladd, 2002).

Prior to the formulation of the Cleveland voucher program market-based education reformers were contemplating ways in which to introduce marketized education reforms in Ohio due to the successful passing to the Milwaukee voucher program. This was the galvanizing factor in governor Voinovich assembling the Committee on Educational choice. Market-based education alternatives have since been the recipients of many education contracts in the state of Ohio. Oplinger and Willard (1999) state “private profit-minded companies, known as education management organizations, are making strong inroads into the state—in doing so, these EMOs are concentrating school ownership in the hands of a few and brushing aside the people who were to be given control of their local charter, or community, schools-parents, teachers and community members” (A10). David Brennan, who has been “the most consistent education-

reform voice in Ohio,” as aforementioned, is the owner of White Hat Management, Ohio’s leading management organization.

Currently Brennan’s company operates 13 Hope academies throughout Ohio, Akron, Canton, Cincinnati, and Cleveland. HOPE Academies are traditional K-8 elementary schools. HOPE Academy High School is “a high-tech high school in Cleveland, Ohio, that serves grades 9-10 utilizing leading edge technology in the delivery of curriculum. The rise of these schools, voucher opponents say supports their position that the primary purpose of voucher proponents championing the cause was not the altruistic ideals they had put forth, rather, it was to become part of the educational “business.” Opponents further support their position by pointing to the legal and political maneuvering that led to school vouchers in Cleveland and school choice systems in Ohio.

Prior to 1991, charter schools were not in existence. However, in 1991 the State of Minnesota passed a law permitting charter schools. By 1998-1999 school year, 15 charter schools were up and running in the state of Ohio, with an additional 33 opening in 1999 costing the state \$52 million. The charter school concept was to “break the public school mold and monopoly” by providing a local building that would be turned over to parents, teachers, educators and community members. During the charter school discussion, profit was not mentioned as a purpose, nor did they talk about private companies staking their claim in the process.

However, as Oplinger and Willard point out “education management organizations dominate the charter school movement” (1999, A11). At the time of this expose by Oplinger and Willard, Whit Hat Management had only 11 schools, serving 3,267 students. During that year WHM earned \$16 million from the schools or roughly one of every three taxpayer-funded

charter school. Opponents were in an uproar because by Ohio law, only nonprofit organizations, and not private for profit-companies, can start a charter school. This law was circumvented, opponents believe, because non-profits and EMOs often work hand-in-hand. Proponents also point to the fact that identical contracts for several WHM-managed schools were submitted together to the state board although the schools are supposed to be run by independent governing authorities. Opponents are angered by the fact that these charter school alternatives pushed through despite obvious problems, they point to the fact that:

- The Ohio Board of Education, responsible for oversight, is rubberstamping contracts as fast as it can without thoroughly reviewing the written proposals or hearing from a single charter school representative. One reason, most board members say they have almost no authority to reject proposals;
- Lawmakers did not fund an oversight office for charter school until the program's second year and after more than 60 contracts had been approved and 15 schools had opened. The undermanned office is hard-pressed to complete routine checks for fire safety and criminal backgrounds, and is barely monitoring academic progress;
- Children are bearing the brunt of the charter school problems. The state has allowed charter schools to open without text books or indoor toilets. Students have attended class in unsafe buildings that lacked sprinklers or fire alarm systems. And local police in Columbus were called 12 times in two months to one charter school to investigate disturbances including one case of sexual assault;
- Most charter schools are not models for reform. First-year test scores indicate students in charter schools are doing dramatically worse than public schoolchildren and the new schools are not incubators for innovation as proponents promised they would be.

With these issues opponents list, how have charter schools continued to thrive in Ohio, and some even converting to voucher schools, which receive more funding than charter schools?

5.1.4.3. Political Nepotism in the School Choice Movement

The process of education reform is political, proponents and opponents of school vouchers have political support and form alliances that will hopefully benefit them in their quest to attain the desired outcome. The battle for school choice and school vouchers in Ohio was no different.

The rise of Brennan as a key education figure has been attributed to his position as an entrepreneur and a strong supporter of the Republican Party. What follows is a chronicle of the Brennan's political affiliations that many argue led to school vouchers and school choice in Ohio, particularly in Cleveland, and to the emergence and prominence of EMOs.

Nearly a decade ago a car pulled up to the White House and a tall man with a white cowboy hat climbed out. The man was from Akron, Ohio—but he had friends in high places. He was there to party with President George Bush and other members of the elite \$100,000 club of big campaign contributors. The man was David Brennan. Over the next 10 years, his friends would help him carve millions of dollars from public schools to start an education business called White Hat Management. Today, Brennan's company enrolls 3,267 Ohio schoolchildren, making Whit Hat larger than three-fourths of the public school districts in the state (Oplinger and Willard, 1999).

Brennan's wealth and ability to raise money for the GOP was seen as the primary reasons for him having the opportunities to strike deals from the Statehouse to the White House during the entire decade of the 90s. During that span Brennan contributed nearly \$1 million to mostly conservative Republicans. Brennan was quoted in an interview with the Associated Press saying "this is a political, not education fight," "I can't get anything if the governor doesn't back me."

A fund raiser at Brennan's Akron resident in September of 1990, was attended by then President Bush and then gubernatorial hopeful Voinovich, at which time Brennan gave \$89,000 to

Voinovich's 1990 campaign and became a member of Bush's "\$100,000 club" of big GOP contributors. Several weeks after Bush returned to the White House, his staff announced that the next national budget would include \$500 million for school vouchers (ibid). However, Bush's voucher proposal was not passed by congress. Also during this time, voucher legislation died in the Democratic controlled Ohio House of Representatives, "Brennan made it a personal mission to raise money needed to give Republicans control of the state legislature in 1994.

With the Republicans victorious in 1994, Brennan saw what he felt was an opportunity to again propose the voucher initiative. In a note uncovered by Oplinger and Willard, Brennan to Sam Miller, an executive of Forest City Enterprises and a close friend of then Cleveland Mayor Michael White, "it is clear that the time is right to make this happen—the legislature is prepared to give a sympathetic ear, Governor Voinovich is supportive, the situation in Cleveland is desperate, and all that it needs is Mike White's impetus to make the program happen" (1999). Voinovich showed his staunch support for the bill that he "sandwiched the voucher program into the state budget," a maneuver that many feel helped the bill pass since it was unable to garner support as a separate issue. The move also did not allow the public to have a full say in the matter, Berkholz states "it never really got a full debate, it never was fully debated in the legislature, and it was tacked onto a bill with the Governors blessings" 2004).

In 1993, Brennan and his daughter started Interfaith Elementary School; at some point Brennan decided he wanted to convert the school to a charter school, a maneuver that according to state funding law would increase the state aid for the 75-pupil school by \$285,000. This attempt was problematic because the State Legislature and Voinovich had outlawed conversions because "if private schools across the state were converted to charter schools, the state's spending obligation suddenly could jump \$1 billion a year" (Oplinger & Willard, 1999).

Brennan argued that this was not a conversion because Interfaith was closing and dissolving its board of directors while returning the operating charter to the state. As this conversion passed many felt it was just another way of Brennan flexing his muscle in the State of Ohio. When asked of the provision to convert voucher schools to charter schools Berkholz responds “well, they were, some of them I’m sure, I mean all of Brennan’s were” (2004).

Brennan accepts the different views on how events occurred, he sees it as part of the greater debate. He posits “all good debaters try to spin the topic to their view point, how they look at it, and that’s what this debate over academic achievement and school choice is all about” (2004).

6. ANALYSIS

It is amazing that an issue such as school vouchers has galvanized so many to act. It is amazing but not unrealistic, for its implications affects all involved in varied ways. It has garnered support from some of the most powerful and influential people and groups and has conversely drawn the disdain of those equally as powerful and influential. It has seemingly appeared from anonymity to top the list on most policy agendas; it has risen in some places but fallen in others. In an effort to shed some light on the rise and formulation of voucher policies, this research posed and answered three distinct questions. This chapter analyzes each question as interpreted by the author. This chapter also poses implications for future research and policy, suggestions for future research and what this researcher feels are some impediments to effective school reform.

6.1. QUESTION ANALYSIS

6.1.1. Supporters of Vouchers

Based on the findings of this study it can be concluded that although supporters of school vouchers had an ultimate uniform goal of witnessing a voucher program come to fruition in Cleveland, their reasons for wanting vouchers were vastly different. This was due in part because supporters circled the gamut. They were made up of members of the business community, social organizations and foundations, and politically affiliated supporters with political agendas.

6.1.2. The Market and EMOs

EMOs are market-based groups that introduced the entrepreneurial concept to schools. EMOs have transformed from organizations that formerly only provided services like transportation, food services, textbooks, maintenance, instructional programs, and professional development to organizations that enter private contracts to operate the entire school, including the core educational mission. It can be concluded that EMOs champion the cause for vouchers in an effort to reduce the role of government in education, because in order for market-education to prosper consumers must be allowed to select their desired service provider. Furthermore, market-base educators feel that government-run programs do not work, therefore it is only through an open-market system of education that true educational reform can be achieved. Also, it can be concluded that there is a shift towards the privatization of public education in that market-based supporters view private enterprise as one of the bedrocks of this country, so it would make sense that privatization be extended to the realm of education, thus allowing for others to be involved in the “competition” that many supporters of vouchers believe is nonexistent in the current system.

6.1.3. Religious Organizations

Religious organizations were also involved in the voucher debate. It can be concluded that although the Catholic Church in Ohio wanted to play a more vocal role in the voucher debate, it would have been the death of vouchers had done so. Their intimate involvement would have given vouchers the appearance of a religious and catholic issue, a position that would have had absolutely no chance of gaining acceptance in the court of public opinion or in the judicial system. Therefore it behooved the Catholic Church to play as little a role as possible in the debate.

The silence of the Catholic Church is not to say they have not benefited from vouchers in Cleveland. They have been one of the biggest, if not the biggest beneficiary of the passage of the voucher program in Cleveland given that over 90 percent of those who utilize school vouchers in Cleveland attend catholic schools. The enormity of catholic school enrollment can be attributed to two things; first, there is an abundance of catholic schools within the Cleveland school district, therefore it would make sense that parents would choose the option closest to them. Second, the notion that is commonly subscribed to by opponents is that the monetary amount allocated for school vouchers renders catholic schools the only viable option for those who choose to utilize school vouchers. This is because traditional private schools cost significantly more than the \$2,500 the program provided.

One surprising conclusion that can be drawn is that not all Catholics favored the voucher program. Many were opposed to the program because they felt it did not offer enough funding to cover tuition and extraneous costs. However, the vast majority who were against the voucher program felt that having students and families that may not share their catholic faith in their schools would force them to have to compromise their beliefs and practice in order to meet restraints that may be placed upon them due to them receiving, though indirectly, government funds.

6.1.4. The Absence of Public School Participation

Although language in the Cleveland Voucher Program indicates that nearby public schools are eligible to participate in the program, at the time of this dissertation (2005) there were no participating public schools involved in the program. Evidence suggests that the absence of public school participation is due to the same reasons there is a decentralized form of education in the United States, in that localities control their schools and schools are located within distinct

district lines. Decentralization and district lines allows for the maintenance of economic and racial boundaries that divide the rich from the poor, and the whites from the blacks. If public schools around the Cleveland School District were to participate in the voucher program then poor and black children would be able to attend more affluent public schools, thus evaporating those clearly defined boundaries.

6.1.5. Foundations, Parental Choice, and Morality

Other organizations and foundations that supported vouchers it can be concluded did so based on the issue of parental choice as a galvanizing factor for doing so. These organizations believe that the education system should not be controlled by the government, there should not be an eminent domain regarding parents' ability to determine their children's schooling. Many of these organizations are politically conservative and also argue that moral values have disappeared from the public schools thus leading to the erosion of the moral fabric of our society. These organizations believe school vouchers are instrumental if some of these issues of morality are to be addressed.

6.1.6. African Americans and Vouchers

While vouchers are viewed as a movement led by the white conservative elite, the movement has garnered a tremendous amount of support from the black community. A consequence of this has been that many blacks who have traditionally aligned with the Democratic Party have now shifted allegiance to the Republican Party based on the strength of this issue. Many in the black community are incensed by what they view as the Democratic Party's nonchalant attitudes toward issues that are considered pivotal in the black community. The feeling is that the Democratic Party has in essence taken the black vote for granted, feeling as if they need not work to earn the vote because blacks will automatically vote Democrat. The Republicans have

ceased this opportunity by exploring every possible avenue to gain the black vote. Republicans understand that there are black parents who are exhausted of watching their children graduate to the street corners, aided by what they consider to be inadequate schools. These parents are hungry for other options and if that comes in the form of vouchers so be it. Many of these parents are not versed in the intricacies of school vouchers, they are simply happy to be presented with alternatives regardless of what form it takes.

The Republicans have also garnered support in the black community by turning to the black churches, understanding that these churches share the same conservative views and “value” system as them. By gaining the support of the black churches the Republicans gain a large percentage of the black votes given that many parishioners live and die by the words of their pastors. This shift in support to the Republican Party has led the Democrats to reexamine the blasé attitude with which they have approached support in the black community. However, akin to a wife who leaves her husband for another man due to her husband taking her for granted for many years, some of the black votes have been lost to forever and are not returning to the Democrats, conversely with much effort there are some voters who will return if only the Democrats will try harder and show a little more commitment.

6.1.7. Politics and Vouchers

It can also be concluded that despite all efforts to craft vouchers as an issue devoid of politics and political agendas, evidence suggests that politics and political agendas were instrumental in the formulation of voucher policies. Exceptions notwithstanding, voucher positions fall starkly on partisan lines and have been used as platforms upon which elections have been won and lost, with Republicans being staunch supporters of their usage while Democrats are equally opposed to them being used. The Republicans support vouchers because vouchers promote their ideals of

free enterprise and a marketize system to the field of education. Politicians have never explicitly stated their support for vouchers as being galvanized by politics, instead support for vouchers is steeped in rhetoric of creating a better educational climate for, and increasing the educational achievement of poor children residing in districts that harbor failing schools.

6.1.8. The Supreme Court: Zelman

The Zelman case further illuminated the political climate upon which the voucher issue operated. Given the political make-up of the Supreme Court which is 7-2 Republicans to Democrats, and the politics of school vouchers, one could easily have surmised that Ohio Supreme Court's decision that held the Cleveland voucher program unconstitutional would be overturned. The U.S. Supreme Court's decision to overturn the ruling has paved the way for voucher programs to form across the country. Now that there is a constitutional blueprint from which to operate, states hoping to challenge new programs have no recourse to do so if tenets of the Cleveland program are followed.

The Supreme Court's decision further polarizes the partisan nature of the voucher debate. Even voucher supporters agree that if the political context of the Supreme Court had been different the Ohio ruling never would have been overturned. Democrats on the Supreme Court stated if they were ever again to become the majority in the court, the Zelman case would be one of the first ones they will look to overturn. It can safely be concluded that the Zelman case went to the Supreme Court at the right time and during the right administration for voucher supporters.

6.2. Expressed Outcomes for African Americans

The fundamental issue pertaining to vouchers as it relates to African Americans was the issue of providing access to "better" educational opportunities for poor families living in communities with failing and poor achieving schools. The CSTP boasted that it would provide these poor

families such opportunities as they would be able to utilize these vouchers to remove their children from those failing and poor achieving schools in the CMSD and be able to enroll them in participating voucher schools that will improve their achievement and provide them with better quality schools. However, evidence suggests that the poorest African American children in Cleveland are not the beneficiaries of the CSTP as originally predicated.

6.2.1. Users

As mentioned in the preceding chapters, the program was intended to serve the purpose of removing students from poor performing failing public schools in the CMSD and provide them with vouchers to attend participating voucher schools. However, research shows that 33 percent of the students receiving aid through the Cleveland voucher program previously had been attending private schools, while only 21 percent had attended public schools in Cleveland. These numbers would seem to suggest that the CSTP serves more as a subsidy for students already attending private schools. Data retrieved from the CSTP show that of the 3,741 students who participated in the program in the 2000-2001 school year 1,234 had previously attended private school while 801 had gone to Cleveland public schools. Also, SchoolChoiceInfo.org a voucher supporting organization states “scholarships and tutoring grants are awarded by lottery, with priority for low-income families below 200 percent of the federal poverty level (\$37, 700 for a family of four in 2004).” However, according to the Federal Register, the poverty index for a family of four in 2004 was \$18,850. So those earning \$37,700 are not considered to be living below the poverty index. This evidence is an indication that the program was not aiding the truly desperate, it was however, providing families already in private schools with additional funding to supplement tuition costs to those private schools.

An examination conducted by *Catalyst: For Cleveland Schools*, an education indicated that the ten schools in Cleveland that have each lost more than 17 students to voucher schools were more likely to have test scores above the district average and sometimes above the state average, and were likely to be magnet schools with specialized programming, and to rated as one of the districts empowered schools based on high academic achievement. Of the Ten schools that lost the greatest number of students to vouchers schools none were among the low-performing city schools. This suggests that what many opponents feared was coming to fruition; vouchers were being used to fleece the cream of the crop from the city's public schools thus leaving the public schools with the poorest and most underachieving students, who were the initial target population of the program. It could be concluded that lower income students are still not receiving what school vouchers promised for several reasons, one of them being they are not rich enough to use vouchers. The parents of the voucher students it can be argued, are either better informed about school vouchers or are already in better positions to take advantage of and utilize vouchers due to the fact that their children were already in private schools, or were already seeking better educational opportunities for their children by enrolling them in magnet schools or in schools with a focused specialization.

6.2.2. Demographics

Although the program was introduced as one geared towards specifically poor black families, Metcalf, in is fifth year evaluation of the program found that students who have chosen to use a scholarship for private school enrollment from kindergarten through fifth grade differ from public school students. An important demographic characteristic according to Metcalf is that scholarship students are more likely to be Caucasian, Hispanic, or Multiracial and are less likely to be eligible for free lunch than are public school students. It is also noteworthy that families

who are of the lowest income and African American are less likely to apply for a scholarship, and they are less likely to use a scholarship if it is awarded to them. *Policy Matters Ohio*, an independent Think Tank also noted that students in the voucher program, in addition to being more likely to come from private schools or from higher performing public schools, are less likely to be African-American than the students in the district at large. Noting that just 53 percent of Cleveland voucher students were African American in the 2000-2001 school year, while 71 percent of CMSD students in the previous year were African American.

It can then be surmised that although vouchers have provided the opportunity for African American parents to jettison the public schools and enroll their children in participating voucher schools, only few have done so. The few who have done so are derived of parents who were already in positions to send their children to private schools, and also in positions to supplement any additional cost and inconvenience that may arise as a result of not attending the conveniently located local public schools. Until vouchers are utilized by those they are truly intended to aid we will never have enough evidence to gauge the success of school vouchers.

6.3. The Unexpressed Outcomes of School Vouchers in Cleveland

It was a common argument by voucher opponents that there were certain reasons why proponents of school vouchers were adamant about the passage of school voucher policies. These reasons, opponents argued, had little to do with success or increase in educational achievement of poor black children. Rather, support for vouchers as opponents see it was steeped in the desire to break up what proponents see as an educational monopoly and hopefully jettison public schools from the community thus allowing for markets to thrive and the entrepreneurial spirit to prosper. Miner states “privatization, while couched in rhetoric extolling the ability of the marketplace to unleash creativity and innovation, at heart is a way for for-profit

companies to get their hands on a bigger share of the \$350 billion K-12 education industry” (2002). Evidence suggest that vouchers and the ability to garner public funding by private organizations has led to a widespread effort by EMOs to stake personal claims to the monies by gaining control over many public schools. Also, vouchers were also seen as a method of funding religious education. Opponents argued that since funds were not directly funneled into the schools by the government and was left up to the devices of the parents as to where they wanted to utilize that funding, the question of separation of church and state was moot. However, upon closer examination, one could surmise that there was some validity to the opponent’s argument.

6.3.1. EMOs

Aside from Brennan’s EMOs in Ohio which will continue to grow due to the Supreme Court’s ruling, the school choice movement has led to EMOs across the country attempting to gain contracts to control schools or to start up schools of their own. While many of those schools are not voucher schools, the idea that education can operate under a free market system has galvanized many to create charter schools, secure consulting contracts and bids to run schools in failing districts. In Philadelphia, with the backing of Republican Governor Mark Schweiker, the for-profit Edison schools attempted to secure a six-year \$101 million consulting contract and a separate deal to run as many as 45 of the 60 district schools due to be privatized as partnership schools.

EMOs are seen as detriments to schools and its students because EMOs will not live or die on their educational record but on their ability to generate profit. Therefore EMOs will do whatever is necessary to generate those profits. Miner posits that because education is a labor-intensive industry, there are only two ways to make money: cut wages or cut services. Cutting

wages would be akin to hiring younger, lower-paid staff, while a variation of cutting services would be controlling student admissions so that more-difficult-to-teach students are discouraged.

All altruistic rationale for wanting a market-base education system aside, EMOs are in the business of making money. Rethinking Schools published a report stating that 650,000 shares of stock indirectly belonging to Edison founder Chris Whittle were sold for more than \$15 million in March of 2001, as of 2002 Whittle still owned 3.7 million shares of Edison's publicly traded stock. EMOs do not operate in a vacuum, for EMOs to continue to operate there has to be unwavering political support, and they have to be viewed as good social policy otherwise they have no chance of succeeding and their existence would be ephemeral.

Up until a little over a decade ago EMOs were not in existence. However, in the last six years according to an Arizona State study, the number of public schools operated by EMOs has more than tripled with a total enrollment of more than 200,000 kids.

Due to President Bush's No Child Left Behind Act (NCLB) EMOs are scrambling to take advantage of a potential \$2 billion market in "Supplemental Educational Fund" made possible through the Elementary and Secondary Education Act. NCLB has left the door open for private companies to offer tutoring to students who attend failing public schools. What complicates matters is that there is not a universal operational definition of 'failing schools' as defined by NCLB. NCLB provisions allow each state to operationalize 'failing schools'.

EMOs gain acceptance by promising rapid increases in student achievement, a promise that evidence suggests does not often come to fruition. Regardless, EMOs function well because they are viewed as a mechanism through which failing public schools will be forced to compete with private schools and private industry thus raising the quality of those schools.

Not only do EMOs continue to garner support despite their apparent failures to meet certain claims and assertions, EMOs are also virtually exempt from many state and federal accountability provisions to which public schools must adhere. EMOs are often allowed to self-govern and to conduct their own accountability measures. While Metcalf and his research team was conducting their study on the CSTP commission by the Ohio Department of Education HOPE school officials refused to allow them to test their students, instead they were provided with data collected from a self-evaluation of the HOPE schools.

EMOs continue to thrive because there is a strong anti-public school among major stakeholders, oftentimes for good and valid reasons. These stakeholders are not anti public schools in good communities, they are anti public schools in poorer mostly minority communities where they feel the money allotted to those schools are mismanaged or goes to waste. The poorer communities are also attractive to EMOs because residents of those communities are often unsatisfied with the poor achievement of their children and with how poor a job the schools are doing educating their children. Therefore those communities become easy prey for EMOs, who may not often provide a better way of doing things, just a different one. Most of the time different is enough to gain acceptance because many in those communities are willing to try anything to provide their children with better educational opportunities which will hopefully lead to more life and employment options.

This researcher opines that given the fact that EMOs only target public schools in poor communities speaks to a deeper problem which has its core at the issues that poison our society (there will be further discussion on this later in the chapter).

6.3.2. The Catholic Gain

Although their voices were relatively silent during the voucher debate in Cleveland, one of the unexpressed outcomes of the CSTP has been Catholic schools becoming the primary destination of voucher users.

In the program's first year, 1996-97 76.8 percent of participating students attended religious schools, a number which has since then risen steadily to 79.1 percent in 1997-98; 84.9 percent in 1998-99; 99.0 percent in 1999-00; and 99.4 percent in both 2000-01 and 2001-02 (Hanauer, 2002). In the 2002-03 school year, of the 4200 students in the program, only twenty-five attended non-sectarian schools. This number is down from the 609 non-religious students at the peak of secular enrollment in the 1997-98 school year. In the 1996-97 school year there were eight secular schools participating in the Cleveland voucher program; ten in 1997-98; eleven in 1998-99; four in 1999-00; and three in both 2000-01 and 2001-02. It is the contention of many that due to the Zelman ruling by the Supreme Court, true gains by the Catholic Church and schools will only be realized in years to come.

6.4. Implications for Future Research

The examination of school vouchers has expanded our understanding of the school choice debate. It has done so by focusing on the role of politicians, interest groups, religious community, teacher unions and community leaders in the formulation of voucher policies, but there is still much to be done.

The voucher debate researched in this dissertation took place primarily on an elite level. The voice of the non-elite was glaringly absent. Given that voucher policies are top-down policies, that is understandable. If the voices of the non-elite were incorporated into the debate it would take us beyond the scope of this dissertation. Furthermore, incorporating the voice of the

non-elite would move the debate from what is perceived by some as rhetoric, to reality.

Research incorporating the non-elite would likely include variables that researchers may have overlooked while attempting to gauge the success or failure of school vouchers.

Also absent from the research on school vouchers is the voice of the poor-white community. Vouchers are presented as a way of providing poor black families with alternatives to escape poor performing schools in their communities. However, there are poor-white families in rural areas destined for the same fate as those poor black families, but the voucher debate is devoid of any mention of those families. It would be interesting to gain a better understanding of how poor white families view the issue of school vouchers, and how they perceive the focus of vouchers being directed solely towards poor black families.

This dissertation has touched briefly on the implications of the Supreme Court's ruling in the Zelman decision. It would be useful for future analysis to examine how many voucher programs were erected utilizing the Cleveland model, and how have public schools been impacted since the Zelman ruling. It would also expand the findings of this research if a number of questions were raised in the future, primarily during the 2006 and 2008 elections. Is there still a shift of black voters to the Republican Party? If so, has this shift led more Democrats to convert to voucher supporters in order to gain black votes? Has the Democratic Party recommitted to the black community due to the large exodus of black votes for what is perceived as a *laissez faire* attitude toward the black community by many Democrats?

6.5. Obstacles to Effective School Reform

6.5.1. Education Reform without Reform of the Conscience, Impossible

When policymakers and reformist speak and advocate for school reform they oftentimes deliberate as if schools operate in a vacuum. Reformist also often believe that their specific method of reform, whether it be vouchers, tuition tax credits, tutoring grants, etc. will be the panacea that cures all of the ills of the public schools. This researcher argues that regardless of the proposed reform initiative as a relief for poor black children or poor children of any race attending poor and failing schools, its effect will be ephemeral unless the consciousness of the people who live in what is commonly known as the “melting pot of the world” is also reformed. This researcher also poses that the incremental nature of school reform historically, is directly correlated to the incremental way in which social change has taken place in this country. There are three important changes that this researcher feels are necessary for true school reform to occur and for a decrease in the achievement gap that exists between blacks and whites is realized. First, the issue of teacher expectations of black students must be addressed. Second, the racist interpretations of the laws that govern our society and renders many young black males incarcerated must be changed. Third, the black culture’s anti-intellectual attitudes that cause black students to perform poorly in school lest they be chastised must change.

6.5.2. Teacher Expectation

As a psychology student during my undergraduate studies, this researcher was introduced to a phrase known as self-fulfilling prophecy. This term deals with the idea that people will behave and perform as others expect them to behave and perform. For instance, if a parent constantly refers to one child as the “smart one” and the other as the “troublemaker” the theory goes that

both children will act in ways that confirm their parent's belief. Although neither may possess the trait described by their parent the simple act being labeled as such leads them to act in that manner in order to meet the parent's expectation.

Same is true for classroom students. Many black students, particularly those in poor communities are often viewed by their teachers in a negative manner. Given that schools do not operate in a vacuum and once teachers, both black and white enter the school buildings they are not magically shielded from their preconceived beliefs of blacks, particularly black boys, it is not surprising that many view their students in a negative light.

The lead story on the local evening news regardless of where one resides is usually about a crime that has been allegedly committed by a black man between the ages of 16-29. The newspapers tell the same stories, television shows and the movies perpetuate the negative stereotypes by portraying blacks in a similar light. It has gotten to a point where not only has the black youth been marginalized from society, they have effectively been dehumanized. By that this researcher means teachers do not see them as individuals, instead they are viewed as a group bent on causing trouble and performing poorly in school. Ferguson argues that teachers' perceptions, expectations, and behavior probably do help to sustain and perhaps even expand the black-white test score gap.

Oftentimes these lowered expectations and preconceived negative stereotypes are guided by fear, which beckons the question, how can one effectively teach that which they fear? How is a teacher who may or may not have been exposed to or been around black children expected to objectively interpret a students' behavior given all of the negative stereotypes that are attributed to blacks? This researcher submits that institutes of higher learning chiefly those involved in pre-service teacher preparation should be charged with the responsibility of producing culturally

sensitive teachers in their programs. Pre-service programs should not simply deal in pedagogy, rather they should attempt to delve deeper in an attempt to understand our basic cultural differences which will hopefully lead to a better understanding of our similarities.

True education reform will only be possible if there is a move from rhetoric to reality. Schools and school districts must reexamine their curricula and question for what purposes are we educating and how. An important change that needs to occur is the practice of teaching about important black historical figures only during black history month. At which time the students are taught about the same figures such as Martin Luther King and Harriet Tubman, leaving the students feeling if one is not leading a civil rights movement or discovering an underground railroad they would have accomplished nothing worthwhile. These figures are sometimes so grandiose and such extraordinary trailblazers that students might not view their accomplishments as something they could replicate or an attainable aspiration.

However, students could be taught year-round about other significant black figures who have accomplished things on an individual basis to which students can relate and aspire. Prominent figures such as Benjamin Banneker who published an almanac based on his astronomical calculations; Dr. Daniel Hale Williams who founded the Provident Hospital in Chicago and performed the first successful open heart surgery in 1893; George Washington Carver who was as important to farming in the south as anyone for developing hundreds of applications for farm products; Charles Henry Turner who received his PhD from the university of Cincinnati in 1907 and was the first researcher to prove that insects can hear; Dr. Charles Richard Drew who conducted research on blood plasma and is noted for setting up the first blood bank; Lewis Howard Latimer who invented an electric lamp and was the only black member of Thomas Edison's engineering laboratory; Granville T. Woods who invented a telegraph that

allowed moving trains to communicate with other trains and train stations thus improving railway efficiency and safety; Garrett Morgan who is credited with inventing a gas mask used to protect soldiers from chlorine fumes during World War I and also invented a traffic signal that featured automated STOP and GO signs which were later replaced by traffic lights; and Frederick McKinley Jones who among other things invented the first automated refrigeration system for long-haul trucks.

These names and accomplishments were not presented as a space filler, rather as illustration of the multiple examples with which students can be presented that covers basically all of the subjects being taught in schools. Oftentimes black students in poor communities are unable to envision their lives beyond the communities from whence they come and are devoid of positive social capital that may show them other options. This is why many homes in those communities are often inhabited by three and sometimes maybe four generations. If students are presented with attainable options they will hopefully find something of interest towards which they will gravitate. However, if they are only presented with extreme examples of prominent blacks (not many people can become MLK or Harriet Tubman) and the only real and attainable images with which they are presented in the classrooms are white, then they begin to believe those attainable aspirations are the privilege of whites only.

6.5.3. The Law, Stereotypes and Education

After Brown, one could no longer speak of racial justice without considering the state of American education, nor could one reasonably discuss American education without addressing the need for racial justice (Casey, 2004).

At the risk of redundancy this researcher contends again that education and the education system do not exist in a vacuum, rather, they are interconnected with the greater society at large. What occurs between the walls at inner-city public schools and public schools in general are mere

microcosms of the greater society. The long standing attitudes and stereotypes towards blacks, particularly black males do not simply subside once educators enter the classrooms. We as a society would love to believe that educators are immune to those ignorant stereotypes that plague the society, however, the prevalence of such stereotypes in all walks of life makes it very hard for anyone including educators to ignore. These stereotypes, I argue, are steered by a misguided fear.

To think that at the start of the 1990s the U.S. had more black men between the ages of 20 and 29 under the control of the nation's criminal justice system than the total number in college (Haney & Zimbardo, 1998) allows us to come to a greater understanding of the gravity of the situation. Data collected in 2001 indicate that the chances of going to prison were highest among black males 32.2%; Hispanic males 17.2%; and lowest among white males 5.9%. These facts beckon the question whether blacks and Hispanics actually commit more crimes than whites or that blacks and Hispanics are more likely to be suspected thus more likely to be arrested. The National Center on Institutions and Alternatives posit that the high rate of imprisonment of blacks and Hispanics is unfair, that whites seem to go to jail in smaller numbers than their share of serious would indicate. According to the Federal Household Survey the most current illicit drug users are white. There were an estimated 9.9 million whites (72 percent of all users) 2 million blacks (15 percent) and 1.4 million Hispanics (10 percent) who were current illicit drug users in 1998, and yet blacks constituted 36.8% of those arrested for drug violations, and over 42% of those in federal prisons for drug violations. Also, Justice Department statistics indicate that in the 1990s whites committed 56 percent of violent crimes and 62 percent felonies in the United States.

This apparent “turn of a blind eye” to crimes being committed by whites leads to crimes of a serial nature. An overwhelming percentage of serial killers are white “they are always almost male and 92% of them are white” (what makes a serial killer). One could argue the reason being not that the criminals are elusive, rather they are not often suspected due to the fact that they do not fit the traditional operational definition of a criminal. Jeffrey Dahmer murdered and cannibalized human beings and buried them in his home for years, yet when he was finally arrested people describing him would say things such as “he didn’t look like someone who could do such things.” Ted Bundy murdered and terrorized women in the great Northwest for years in the late seventies, but was described as “a good looking man who could not be capable of such things.” The list of killers and other serious criminals who have operated with impunity and are able to matriculate among people in their communities is an extensive one because no one ever suspects them. White criminals seem to always get the benefit of the doubt, innocent until proven guilty, while blacks seem to operate under different rules, guilty until proven innocent. Even as recently as 2004 a juror in the Scott Peterson (a white man) case had to be removed because he took one look at Peterson and said he could not have committed the crime despite overwhelming evidence that suggested he murdered his pregnant wife and disposed of her body in the ocean.

The double standard is a dirty little secret that everyone knows exists but it is an unmentionable. However, every now and then someone indirectly exposes the double standard by crying wolf and brings the issue to the forefront. In 1994 a South Carolina woman named Susan Smith, for fear of losing her boyfriend because of her young children drowned both children in a river while they were strapped to their car safety seats. Knowing the uproar it would cause, she pushed the universal panic button and called the police and told them that a

black man had carjacked her car with her children still inside. Within minutes police were stopping every black man driving up or down interstate 95 which connects the northern states to the southern. After garnering sympathy from the public by going on television and shedding false tears she was finally forced to reveal her actions, even then, there were those who were sympathetic to plight. This is not an isolated case, a man in Boston shot and murdered his pregnant wife on the way to the hospital for fear that the extra financial burden a child would bring would cause him to prolong his life long dream of opening a restaurant. What was his explanation to the police? He stated that he and his wife were driving through the black neighborhood on their way to the hospital when two black men approached them at a stop light and shot his wife in an attempted robbery. These two cases are indications that many whites understand the unequal implementation of the laws, and that a get out of jail free card, at least for a while, is to say “a black man did it.” Luckily the truth was eventually uncovered in these two cases, however, this researcher shudders to think of the number of black men incarcerated for crimes which they did not commit.

As someone who has experience the wrath of the legal system, this researcher understands that the problem is real and not imagined. This researcher also understands that ones level of educational attainment does not provide refuge from the system. A joke that has been told many times and explains the issue in a succinct manner goes like this: what do you call a black doctor? A nigger.

Focusing on issues pertaining to the justice system is a way for this researcher to convey that attitudes and stereotypes that stunt our growth as a society also are reasons why true educational reform cannot take place in isolation. Ironically, those who support school vouchers are also often those who are against programs such as affirmative action, support a reduction in

social programs that may help those in those poor communities they want to help with vouchers, and support building more prisons, prisons that according to statistics will eventually hold the same people they are supposedly attempting to help, these contradictions keep reform stagnant. There are still issues of poverty, joblessness, racism etc. that fester in those poor communities, so it should come as no surprise that there are *poor* performing schools and *poor* achieving students in *poor* communities.

6.5.4. Black Cultural Identity and Education

You either slingin' crack rock
Or you got a wicked jump shot (Biggie Smalls, 1994)

Those lyrics professed by slain rapper Christopher Wallace better known as Biggie Smalls echoes the sentiment of many black youth who live in poor communities amidst desperation. Unable to envision options beyond their environments they often turn to selling drugs or excelling in athletics as ways of escaping their poverty ridden existence. Education is often an option preached to them by their parents; however, it is often a sermon that falls on deaf ears. The perception that selling drugs or excelling in athletics are the only ways out of these communities has given rise to an anti-intellectual mentality that defines high academic achievement a “white thing.”

6.5.4.1. The Burden of Acting White

In a study conducted by Fordham and Ogbu in 1986 the researchers examined longitudinally, students in a predominately black lower-income high school in Washington, DC. The Researchers concluded that many of these students were highly intelligent and capable of high academic production. However, the fear of being labeled “white” by their peers prevented them

from becoming high achieving students. Many chose instead to excel in athletics or become class clowns, traits that are more acceptable in those communities. In those communities being considered “smart” or a “bookworm” are viewed as weaknesses and leaves the students open to ridicule from their peers.

Children who grow up in cultures that view being accepted by ones peers as paramount to everything else, tend to be drawn to groups or activities that are not necessarily conducive for educational achievement. Fordham and Ogbu coin this phenomenon *fictive kinship*, whereby it conveys the idea of brotherhood and sisterhood of all black Americans. Some of the terms historically associated with this idea are “sister,” “soul brother,” “blood,” “folk,” “my people” (Fordham & Ogbu, 1986, p. 183). In their study the researchers also listed behaviors blacks students associated with “acting white” therefore unacceptable, the following are just a few: (1) speaking standard English;(2) listening to white music; (3) going to the opera or ballet; (4) spending a lot of time in the library studying; and (5) working hard to get good grades in school.

The irony of this ideology is that whites who harbor stereotypical racial attitudes towards blacks do so without differentiating one black person from another; however, in the black community you have to earn your “blackness” by adhering to the invisible and unwritten rules of what it does and does not mean to be black. Unfortunately many youth view being highly educated as not being the make-up of a “true” black person.

These attitudes are perpetuated and exacerbated by the images children in these communities view on television. Studies have shown that on average, black children watch more television than children of any other race. The most recent figures from Nielsen Media Research suggest that black families watch an average of 40% more TV than whites - turning to the tube in every segment of the weekly schedule more frequently than any other ethnic group. One can

partially explain these figures in terms of higher African-American rates of unemployment, providing more time available for viewing-especially during the day. Higher rates of poverty also play a role-since in every poor people of every race generally watch more TV than those in the middle class or above (Medved, 1999). The advent of cable television, with some homes having access to over 200 channels has exposed these children to images that confirm the “sell drugs or excel in athletics” ideology that runs rampant in those poor communities and instills false hopes in these children. Music Television (MTV) has programs that target the desires of the young; one such program is entitled “MTV Cribs.” This program invites the viewers into the homes of athletes, rappers and entertainers where they are shown all of luxury within which these performers live. Children watch these programs and see people who come from similar backgrounds and have had success in athletics, music etc. and believe they too can accomplish the same not realizing that the percentage of those living that lifestyle is minute. Black Entertainment Television (BET) has a similar program as Cribs entitled “How I’m Livin’.” Just as teaching only about MLK and Harriet Tubman exposes children to the extreme, so too do these types of shows. It is a feast or famine mentality that allows little or no room for anything in between, which is usually what can be acquired with a quality education.

6.5.4.2. Little Difference in Black Affluent Students

Granted, this researcher is a firm believer that the utilization of property taxes as a method of funding public school education renders most in the poor communities unable to compete with their wealthy counterparts. However, the need for cultural acceptance might be a problem that supersedes the need for more funding.

In Ogbu’s follow-up study entitled “Black American Students in an Affluent Suburb: A Study of Academic Disengagement” Ogbu concludes that even black students living in affluence

and attending an affluent school with white students still perform at a below average level. Ogbu studied students in the affluent Cleveland suburb of Shaker Heights. These students, he found, subscribed to those same ideologies adhered to by blacks in the poorer communities.

In some ways affluent black youths find themselves in a more challenging position due to the fact that they often do not fit with their white peers and are disconnected from their black communities, thus having to for a cultural identity which often results in the formation of a counter culture different from the communities in which they live. It has been the observation of this researcher that blacks who come from affluence, once in college become the most militant and anti white establishment. This is often done in an effort to mask their affluent underpinning while illuminating their “blackness.”

Attempts at education reform are not hopeless endeavors, however, regardless of what alternatives are proposed, those alternatives will always be hindered due to existing and interconnected issues that permeate our society. Thus, Education and Society are inextricably linked.

APPENDIX A

Oral Arguments from Zelman v. Simmons-Harris

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IN THE SUPREME COURT OF THE UNITED STATES - - - - -

- -X SUSAN TAVE ZELMAN, :

SUPERINTENDENT OF PUBLIC : INSTRUCTION OF OHIO, ET

AL., : Petitioners :

v. : No. 00-1751 DORIS SIMMONS-HARRIS, ET AL.; : HANNA PERKINS SCHOOL, ET AL.
:

Petitioners :

v. : No. 00-1777 DORIS SIMMONS-HARRIS, ET AL.; : and :
SENEL TAYLOR, ET AL., : Petitioners :

v. : No. 00-1779 DORIS SIMMONS-HARRIS, ET AL. : - - - - -
-X

Washington, D.C. Wednesday, February 20, 2002

The above-entitled matter came on for oral argument before the
Supreme Court of the United States at 10:08 a.m.

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APPEARANCES:

JUDITH L. FRENCH, ESQ., Assistant Attorney General, Columbus, Ohio; on behalf of the State Petitioners.

DAVID J. YOUNG, ESQ., Columbus, Ohio; on behalf of the Private Petitioners.

THEODORE B. OLSON, ESQ., Solicitor General, Department of Justice, Washington, D.C.; on behalf of the United States, as amicus curiae, supporting the Petitioners.

ROBERT H. CHANIN, ESQ., Washington, D.C., on behalf of the Respondents Simmons-Harris, et al.

MARVIN E. FRANKEL, ESQ., New York, New York; on behalf of the Respondents Gatton, et al.

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P R O C E E D I N G S

(10:08 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument

now in Number 00-1751, Susan Tave Zelman, Superintendent
of Public Instruction of Ohio v. Doris Simmons-Harris, and
two related cases.

Ms. French.

ORAL ARGUMENT OF JUDITH L. FRENCH

ON BEHALF OF THE STATE PETITIONERS

MS. FRENCH: Thank you, Mr. Chief Justice, and
may it please the Court:

In 1995, the Ohio General Assembly responded to
an unprecedented educational crisis by enacting the Ohio
Scholarship and Tutorial Program. Under this Court's
decisions, especially Mueller, Witters, and Zobrest, and
in light of this Court's teachings, most recently in
Agostini and Mitchell, the Ohio program is constitutional
because it offers a neutral program that offers true
private choice to parents.

First, the principle of neutrality. There are two
criteria that determine where the benefits will go under
the program. First is residence in a school district that
is or has been taken over by State control. Second is
family income. Neither of these criteria has anything to
do with religion, but even beyond these basic elements --

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QUESTION: Well, do you -- you don't take the
position that that guarantees constitutionality, do you?

MS. FRENCH: We do not, Your Honor.

QUESTION: Okay.

MS. FRENCH: We have a two-pronged approach.

QUESTION: You take it as a necessary condition,
but not a sufficient condition?

MS. FRENCH: We do, Your Honor. We offer both
neutrality and true private choice, but even beyond the

basic elements of neutrality, there are a number of provisions within this program that guarantee that it's open to all-comers, both in terms of students and schools. First, the program requires schools not to discriminate based on race, religion, or ethnic origin, that ensures that even a religious school may not discriminate in favor of students of their own religious faith.

QUESTION: And you think it would be unconstitutional if it didn't have that --

MS. FRENCH: Not necessarily, Your Honor, but it certainly goes to the neutrality of the program, but even beyond the --

QUESTION: Well, why does it matter? I mean, if they're proselytizing, doesn't it make good sense for them to admit anybody who may come along, and yet the

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proselytizing can't be established under the Establishment Clause?

MS. FRENCH: We, of course, Your Honor, do you

agree that they're proselytizing. Whatever proselytizing is happening in the religious schools is at the behest of the parents, not at the behest of the Government, and perhaps I should move to the second prong, then, and talk about --

QUESTION: Well -- go ahead.

MS. FRENCH: And talk about the true private

choice that is at issue here for the parents.

QUESTION: Well, but I take it that the first part of your argument as demonstrated is to try to show that there are certain indexes, indicia of neutrality.

MS. FRENCH: Correct.

QUESTION: And you just -- and you tick them off.

MS. FRENCH: Yes, Your Honor. Yes, that there

is the Nondiscrimination Clause, and secondly that there is a cap on the number of students that -- who are already in the program, and the limit on the number who can continue in the program. Only 50 percent of the scholarships awarded each year may be awarded to students

who are already in the program. That again assures that the program be open to all-comers, to those eligible in

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the Cleveland School District.

Thirdly --

QUESTION: What percentage of the students in the school system are -- get vouchers?

MS. FRENCH: Well, there are 57,000 students, elementary students in the Cleveland School District, Your Honor. About 4,000 of them get scholarships.

QUESTION: About how many thousand get scholarships, 2,000?

MS. FRENCH: In 1999 the number was 3,700. It's now about 3,4 --

QUESTION: So it's about 10 percent of the student body?

MS. FRENCH: Yes, Your Honor, a little less than

10 percent, but all the students in the Cleveland School District are eligible. They all receive information about the program, all are invited to attend, as long as the resident is in the school district, and then family income determines the amount of the scholarship that they receive.

The third and final prong of the neutrality here is the benefit itself. It is, of course, money. It is inherently neutral. There is nothing about that benefit that suggests any sort of reference to religion.

The second prong this Court has looked to is the

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true private choice available for receiving the benefits.

Here, Cleveland parents have a number of alternatives available to them. They can stay in the Cleveland Public Schools --

QUESTION: May I ask you a question about

private choice which is a very important part of the case? Supposing you had a situation with a small community that had one public school and one religious school, and they would pay for the voucher to go to the religious school if the family on its own private choice wanted the child to go to the religious school. Would that save the program in that case?

MS. FRENCH: I think it would, Your Honor --

QUESTION: Yes.

MS. FRENCH: -- given -- if -- of course --

QUESTION: So in this case it's irrelevant,

really, that there are four or five choices available, as long as there's a free choice either to go to the public school or to go to the religious school?

MS. FRENCH: Well, we have a number of choices within the traditional public schools, Your Honor.

QUESTION: But they're not -- it's not necessary to your argument is what I'm trying to --

MS. FRENCH: They are not necessary, Your Honor.

However, this Court has viewed other programs in view of

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the entire -- viewed as a whole of the program. For instance, in Rosenberger, Justice Powell's decision in Witters --

QUESTION: In Witters, there's such a dramatic difference between a choice from the great universe of colleges and universities, what a particular student will choose, and here, the difference -- you just explained to Justice Stevens that maybe it doesn't matter. The difference is that in fact there is only one alternative, if you don't take account of the community schools, the

suburban schools say no, they don't want any part of this, private schools can't make it on that low tuition, so in fact, isn't it true that something like 99 percent of the

students who were receiving these vouchers are in religious schools?

MS. FRENCH: That's currently true, Your Honor.

That number has fluctuated over the years of the program.

It's fluctuated a great deal from 1995 to this year.

That's true.

QUESTION: May I ask why we don't take account of the availability of the community schools in analyzing this program?

MS. FRENCH: We would like the Court to take very much account of the community schools, Your Honor.

QUESTION: The court below didn't do that.

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MS. FRENCH: That's correct, Your Honor.

QUESTION: Is that an option, in fact, to the parents?

MS. FRENCH: Very much so, Your Honor.

QUESTION: And the tuition assistance would be provided if the selection were for a community school?

MS. FRENCH: There would be no tuition assistance, Your Honor, only because they are public schools, so there's no need for a scholarship there. Parents can choose a traditional public school, they can choose a tutoring grant if they're in a public school, they can choose a magnet school, they can choose a community school, or --

QUESTION: And if a community school is

selected, no additional money then is provided, as would be provided if the religious school were selected?

MS. FRENCH: That's true, Your Honor. If the parent chooses a community school, because it's considered a public school, there is no money exchanged. It's only --

QUESTION: Have some of the private nonsectarian schools in the city become community schools?

MS. FRENCH: They have, Your Honor. There were two schools in particular who in 1997 chose to be community schools rather than be in the scholarship

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program just after the district court's injunction.

QUESTION: Because they get more money. Because they get more money.

MS. FRENCH: In part because they get more money, and in part because of the uncertainty of the litigation. There certainly has been a chilling effect as a result of the litigation that's been going on in some form since 1995.

QUESTION: Are slots available in the community schools for these children that we're talking about?

MS. FRENCH: Yes, Your Honor, there are spots available.

QUESTION: There are vacancies?

MS. FRENCH: Available in both community schools --

QUESTION: Can you get a tutoring grant if you go to a community school?

MS. FRENCH: Yes, Your Honor, you can. As long as you're in a public school, and that would include community or magnet schools, you're eligible for a tutoring grant.

QUESTION: Is there anything in the record about the quality of these community schools? There was one brief that said they were too new, too few, too unregulated, too untested to tell. Was there any evidence

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of what these schools are, when -- there is evidence that the public school system is deplorable. What evidence is there of these community schools, of whether they are a better choice to educate the child than the regular public schools?

MS. FRENCH: I would direct the Court to two places in the record, particularly the joint appendix. One is the affidavit of Mr. Puckett, which is at 157a, which simply describes what a community school is, the number of schools that are available, the number of spaces that are available. There is also the affidavit of Paul Peterson, at approximately 98 of the joint appendix, a very lengthy affidavit that describes the different kinds of options available and what their benefits are. The benefit for a community school is, it is considered a public school. There is some amount of

accountability that might not be there with respect to a private school, but for a parent who's looking for an alternative to the public schools, that might be a good option for them.

QUESTION: Is there a description of the precise community schools that are participating in the program, and the quality of education in those schools?

MS. FRENCH: There is to the first part of your question, Your Honor, and that's in Mr. Puckett's

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affidavit, of just describing what the schools are, why we have them in Ohio. It's a State-wide program. It's not just for Cleveland. It's actually a State-wide program that was implemented in 1997, and was specifically complemented by the district court in a desegregation order relating to Cleveland as an option for Cleveland parents.

QUESTION: Is there information in the record available about the quality of the religiously affiliated schools?

MS. FRENCH: There are a number of studies that have been done both in Cleveland and with respect to other scholarship programs, Your Honor. I would point specifically to, again to Mr. Peterson's affidavit at 105 to 107 in the joint appendix.

QUESTION: I mean about these particular schools in the program.

MS. FRENCH: Yes, Your Honor, in general the scholarship program, not just specifically the religious schools, but the voucher, or the scholarship program as a whole, as to whether the students are showing academic achievement or, you know, significant results beyond that. Yes, there are, but not specific, again, to the religious schools.

QUESTION: Before we leave the community

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schools, when the State calculates the funding that goes to the community schools, it takes account of the number of students that go to the community schools, I take it?

MS. FRENCH: Oh, yes, Your Honor.

QUESTION: And there's a figure of something like \$5,000 --

MS. FRENCH: Yes.

QUESTION: -- per student. It's not quite that.

MS. FRENCH: Right. \$4,500 to \$5,000. It's calculated on the basis of the normal State aid number that a public school would receive for educating a child and, again, it's a per capita kind of number.

QUESTION: Does the same amount of money per capita go to a community school as would go to the regular public school?

MS. FRENCH: Yes, Your Honor, approximately. There's a slightly different amount, but it's approximately the same as the State aid number.

QUESTION: May I ask you if this Court would have to overrule the Nyquist case to support your position? It certainly points the other way, doesn't it?

MS. FRENCH: It does point the other way, Your Honor, but we think that there are a number of distinctions which this Court has drawn between the programs at issue, say, in Mueller and Witters that

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distinguish it from the New York program at issue in Nyquist.

The New York program took a class of beneficiaries, that is, the students already within the private schools, and offered them a benefit. The Ohio program approaches the problem very differently. It approaches the problem from all of the schoolchildren in Ohio, or in the Cleveland Public School System, and offers them a benefit which --

QUESTION: How does that change the legal concern about the Establishment Clause?

MS. FRENCH: Well, this Court has pointed to specifically footnote 38, where the Court reserved judgment in the Nyquist decision for programs that offered a benefit, the specific example was scholarships there, and offered to a broad base of beneficiaries without regard to the nonpublic or public or nonsectarian, sectarian nature of the institutions benefited, which is precisely what is happening here.

QUESTION: Well, but doesn't that simply then go

back to this neutrality point, and you're saying because it's neutral, in the sense that it's offered in an even-handed way, query -- your friends on the other side dispute that, but just accepting that categorization, because it's neutral in that sense, that's a distinction

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which ought to make a difference in the result.

But as you agreed earlier, the neutrality that you're talking about is a necessary condition, but it's not a sufficient condition of constitutionality, and at the end of the day, I think what's bothering me about Nyquist and, I suspect, Justice O'Connor, too, is that Nyquist depended not merely on a question of neutrality, but on the effect, and at the end of the day, the effect is a massive amount of money into religious schools in Nyquist, a massive amount of money into religious schools here. That, I think, is the sticking point here.

MS. FRENCH: We, of course, disagree, Your

Honor, that there is a massive amount going to religious schools as a result of something that the Government is doing. It's true, it's very true --

QUESTION: Well, your adding a term as a result

of what the Government is doing, which is a separate issue as to what the significance is of the private choice, but the effect that Nyquist was concerned with, and the effect that I think has been shown here, is a substantial amount

of money, aid to the schools themselves, in relation to the amount of money spent on the program, and in those respects the two are identical.

MS. FRENCH: Well, in that respect, Your Honor,

there's no question that there is money that is ending up

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in religious institutions, because that's what the parents have chosen, but that nondiscrimination provision that I spoke of earlier did not exist in Nyquist. The New York schools at issue in Nyquist could discriminate based on religion, and that, of course, means that the program, the New York program was not open to all-comers.

QUESTION: Well, Miller also made the point, I think, that where the parents do the choosing, as they did not do in Nyquist, it was a different ball game.

MS. FRENCH: Absolutely, Your Honor. In

Mueller, of course, the percentage of religious schools or the number of parents receiving benefit because they paid tuition to religious schools was 96 percent, and this Court has been very clear that where there is private choice, that percentage that changes from year to year is simply not relevant. The wisdom of that rule --

QUESTION: What is the closest of our cases, do you think, to the Ohio program? Is it Witters?

MS. FRENCH: I would suggest Witters, Your

Honor, because it's a financial aid going to, there it was a college student, but an adult, to make a decision about

where to send the money. Here, it's an adult parent making a decision about where to send the money on behalf of the child.

QUESTION: What are you say --

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QUESTION: Here, the difference would be, however, that according to respondents the choices are much more limited here than in Witters.

MS. FRENCH: That's true, Your Honor, but in Mueller the Court did address that concern, as Justice Powell said in his concurrence in Witters, that it didn't

matter that there was only one person, Mr. Witters, using the money for seminary, for the Inland Empire School of the Bible, nor did it matter in Zobrest that there was only one child or one parent, set of parents for a child looking for an interpretive or religious school. Mueller teachers that the percentage that changes from year to year is simply not relevant.

QUESTION: I suppose part of the design of the

program is to have a structure which will encourage over the long term more and different kinds of school choices, including, of course, the community schools.

MS. FRENCH: Absolutely, Your Honor.

QUESTION: May I ask you about your suggestion that in Nyquist, it's a difference when the parents do the choosing, but who chose where the children would go to school in Nyquist? Did the parents make the decision?

MS. FRENCH: The parents, of course, did, Your Honor.

QUESTION: So it's the same case.

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MS. FRENCH: I disagree, Your Honor. I think

it's different in that we fall under the question that was reserved by the Court that there, because they didn't have the nondiscrimination provision, because of the purpose behind that Nyquist program was specifically to aid the private schools, that's very different from the Ohio program that's at issue here.

Your Honor, I'd like to reserve my remaining time.

QUESTION: Very well, Ms. French.

Mr. Young, we'll hear from you.

ORAL ARGUMENT OF DAVID L. YOUNG

ON BEHALF OF THE PRIVATE PETITIONERS

MR. YOUNG: Mr. Chief Justice, may it please the Court:

I'd like to start out by addressing the questions concerning Nyquist and the basis for distinction. I would refer specifically to 463 U.S. page 398, and there this Court, when it distinguished -- in Mueller, when it distinguished Nyquist said, in this respect, as well as others, this case is vitally different from the scheme struck down in Nyquist. There, public assistance amounting to tuition grants was provided only

to parents of children in nonpublic schools -- pardon
me -- in nonpublic schools. This fact had considerable

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bearing on our decision striking down the New York statute
at issue, and then it goes on. It talks about Allen and
Everson.

So this Court made it very clear in Mueller that
there was an important distinction between that and
Nyquist.

QUESTION: Does the money went to children --
the money went to families with children in nonpublic
schools, but that's exactly what's happening here.

MR. YOUNG: Your Honor, if --

QUESTION: Aren't the vouchers just for people
in the nonpublic schools?

MR. YOUNG: Your Honor, it isn't exactly the
same at all. In Nyquist --

QUESTION: Well, am I right that the vouchers
are just for people in nonpublic schools?

MR. YOUNG: In this case, no, Your Honor. We
have tutorial vouchers for people in public schools, and
tutorial vouchers for magnet schools and community
schools.

QUESTION: Speaking of the tutorial vouchers,
why is the number of tutorial vouchers limited to the same
number of vouchers paid to the private schools?

MR. YOUNG: Well, I would -- Your Honor, I would

suspect the answer to that is to try to provide some form

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of equality and to make sure that there was no Government
endorsement of one choice or another, so the equality of
having the same number of grants for tutoring being the
same as the same number going for scholarships.

QUESTION: Of course, the amount of money is
vastly different, isn't it, because the -- I forget the
figures exactly, but isn't the limit on the tutorial
something like \$350 a student, as opposed to the \$2,000-
some-odd limit on the tuition vouchers?

MR. YOUNG: Your Honor, there is a difference,
but there is less a difference than the difference between
the public school and the nonpublic school deductions
taken in Mueller.

QUESTION: Well, you wouldn't limit it to the
vouchers anyway, would you? I mean, you would think that
we'd have to look at the money that goes to the community
schools --

MR. YOUNG: That is --

QUESTION: -- which does not go via vouchers, it
goes directly to the schools, and it's a greater amount of
money that goes to the private schools, isn't it?

MR. YOUNG: Your Honor, I think the fact --

there is no question that when this program was initially
implemented, every single secular school in the district
signed up to participate. Additionally, two brand-new

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secular schools were established by reason of this program, the two HOPE schools. They remained in the program until the Community School Act was adopted. That, indeed, doubled the amount of money available to the families. In other words, the maximum scholarship grant, \$2,250, and -- but if those same children elected to go to a community school, the State would pay for each child at least double the amount that it would pay if they selected the scholarship --

QUESTION: So what is actually involved? I'd

like to hear what you say about the endorsement point that Justice Souter initially raised, and my thought is, I'll assume no discrimination, and I'll assume it's a fine program, but imagine you came from Europe or Africa, or a different place, and said, what do they do in the United States by way of educating their children, and you're told, well, \$60 billion a year, \$40 billion, or some very large amount of money is being spent by the Government to give children K through 12 what is basically a religiously oriented education taught by a parochial school. Wouldn't you then say, in the United States of America, like France or like England, the Government of the United States endorses a religious education for young children by putting money up, massive amounts?

Now, I'm putting it that way to get your

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response, and that's the problem that bothers me most about the word, establishment.

MR. YOUNG: Thank you, Your Honor. There is no governmental endorsement of religion in this program, and there are several reasons why there isn't. The first, Your Honor, reason would be the amount of money that is

spent, first of all, on a public school education, which is approximately \$8,000, the amount of money paid for a community secular education, \$4,500, and the maximum amount provided to a family that selects a nonpublic school, \$2,250.

So if -- the first thing you look at is the amount of

money that is spent depending on the nature of choice made by the child, and the preference, the -- in that instance is clearly a preference for the secular schools.

Secondly, Your Honor, if you look at the history, as well as the context of this particular program, this program was adopted because of one of the most serious educational, public school crises in the United States, and I think anyone trying to determine what was the Government doing, was it endorsing religion, no. The Government was trying to permit low income educationally disadvantaged children who were trapped in a failing system to exercise an alternate choice.

So I think any person -- the Cleveland district

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has been in litigation, Your Honor, for some 20-plus years, in Federal court, because of the difficulties that have been encountered in the public school system. I think anyone looking at this legislation as it was adopted and as it was implemented would conclude that there is certainly no Government endorsement of religion.

The Government was trying to resolve a problem of these disadvantaged low income children, and giving them alternate choices, which parents ought to have in any event so that's certainly another reason. When no money flows, not a dollar flows to a religiously sponsored school under this program, but for the independent, private choice of a parent. The State does not direct a dollar to a religiously sponsored school. No --

QUESTION: There's an irony, I -- are you -- is that --

MR. YOUNG: I could go on, Your Honor, but --

QUESTION: No, if -- I mean, the irony is that

the better the parochial school, in a sense, the less the freedom of choice. I mean, I -- if it were my children and I saw these comparisons, I'd say, send them to the parochial school. Would you like them to learn that religion, I'd say, frankly not, that's not my religion,

but it's very important my child get the best education, and therefore I would be feeling I had to send them there,

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if that's what I want.

MR. YOUNG: Your Honor --

QUESTION: I mean, no one's complaining about

the quality of the program. It's this concern about the
endorsement, and not even that that's what they intend,
but that that's the effect.

MR. YOUNG: For reasons I've already noted, Your

Honor, I believe there is no governmental endorsement, and
you have to realize that the overwhelming majority of the
eligible children elected to remain in the public school,
and incidentally there are --

QUESTION: I assume Justice Breyer could send
his child to one of the community schools, which is
entirely nonsectarian, under this program, right?

MR. YOUNG: Your Honor, that's another
alternative, and I think we --

QUESTION: Which schools would get more money
than the sectarian schools anyway.

MR. YOUNG: Your Honor, I see that as another
reason why no one could say there's a reasonable message
of governmental endorsement in this case.

QUESTION: And you agree that the Sixth Circuit
erred. Was it legal error? The Sixth Circuit said,
we're not going to take account of the community schools

because that's a whole other program. This case was about

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the voucher program. In the district court, what development was there about the community schools?

MR. YOUNG: Your Honor, the same approach was taken by Judge Oliver, but I don't feel that the Sixth Circuit really understood how the community school program

worked, or how one could use the tutorial vouchers to help the children that elected to go to the community schools.

QUESTION: Well, there's really no record on the community schools, you're saying, because you weren't permitted to make a record?

MR. YOUNG: Your Honor, there is an extensive record in affidavits in terms of the creation of the community schools, the transfer of the two secular scholarship schools to community school status. The children who were enrolled as scholarship pupils in the scholarship secular schools just transferred when those schools became community schools, so this legislation clearly enabled the same children, the same low income,

educationally disadvantaged children to elect a community school, so there is record evidence to that extent, Your Honor. Why the Sixth Circuit refused to consider the community schools is beyond me.

The -- I think in order to fully understand the choice issue, Your Honors, I think you have to really look into more detail into the tutorial grant program. We

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haven't addressed at all the subject of the --

QUESTION: Do we have to link the two programs

together to resolve the case --

MR. YOUNG: Your Honor, I believe not.

QUESTION: -- the tutorial program and the money

paid to the parents and endorsed over to the schools in

the case of choice? Do we have to consider both together?

MR. YOUNG: Your Honor, I would consider them

together, but it was -- it's the, all of the indicia of

choice, not just the endorsement.

QUESTION: Thank you, Mr. Young.

General Olson, we'll hear from you.

ORAL ARGUMENT OF THEODORE B. OLSON

ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,

SUPPORTING THE PETITIONERS

GENERAL OLSON: Mr. Chief Justice, and may it

please the Court:

I'd like to follow up on the point that was just

being made. This Court has taught repeatedly that the

history, the context, and the purpose for programs like

this are a very, very important part of the determination

of what the endorsement test or the effects test would be.

There is no question that the purpose that inspired, and

the history and the context that inspired the Ohio pilot

program could not have been more compelling and more

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focused on the needs of children.

QUESTION: No, but I would think you would say

the program was still constitutional, even if it was just
conceived in the healthiest school system in the world.

GENERAL OLSON: Well, perhaps, Justice Stevens,

I might, but this -- as this Court has taught repeatedly,
the background history and the context informs the
decision which this Court has endorsed with respect to
what the effects or endorsement test would be, measured by
what a reasonable, objective observer would believe the
State or the Government was doing, is the Government
endorsing religion, and that has to be considered in the
context of what was going on.

Here we have a manifestly failing system in
which -- no one disagrees with that. Efforts had been
made, and a Federal court had decided the system had to be
taken over.

QUESTION: The thing that puzzles me about that
argument is, why did they make this wonderful solution
available to such a small percentage of the student body?

GENERAL OLSON: I would invite the Court's
attention to page 41 of the Taylor petitioner's brief,
which contains a chart which shows the various choices
which were made available to the students as a result of
the composite, the context of the program that we're

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considering.

It shows -- that chart shows, along with the other statistics in the brief, that there are 57,000 students in the school system. 16,000 went to the magnet schools, 2,000-and-some are going into the community schools -- these are present facts -- 3,700 accepted scholarships to use in religiously affiliated schools, 1,400 accepted the tutorial program, and another 100-and-so took scholarships with respect to nonreligiously affiliated schools.1 There were more nonreligiously affiliated schools available, but two of those, the major ones, decided to become community schools.

I would like to invite the Court's attention --

QUESTION: Mr. Olson, I didn't quite understand Justice Stevens' question. You acknowledge that it was made available only to a small number of the students?

GENERAL OLSON: No. I -- what I meant --

QUESTION: I thought the program was available to all the students.

GENERAL OLSON: I stand corrected. What I mean to say, the choices were -- there was a broad range of choices, but the program itself was made available to all of the students.

QUESTION: Any student could have gone into a -- one of the community schools, or to one of the private

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schools, isn't that right?

GENERAL OLSON: That's correct, and the record is quite clear on this, also. Any student who wanted to go to a nonreligiously affiliated private school, no student who wanted to do that was declined the opportunity to do that, so your child, Justice Breyer, could have gone to a nonreligiously affiliated school.

QUESTION: Ah, but there doesn't seem to be a record on this very clear, that my impression was really the parochial schools are an awful lot better.

GENERAL OLSON: Well, I think that's an impression that you may have, but --

QUESTION: So are we supposed to send the case back? Does it turn on that?

GENERAL OLSON: No, no. There's no record evidence to support that. Remember, this is a pilot program, an experimental program. The best evidence may

be found in the affidavit or declaration of Howard Fuller, who was the former superintendent of the Milwaukee system, who watched the Milwaukee system develop and get put into practice. That's at the joint appendix pages 228 to 236.

During the period of time that the Milwaukee program has been in existence, the number of private, nonreligiously affiliated schools have increased from 7 to 30, the number of students in those private,

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nonreligiously affiliated schools has increased tenfold,
from 337 to 3,025.

He also points out that the existence of the
alternative has improved the public school systems as
well. Parents are involved in the choice of the
educational opportunities for their children. He
demonstrates they get more involved in the school system.

QUESTION: General Olson, if a private
individual challenges a State law as unconstitutional, the
burden of proof is on that individual, isn't it, to show
the necessary facts to establish unconstitutionality?

GENERAL OLSON: Yes, Mr. Chief Justice,
absolutely, but the record here goes even further than
that, because the record that is available shows these
many alternatives. It shows that when the program has
been allowed to exist free of constitutional objection, it
has shown improvement at the student level, and
improvement at the public school level as well as the
private school level.

Let me emphasize that in response to the
question Justice Souter raised at the very beginning of
the argument, it isn't just neutrality, but there is
clearly neutral criteria here for opting in or out of the
program.

Another factor that the Court has thought was

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important in the past was, the parents have an option not to participate in the program, and that's a part of the optional choices that are available.

QUESTION: I want to ask how the courts faced

with this challenge have to view the case. Must they view it as having the whole range of options available, public school, magnet, community, and religious schools?

GENERAL OLSON: Yes, Justice O'Connor, I believe that is the correct context.

QUESTION: And why did the court below not do that?

GENERAL OLSON: I think the court made a legal error in failing to do so, because this Court has taught over and over again that the context is extremely important --

QUESTION: Now, is it limited only to low income children, or does it just -- does that affect the amount of money to be given?

GENERAL OLSON: It affects both the amount of money to be given and the preference. To the extent that there are any limitations on the program at all, the priorities are given to low income students on the theory --

QUESTION: There's only a finite amount of money available.

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GENERAL OLSON: Well, that's always the case, of
course --

QUESTION: Right.

GENERAL OLSON: -- in any Government program,
but the priorities are given to the low income people.
The evidence that's in the record demonstrates that the
vast majority of these scholarships are used by people at
the poverty level. The rationale for that, of course, was
that people in the higher income level can afford the
alternative.

QUESTION: Now, there was no attempt in the
program to make sure that the money that ends up in the
parochial schools is not used for religious training, or
teaching. There have been other Federal programs, for
example, where there have been such limitations on usage.
There's none of that here.

GENERAL OLSON: That's correct, Justice
O'Connor, but the Court has made the point in connection
with those types of programs that there's a significant
difference between a direct aid program, where funds are
going from the Government to the school, as opposed to the
private, genuinely independent, purely private choice
programs where the choices are being made by individual
parents, and being made by individual parents motivated by
the best education for their children.

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So to go back to the reasonable observer test

with respect to endorsement, would a reasonable observer believe that the Government's putting its thumb in favor of religion on the scales here under all of these circumstances, the wide range of choices --

QUESTION: May I ask on that very question, do you think these alternatives are essential from a constitutional point of view, or would you make the same argument if there were merely the one choice, religious school or the private school?

GENERAL OLSON: I think applying the standards this Court has adopted, that if the criteria are neutral -- and I'm answering -- I'm saying yes.

QUESTION: The criteria is neutral. You can either go to the public school, or you can go to the parochial school, and if you go to the parochial school, we'll pay the tuition.

GENERAL OLSON: Which we're also offer -- yes.
Yes.

QUESTION: I understand there's a lot more here, but what would you do with that case?

GENERAL OLSON: I think if there was a purely neutral criteria in terms of eligibility for the program, and it's a purely private choice, that the -- because this Court has emphasized that we're looking at whether the

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Government's being -- going to be perceived by a reasonable observer as endorsing religion, if it is a purely private choice program, the teaching of this Court is, it's not unlike a Government check that goes to an individual who then spends it, all of it on his church.

QUESTION: My hypothesis is, it's purely private. Either I'll go to the parochial school or the public school, and the Government doesn't care which one.

GENERAL OLSON: It's purely neutral --

QUESTION: And you would say that's perfectly all right.

GENERAL OLSON: Well, I would probably be making that argument in another case. I don't have to make that argument here, because we have all of these other alternatives, including private schools.

QUESTION: But I'm trying to decide whether those alternatives are constitutionally necessary, or just make your argument stronger.

GENERAL OLSON: Well, I think that what this

Court has taught, that because these establishment Clause cases are so difficult, that they are made in the context of the particular facts of the case, and that the facts and circumstances in history illuminate what the Government was involved in, because we're not talking about --

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QUESTION: Why don't we -- why don't you --

well, I know why you don't stress, but why shouldn't we stress as one of those facts the bottom line of 96 percent of the kids taking the tuition aid, or taking it in parochial schools?

GENERAL OLSON: Well --

QUESTION: And doesn't that suggest that there

is perhaps something specious about this notion that it's a matter of wide-open choice here? In practical terms, the money is going to end up where it ends up, and the 96-percent figure is pretty persuasive.

GENERAL OLSON: That was the same factor in the Mueller case, and one of the other cases that has been cited, the Court said that is not of constitutional significance. We're not going to --

QUESTION: Oh, I'm asking you a question about

practical significance, and why do we eliminate that fact from our judgment about what in the real world seems to be going on?

GENERAL OLSON: Because those choices this Court has said are the result of purely private choices, and that that will not be associated by a reasonable observer with a governmental decision.

QUESTION: Thank you, General Olson.

Mr. Chanin, we'll hear from you.

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ORAL ARGUMENT OF ROBERT H. CHANIN

ON BEHALF OF THE RESPONDENTS SIMMONS-HARRIS, ET AL.

MR. CHANIN: Mr. Chief Justice, and may it
please the Court:

Under the Cleveland voucher program, millions of
dollars of unrestricted public funds are transferred each
year from the State Treasury into the general coffers of
sectarian private schools and the money is used by those
schools to provide an educational program in which the
sectarian and the secular are interwoven. It is a given
that, if those funds are properly attributable to the
State, the program violates the Establishment Clause.
We submit that the answer to that attribution
question is yes, and it is yes because, regardless of the
decision that individual parents may make, it is
inevitable, it is a mathematical certainty that almost all
of the students will end up going to religious schools
that provide a religious education --

QUESTION: Well, Mr. Chanin, wait just a minute.

A couple of things. Do we not have to look at all of the
choices open to the students, the community schools, the
magnet schools, et cetera? How is it that we can look
only at the ones looking to the religious schools?

MR. CHANIN: The limitation to looking at the
voucher program as a freestanding program is consistent

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both with the precedents of this Court and with absolute logic, Your Honor.

QUESTION: I don't understand either point, to tell you the truth. I mean, if you want to look at what the parents' choices are, do you not have to look in reality at the whole program, then it isn't a 96-percent thing?

MR. CHANIN: Your Honor, this Court has always been program-specific in its financial aid cases. In Nyquist, the Court looked at three separate programs under the one statute, viewed them all in independent terms, and viewed them all independently of whatever else was going on in the New York City Public Schools and New York State.

QUESTION: But I'm not sure that's proper. That's what I'm asking you. Why should we not look at all of the options open to the parents in having their children educated?

MR. CHANIN: Because what that does, Your Honor, is, it mixes together programs that are quite qualitatively different in both function and purpose. The magnet schools, the charter schools, the tutorial program, those are all ways in which the State is attempting to discharge its basic legal obligation to provide a public education for all of its students.

QUESTION: But the question is whether or not --

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MR. CHANIN: All of the parents are entitled --

QUESTION: The question is whether or not there is neutrality in this program, and it seems to me that if you ask us to put on blinders, and not inquire as to what's really happening in Cincinnati, what really was the reason for this, what all of the choices are, that you're asking us to make a decision based on an a fictional premise.

MR. CHANIN: Your Honor, I think we're doing precisely the reverse. We are asking you to look at the reality. What the State of Ohio has set up here --

QUESTION: You're asking us to look at part of a reality.

MR. CHANIN: No, Your Honor. We're asking you to look at a special benefit that the State of Ohio is making available to a selected group of parents over and above the benefit that they have, along with all other parents, to send their children to a public school. That benefit is a qualitatively different benefit to take my child out of a public school and put my child into a private school and be educated with public money.

QUESTION: You don't have any problem with that. You say it would be perfectly okay if it went to a private school. It's only the portion of it that goes to a private school that is religiously affiliated that you

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object to, isn't that right?

MR. CHANIN: No. What I am saying --

QUESTION: Oh, this money could not even go to
nonsectarian private schools?

MR. CHANIN: Pardon me, Your Honor?

QUESTION: This money could not, in your view,
even go to nonsectarian private schools?

MR. CHANIN: Yes, it could, Your Honor.

QUESTION: It could, and that would be a
rational way for the State to provide for the education of
children --

MR. CHANIN: It would be a constitutional right.

QUESTION: -- some in publicly run schools and
some in private schools, but if any of those private
schools is a religiously affiliated school, that is a no-
no.

MR. CHANIN: No.

QUESTION: -- and that, in your view, is
neutrality?

MR. CHANIN: No, Your Honor, that is not my
position. We are not saying, if any of those schools are
sectarian it is a no-no, or the program fails. We are
saying, if you take a program which is designed to give
parents the option to go out of the public schools and
educate their children in a private school, and then you

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say to 99 out of 100 of those parents, if you choose that option, you must send your child to get a religious education, that is not --

QUESTION: Well, the percentage in Mueller was 96 percent.

MR. CHANIN: I believe, Your Honor, that this Court, this case is not controlled by Mueller, for the very same reason that Mueller was not controlled by Nyquist. The Court distinguished a Nyquist-type program in Mueller on three grounds, all of which are equally applicable here. The Court --

QUESTION: The State does not say here, as you put it, that you must go to these religiously affiliated schools. What you're saying is, they happen to be the schools that are currently up and running. In fact, originally in this system it wasn't -- what is it, 96 percent you say? Originally it was something much lower,

something like 62 percent, except that two of the schools, two of the largest nonsectarian private schools, decided to be come community schools, so originally it was a much different percentage. Are we supposed to examine this program year by year to see what the percentage is?

MR. CHANIN: No, Your Honor. What we would like

the Court to do is take the language of this program and look at it, not simply on its face, but in the empirical

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context in which it will operate. Let me give you the percentages, if I may, just to track what you have done.

This started out in 1996 with 80 percent of the schools being sectarian and 80 percent of the students going to those schools. By 1999, 2000, the universe had become even more skewed toward the religious. It was 82 percent of the schools and 96 percent of the students.

QUESTION: But isn't that because some of the private schools had become community schools, and is it not true that parents can choose to have their children educated in a community school and, if they do, that school gets more money from the State than if they had chosen the religious school? If anything, it's skewed against the religious schools --

MR. CHANIN: Your Honor --

QUESTION: -- in terms of public support.

MR. CHANIN: I think there are two parts to your question, if I may take them in sequence. The first is, why is the universe moving in the direction it is, and just, if I may, to complete the point, we now have this year 99.4 percent of the students in that program going to religious schools.

QUESTION: So far, you're doing a very good job of not answering Justice O'Connor's question.

(Laughter.)

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MR. CHANIN: Well, the answer to it is this,
Justice Kennedy. From our perspective, it is not
determinative why the universe is the way it is. From the
point of view of the --

QUESTION: Well, but now, wait a minute. Why do

you not put the community schools and the magnet schools
in the universe of choices? That's the problem I'm having
with your argument. You say the figures are skewed, but
they're skewed only because you will not look at those
choices. Why?

MR. CHANIN: We do not look at them for two
reasons, Your Honor. One is that the Court in Nyquist
explained why it did not go beyond the program itself. It
said this. If you extend the -- if you look at the
choices that parents have to go to public schools as well
as the vouchers in the private schools, you allow, through
the tuition grant program, to do precisely what the
Establishment Clause prohibits, which is to use tuition
grants to pay totally for private, sectarian religious
education, the Court said. It's a back-door approach to
do precisely what the Establishment Clause prohibits.

Secondly, people talked a moment ago about

perception, and I think they're completely mistaken. This
is the perception. The reasonable observer does not look
at public education and the multiple, changing, various

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programs that are offered. The person looks at this. The State of Ohio has set up a special, well-publicized program which allows a certain number of students to escape from a troubled school district, and appropriates a pot of money into that program, and what the reasonable observer sees is, that program and that pot of money ends up 99.4 percent giving children a religious education.

QUESTION: Mr. Chanin, that's only true if you say the person is reasonable in not looking at all the choices, which include community schools, certainly.

MR. CHANIN: Your Honor --

QUESTION: And probably magnet --

MR. CHANIN: Your Honor, if it extends that way, there is no meaning any more to the concept of genuinely independent and private choice. We don't need magnet schools. We don't need community schools. We should just say, you people have 57,000 options. You can stay in the Cleveland public schools, or you can leave that school district, take public money, and go get a religious education. The magnet schools, the community schools, they're not unique. They're part of the way in which a State provides a public education. There are small classes and large classes. There's distance education, and face-to-face education. Magnet schools have been around for 50 years.

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QUESTION: But suddenly it changes, and it's
not education any more if you're getting it in a religious
school. Why is that?

MR. CHANIN: We're not saying it's not --

QUESTION: Unless there's an endorsement of
religion involved here, I don't see why the fact that some
of the money, even most of the money goes to religious
schools makes any difference.

MR. CHANIN: Well, because you have a basic
proposition that we build our case on, which the Court has
adopted, and it is this. If public money that is
reasonably attributable to the State is used to pay for a
religious education, it violates the Constitution. The

only way in which it's not attributable to the State is if
it doesn't go there by virtue of a State action or a State
decision, but the circuit is broken, and the circuit is

broken because in between, standing between the State and
standing between the schools, is an independent party with
decisionmaking to divert it away.

There is no intervening party with

decisionmaking here. The parents play a ritualistic role
in the transmission process, and if I am a parent, and I
am holding a voucher in my hand, I can say, where can I
use it, and 99 of my 100 choices is, send my child to a
religious school.

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QUESTION: Well, suppose it weren't that number.

I mean, our decision, I take it, would have to govern lots of programs in lots of school districts, and suppose that a particular program in a particular school district was set up for the best possible reason, educate the children, and there's no other way, and suppose, too, that you would have very, very good parochial schools, and also some very, very good private schools, and let's suppose the numbers were several hundred million dollars, and so parents getting the money, about half of them sent them to parochial schools and about half of them sent them to private schools. Now, suddenly, does the constitutional balance change?

MR. CHANIN: Not in my mind, Your Honor.

QUESTION: And so all this 99 percent doesn't make that much difference. Why not?

MR. CHANIN: It -- I focus on it because it makes it clear to the Court, I hope, that this isn't even a close-to-the-line case. This is so far to the polar end of the continuum that even if the Court may, in particular cases, have to make judgments on the specific facts, this is not one of those cases.

QUESTION: All right, so what is your response if it's 50-50, and you have hundreds of millions of dollars, and --

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MR. CHANIN: My response is --

QUESTION: -- what they're saying, remember, is
private --

MR. CHANIN: My response is it's
unconstitutional.

QUESTION: Because?

QUESTION: Your response --

MR. CHANIN: Because of the criteria that this

Court used in Witters. What the Court used in Witters, it
didn't just say the program is constitutional in Witters.

It told us why it was constitutional. It said, it's
constitutional because the aid recipients have generally
independent and private choice, and then the Court went on
to say what that meant.

It said, Witters could choose from a huge
variety of options, most of which were secular. It said
that only a -- an insignificant portion of the total
program money will end up going to sectarian schools.

Those were the criteria.

It seems to me there may be a case, a different
case, in which the Court will have to determine what do
the words, substantial portion, significant amount, huge
array of choices mean, but the Court does that all the
time. It's the normal line-drawing.

QUESTION: No, but let me sure I understand --

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MR. CHANIN: This is not a line-drawing case.

QUESTION: Let me just be sure I understand your
position. Supposing there are 10 schools out there, 10
private schools, nine of which are nonreligious, and one
of which is religious, but the Government money will pay
the tuition of the -- for the parents who choose the
religious school. Is that, in your view, consistent with
the Establishment Clause or not.

MR. CHANIN: Oh, that's clearly
unconstitutional, Your Honor.

QUESTION: So even if it's 10 percent.

MR. CHANIN: Oh, no. That -- I'm only -- I'm
responding to I think --

QUESTION: So we've got two extreme --

MR. CHANIN: -- Justice Breyer put to me was,
there's a choice --

QUESTION: See, the interesting thing, if I
understand the case correctly, your view is, if any one
school gets the money, it's unconstitutional.

MR. CHANIN: No. No, Your Honor.

QUESTION: Oh, I thought you said yes.

MR. CHANIN: No. I'm sorry if I -- I did not.
Or, I may have, but I didn't mean to.

(Laughter.)

QUESTION: Well, what is your answer if there

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are 10 schools, nine nonsectarian, one sectarian?

MR. CHANIN: I think that is a borderline case,
but if it's structured this way, I'm a parent --

QUESTION: Well, say there are 100, and 99
nonsectarian and one --

(Laughter.)

QUESTION: Give us something that isn't
borderline.

QUESTION: Well, I'm really trying to find out
what your position is.

MR. CHANIN: I think I can explain it relatively
simply. If Government money that is attributable to the
Government is paid directly to a religious school to pay
for a religious education --

QUESTION: Well, my hypothetical --

MR. CHANIN: -- it's unconstitutional.

QUESTION: -- is that in this -- and the
Government says -- you pick your school. There are 100 of
them out there. One of you picks a parochial school,
we'll pay the tuition.

MR. CHANIN: Okay.

QUESTION: We'll send a check direct to the
school.

MR. CHANIN: All right.

QUESTION: That's unconstitutional?

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MR. CHANIN: But do I also --

QUESTION: And your opponent says it's
constitutional if 100 percent, so --

MR. CHANIN: But I have to know the choice

you're giving me as an aid recipient. Are you saying to
me, I can use that money at this one religious school, or
at the other 99?

QUESTION: No, I want to use that money at that
one -- my private choice is to have my child go the
sectarian school.

MR. CHANIN: Absolutely violates the
Establishment Clause, in my opinion.

QUESTION: Why?

MR. CHANIN: Because certainly I can say,

without hesitation, nothing broke the circuit between the
State and the general coffer of the sectarian school, your
aid recipient in your hypothetical had no choice
whatsoever. The only choice was to stay in the public
schools or go into a religious school. That is not the
kind of choice that this Court referred to in Witters or
in Nyquist.

QUESTION: Well, what if, in Justice Stevens'
hypothetical, the State would pay the tuition to the
nonsectarian private schools, too?

MR. CHANIN: Oh, I think that's Witters.

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QUESTION: What breaks the circuit in my 50-50
case? You say it doesn't break the circuit, but they're
saying, well -- the petitioners say, we gave the money to
the individuals. It was the individuals who decided, and
they had an equal choice between church-related schools

and private ones, other ones, and so that broke the
circuit. Now, your response to that is what?

MR. CHANIN: My response to that is, if this
Court concluded that the words, significant amount, huge
array of choices, if the Court concluded, as an abstract

proposition, that those standards were met on 50-50, I
would be most unhappy, but I would conclude that the
program was constitutional.

QUESTION: No, no, but give me -- not the case,
but give me the rationale.

MR. CHANIN: The rationale is this. We need to
break the circuit. The only case --

QUESTION: They say it does. Now, forgetting 19 the cases,
they say it does, so why doesn't it?

20 MR. CHANIN: Well, I would not forget the cases.

21 I'd say, I don't accept what they tell me. I want to hear
22 what you've said, and I would say the one case in which
23 you allowed financial aid to go to pay the tuitions of a
24 religious school was Witters, and then I'd say to myself,
25 why did you do it in Witters, and words would pop out to

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me, huge array of options, only an insignificant portion would end up in sectarian schools. That, said the Court, is genuine, independent private choice, because of the numbers.

QUESTION: Well, let me ask you this. Suppose the program were, if the parent chooses the sectarian school, we'll give you a voucher of \$2,500. If the parent chooses the community school, we'll give you a voucher of \$4,500?

MR. CHANIN: Your Honor, it's an unreal hypothetical.

QUESTION: Well, it's not, because in effect that's what's happened here.

MR. CHANIN: No, it isn't because the -- everybody --

QUESTION: The community school gets \$4,500 a head, and parochial school \$2,500, so if it were done by a little voucher working that way, then what is your answer?

MR. CHANIN: It would be no -- it would be un -- a violation of the Constitution.

QUESTION: Would it?

MR. CHANIN: And it would be because --

QUESTION: It wouldn't be perceived as --

MR. CHANIN: I think it would, Your Honor. That is no different than saying

QUESTION: -- giving undue help, or endorsing
the religious school.

MR. CHANIN: It's no different than saying, you

can take a voucher, you can leave public education and go
to a religious school, or you don't limit it to community
schools, or, I'll give you money to go to a community
school, I'll give you money to go to a magnet school, I'll
give you money to go to a traditional school.
The choice that you are positing for me is, the
choice is between staying in the public schools with
whatever the public schools may offer --

QUESTION: Well, we haven't been --

MR. CHANIN: -- or leaving to go into private
school.

QUESTION: We haven't been referring to
community schools as public schools. The public school
system that failed was the traditional old public school
system in the community. The community schools are
basically private schools that are getting a different
kind of State aid. Why shouldn't they be considered?

MR. CHANIN: They are not private schools, Your
Honor. They are public schools. They are subject to
Government control. They are just a method or a mechanism
by which the State has chosen to provide a species of
public education. There is a bright line distinction

between the public school system in which the community schools fit, and private education in which the voucher parents can take their money. It is simply --

QUESTION: Do these community schools have to accept all-comers?

MR. CHANIN: There are certain -- they cannot discriminate on certain bases. There are a lot of --

QUESTION: Right, but can they say, we're only going to take kids who pass a certain test, a certain entry exam?

MR. CHANIN: I'm not sure you can base it on academic achievement.

QUESTION: It doesn't sound much like the public school system to me.

MR. CHANIN: Pardon me?

QUESTION: It doesn't sound much like the public school system to me.

MR. CHANIN: Well, it is, Your Honor. Magnet schools do that.

QUESTION: Well, but why is there the bright

line that you talk about which separates community schools from private schools and aligns them with -- other than the fact that they're run by the Government? Here, the community schools, as I understand it, were set up because they wanted to get away from the kind of failing system

that so many public schools are, and do something different.

MR. CHANIN: Because, Your Honor, if the concept

of breaking the circuit is going to have any meaning, you have to draw a line, and the only rational line to draw is between public education and private education.

QUESTION: Well, but you've said that time and again --

MR. CHANIN: I --

QUESTION: -- but you can tell members of the Court are --

MR. CHANIN: I say it because --

QUESTION: Well, I --

MR. CHANIN: I didn't mean to interrupt you, Your Honor.

QUESTION: You'd better not.

(Laughter.)

MR. CHANIN: Is it too late?

QUESTION: You can see a number of members of the Court are really not satisfied --

MR. CHANIN: No.

QUESTION: -- with that explanation.

QUESTION: May I ask this question, is it true that the group you put on one side of the line, there's no tuition in those?

MR. CHANIN: There is no tuition.

QUESTION: So those are all free schools,
supported -- where the others, there's tuition. That's
the line, isn't it?

MR. CHANIN: Can I -- could I try once again on
another --

QUESTION: By all means.

MR. CHANIN: -- example here?

The prototype that this Court has set out for us
of genuine, independent, and private choice, is a
Government employee. The Government can pay that employee
the paycheck, and that -- even knowing that the employee
intends to donate all or part of it to a church, all, with
no constitutional problem, because the employee has
independent discretion. He can spend that paycheck any
way he wants, for whatever purpose he wants, with no
control or direction from the Government.

Now, you use that as your analogy of genuine and
independent choice. You don't say that Government
employee has independent choice --

QUESTION: Mr. Chanin --

MR. CHANIN: -- because he didn't have to come
work for the Government in the first place.

QUESTION: Mr. Chanin

MR. CHANIN: He had all kinds of options. He

could have worked everywhere else.

QUESTION: Mr. Chanin, may I ask you a question, because I think we understand the case of the Government employee turning over his paycheck to the Salvation Army, or whatever.

Suppose the suburban schools had been included

in this mix, that instead of saying, come in if you want, and then the reality is that none of them do, suppose all those school districts surrounding the city were made to be part of the program, and the parents had the choice of sending their children to those public schools, or to the religious private schools, would you then say that -- would it make any difference, that is, if the public schools in the suburban communities were made to participate in this program?

MR. CHANIN: It would make a difference, but I

could not answer as to whether it would be constitutional or unconstitutional as far as the program is concerned, until I saw the specifics of that program, are those public schools a really meaningful type of choice for an inner city child in Cleveland, and I'd also have to make a legal analysis of whether that really is just another way in which the State of Ohio is providing a public education.

QUESTION: Mr. Chanin, can you tell me how we

get from here to there? Here we have a failed inner city school system, and the State says, part of the problem with this is monopoly. We just have to provide diversity, let parents choose a good education.

Now, it so happens that the only up-and-running schools that happen to be in the inner city are religious schools, educating the poor people in the city at relatively low rates. The State of Ohio adopts a program

which allows suburban schools to accept these inner city kids, but the suburban schools say, oh, heck no, we don't want the inner city kids come into our suburban schools.

How does one get from here to there? The only schools that happen to be there right now are religious schools.

This doesn't mean that the program will always

be that way. The experience in Milwaukee was that as the program continued, there were more and more nonreligious private schools, but right now, to start off with, of course they're mostly religious, and that is going to destroy the entire program, so that we can never get from here to there.

MR. CHANIN: I do not believe, Your Honor, that

a crisis in the Cleveland public schools is a license to ignore the mandate of the Establishment Clause, nor do I think it's a mandate to say, ignore it for a while because in a few years it may --

QUESTION: Tell us how to get from here to there.

MR. CHANIN: I will tell you, Your Honor --

QUESTION: What do you do, abolish all the religious --

MR. CHANIN: No.

QUESTION: -- schools in the inner city --

MR. CHANIN: No. No.

QUESTION: -- and then start from scratch --

MR. CHANIN: I'll tell you just what it should do.

QUESTION: -- so that all the schools that start up won't be religious?

MR. CHANIN: What the State of Ohio should do in this specific case is exactly what the Ohio supreme court's been telling them to do for 10 years to deal with

the problems in Cleveland. It's telling them, there are innovative programs within the public schools, refinance your schools, provide resources, and do that. Instead --

QUESTION: They've spent already \$7,000 per child, which is above the average in the rest of the country. It isn't a money problem.

MR. CHANIN: The --

QUESTION: It's a monopoly problem.

MR. CHANIN: No, Your Honor, not according to

the Ohio supreme court. According to the Ohio supreme court, which just struck down as inadequate the financing

structure of the Ohio school system and has been directing it for 10 years to restructure it and put in more remedial classes, smaller classes, free kindergarten classes --

QUESTION: Mr. Chanin, it's very clear to me that Ohio had that option. The question is, is it unconstitutional for them to choose an option that they think has more likelihood of success, and Justice Scalia put the point that what they're trying to do is have a structure in which different school systems, different curriculums, curriculums that do not inflict terminal boredom on students, can begin to flourish, and the question is, how can they do that in the long term, and you say they cannot do it.

MR. CHANIN: No, I say this, Your Honor. I say that the Ohio legislature has the right to make an educationally unsound judgment. It does not have the right to make an unconstitutional judgment. It must solve the problems in Cleveland within the parameters of the Establishment Clause, and as the brief that -- the amicus brief filed by the National School Boards Association indicates, there are numerous programs that were available to it. There are problems being solved in urban school districts all over the country without voucher program.

We have not said much about the educational

value vel non of voucher programs, because we don't think that this is a forum for an educational policy debate, but they are a lousy option, and we refer you to the amicus brief of the National School Boards Association. The evidence is conflicting. There is no evidence that competition improves the lot for the 96 percent of the students who remain in the troubled Cleveland Public School System with less resources and even worse problems. If there are no further questions, thank you, Your Honor.

QUESTION: Thank you, Mr. Chanin.

Mr. Frankel, we'll hear from you.

ORAL ARGUMENT OF MARVIN E. FRANKEL

ON BEHALF OF THE RESPONDENTS GATTON, ET AL.

MR. FRANKEL: Mr. Chief Justice, and may it please the Court:

Coming in at this point, I come in in a way toward the beginning and also toward the end of Mr. Chanin's argument. The discussion of this problem long ago began with talk of a crisis in the public schools of Ohio, and that talk in a strange way has gotten lost in the shuffle as the Court has ranged widely, necessarily but widely, over Establishment Clause questions for which I am now about to submit this may be a strangely

incongruous vehicle for a decision.

As was just pointed out toward the end of what

Mr. Chanin was saying, you had a determination sometime ago by the supreme court of the State of Ohio that its system of public school financing is unconstitutional under Ohio's own constitution. Now, we in our submissions

early felt that that was an important threshold question to be looking at, very possibly before you got into big, Federal constitutional questions, and so we have briefed it. We briefed it in the Sixth Circuit, and we briefed it in this Court.

Somewhat remarkably, that question of whether Ohio's school financing system is unconstitutional under its own constitution --

QUESTION: But Judge Frankel, wasn't that on the ground that it used the single subject title, rather than --

MR. FRANKEL: No, Your Honor, it had nothing to

do with that case. That was a quite separate case called DeRolf, which was decided in 1997. Under that decision, ever since 1997, Ohio's system of financing its public schools has a) been unconstitutional as a matter of Ohio constitutional law and b) under ongoing repair, which is in progress this very day, and is approaching completion of repair.

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QUESTION: Judge Frankel, you are going to tie
this in to the question presented in this case?

MR. FRANKEL: I hope so, Your Honor.

QUESTION: That was a program designed to rescue
economically --

MR. FRANKEL: I hope so, Your Honor --

QUESTION: All right.

MR. FRANKEL: -- for this reason, because I want

to raise a question whether this Court doesn't reach hard
questions first is present here, whether the much-debated
Establishment Clause questions are as essential as the
Court has been led to believe they are in this case, and
whether a decision leaving the Establishment Clause
jurisprudence where we think it should stay will be an
appropriate resolution for the interests of Ohio and its
poor children.

QUESTION: Your assumption, Judge Frankel, is
that the problem is a problem of money. That's all that
the supreme court of Ohio --

MR. FRANKEL: Is what, Your Honor?

QUESTION: Is a problem of money --

MR. FRANKEL: Not only --

QUESTION: -- and the studies that I'm familiar
with suggest that that is not the case.

MR. FRANKEL: Whatever people suggest --

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QUESTION: Please let me finish, sir.

MR. FRANKEL: I'm sorry.

QUESTION: The studies that I'm familiar with say that the inner city parochial schools, which spend much less per child on education, do a much better job than the public schools that spend much more, so I just don't think it follows that once you solve a constitutional problem that will get more money, you're going to solve the difficulty that the people of Cleveland found with their public schools. I don't think that necessarily follows.

MR. FRANKEL: Your Honor, there is mostly anecdotal material comparing the kind of job that's done in parochial and secular schools.

QUESTION: Oh, I don't think it's anecdotal at all. I mean, there are extensive studies that show that parochial schools do a better job.

MR. FRANKEL: With all --

QUESTION: I mean, these are studies by, you know, educational scholars.

MR. FRANKEL: With deference, Your Honor, I don't think that the difficulties that I'm trying to suggest about the Court's getting into the details of some of the Establishment Clause cases that have been mooted here are avoided by looking what is said to be a

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comparison between parochial schools and public schools.

Certainly, as you compare the subject of affluence from district to district, which was the guts of the Ohio decision that I refer to, the problem of comparative qualities changes quite markedly, and you don't have the same kind of problem. In fact, what you have in Ohio, and a basis for the holding of unconstitutionality, is vast regional disparities between the public schools in affluent districts and the public schools in impoverished districts.

QUESTION: Mr. Frankel, did you make this argument to the court of appeals?

MR. FRANKEL: Yes, Your Honor. We raised --

QUESTION: And how did they deal with it?

MR. FRANKEL: Well, Your Honor, it sort of slipped by --

(Laughter.)

MR. FRANKEL: -- but we made a point that -- let me put it this way. I think in fairness to me and the court of appeals, arguments undergo some sea changes as

you go from court to court. We raised this 1997 decision, DeRolf, as a threshold problem that ought to be looked at before you got into wide Establishment Clause questions.

On the Establishment Clause, I should add we are as one with our friends here.

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QUESTION: Did you cross-petition for certiorari
in this case?

MR. FRANKEL: No, Your Honor, we didn't think we
had any occasion to do that.

QUESTION: You brought the lawsuit, though. You
brought the lawsuit.

MR. FRANKEL: We won the lawsuit.

QUESTION: Yes.

MR. FRANKEL: And we didn't believe -- I still
don't believe we had occasion to do that.

Now, what's happened --

QUESTION: Mr. Frankel, may I ask you, has
the -- have the Ohio courts ever passed upon this
question? I know they passed on the single statement
issue under the Constitution. Was that issue before the

Ohio courts when they passed on the single issue matter?

MR. FRANKEL: The Ohio supreme court, Your
Honor, in what we consider obiter, said it found
consistency with the Establishment Clause, but it had
already held its statute unconstitutional on State
grounds, so we never could reach that. That's why we came
to the Federal court. Now -- so we've never had that
question adjudicated.

QUESTION: But the fact that it issued the

obiter indicated that it was not concerned with the point

that you're now making, and that's the highest court of the State.

MR. FRANKEL: It was not concerned with -- I didn't hear Your Honor.

QUESTION: With the point that you're now addressing to us.

MR. FRANKEL: No, Your Honor, it didn't take proper concern of everything that we thought it should have looked at. What I am saying is that in the midst of Ohio's efforts, which are almost completed, to resolve whether Mr. Justice Scalia has the answer or not, the great core problem of public education in Ohio, in the midst of that, they come slicing across this situation, having held their own system unconstitutional in 1997, and they create this voucher program.

Well, there we are. We're served up with a

voucher program, so we look at it, and looking at it, we have argued, and Mr. Chanin has sufficiently covered that, that it is unconstitutional, and we think their effort to defend it is somewhat slap-dash, especially, for example, when they try to defend proselytization in a few hasty paragraphs, overturning 50 years of precedent, as they would hope, and saying proselytization with Government money is okay, where we say that the law since 1948 has been to the contrary, and that's because this voucher

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program came in, as it were, by the ears, while they were busy working on other, more fundamental things that may well -- and I don't know, Mr. Justice Scalia, and I don't think any of us knows that may well go far to solving --

QUESTION: Thank you, Mr. Frankel.

MR. FRANKEL: Thank you, Your Honor.

QUESTION: Ms. French, you have 4 minutes remaining.

REBUTTAL ARGUMENT OF JUDITH L. FRENCH
ON BEHALF OF THE STATE PETITIONERS

MS. FRENCH: Thank you, Mr. Chief Justice, I have four points.

First and foremost, the Ohio supreme court upheld the constitutionality of this program under the Establishment Clause, and approved its use as one solution for solving the problem in Cleveland and for any school district that might find itself in a similar unfortunate situation.

Second, it appears that respondents have either

ignored or do not accept the last 20 years or so of this Court's jurisprudence. Each of the legal principles they have raised here today and in their briefs have been expressly rejected by the Court.

Their reliance on percentages was expressly

rejected by this Court in Mueller. Their arguments about

substantiality of the aid going to religious schools was rejected by five members of the Witters Court.

Their question about indoctrination, or proselytization, has been specifically rejected by this Court in the cases involving true private choice, Mueller, Witters, Zobrest, and confirmed again in Agostini and Mitchell most recently.

Third, and Your Honor, I believe this goes to

your question, Justice Breyer, and your concerns, Justice O'Connor, about the breadth of options that are offered to all Cleveland students, the State of Ohio has looked to every conceivable educational option available, to include all Cleveland students, to include all-comers in terms of students and schools.

QUESTION: Are community schools public schools in Ohio?

MS. FRENCH: They are considered public schools, Your Honor.

QUESTION: They have separate boards?

MS. FRENCH: They do.

QUESTION: Separate employees?

MS. FRENCH: They do. They do have separate employees.

QUESTION: And not the same control over content of programs?

MS. FRENCH: That's right, Your Honor. It is
separately, it's not --

QUESTION: It's publicly financed?

MS. FRENCH: Yes, Your Honor, and it does have
the same sorts of financial requirements. They get
audited a little differently. There are more controls,
but it is slightly different, because it's not --

QUESTION: They charge tuition, though? They
charge --

MS. FRENCH: Community schools do not charge
tuition, Your Honor.

QUESTION: Do not charge tuition?

MS. FRENCH: And in answer to your question

earlier to Mr. Chanin, it's open to all-comers. If they
have -- if they don't have enough spaces available for all
who have applied, they must accept students on a lottery
system the way that a public school would have to accept
all-comers. The scholarship program, though, among all of
this array of options, is really the poor relative. They
get less money, parents have to pay tuition, and they get
no tutorial grants.

Perhaps the best way to describe the array of
options is that at the eye-level of parents. This Court
has said it is important in Rosenberger and again in
Justice Powell's concurrence in Witters, that it is

important to view all of the circumstances, view all of the consequences as a whole.

What respondents seem to want us to do is exclude the religious schools as an option. This Court on many occasions has told us that we can neither inhibit nor advance religion, and that would certainly be the cause there.

Finally, it is apparent from the Court's questions and respondents' arguments that the Ohio general assembly had a number of competing and conflicting considerations before it in the face of and in an environment of an educational crisis it needed to solve, and to solve quickly. It seems that Ohio did it right. It didn't take too much money away from the public schools, but gave enough for a limited program that is targeted to the most needy, the poorest of the poor, the low income students who would not otherwise have choice. It is for that reason that we ask the Court to overturn the decision of the Sixth Circuit and uphold this program.

Thank you.

CHIEF JUSTICE REHNQUIST: Thank you, Ms. French.

The case is submitted.

(Whereupon, at 11:25 a.m., the case in the above-entitled matter was submitted.)

ELITE INTERVIEWS

David Berkholz—Former Vice President—Gund Foundation Cleveland

David Brennan—Former Head of The Governor’s Commission on Educational Choice

Meryl Johnson—First Vice President and Director of Community Engagement—Cleveland

Teachers Union

Fannie Mae Lewis—Former Councilwoman Ward 7—Cleveland

Mary Lou Toler—Director, Special Projects—Diocese of Cleveland

Mayor Michael White—Former Mayor—Cleveland

CLEVELAND SCHOLARSHIP ANT TUTORING PROGRAM TIMELINE

1992	Commission on Educational Choice began its work.
1992	Governor Voinovich supports legislation to institute a pilot scholarship program in Cleveland.
1992	The 1992 School Choice bill died with no hearing and no votes in the Ohio Legislature.
1994	The School Choice bill received hearings in both chambers of the Ohio Legislature.
June 28, 1995	The Cleveland Scholarship and Tutoring Program was enacted through the Ohio Legislature.
August 1995	The Cleveland Scholarship and Tutoring Program Office opened in Cleveland.
January 1996	Lottery drawing was held for 1,500 scholarships to be awarded. School Fair and informational session held for scholarship recipients.
January 1996	American Federation of Teachers filed a lawsuit challenging the constitutionality of the Cleveland School Choice plan and asked for an injunction.
July 1996	Franklin County Common Pleas Judge Lisa Sadler ruled that the legislatively approved Cleveland Plan did not violate the Ohio or United States Constitution. Opponents appealed.
August 1996	1,994 students enter the school of their choice using scholarships for the '96/'97 academic year.
May 1997	The 10 th Ohio District Court of Appeals ruled on the appeal saying that including religious schools in the voucher program violated both the state and federal constitutions. Voucher proponents appealed. The program was allowed to continue while the case was pending before the Ohio Supreme Court.
August 1997	2,938 students enter the school of their choice using scholarships for the '97/'98 academic year.
August 1998	3,774 students enter the school of their choice using scholarships for the '98/'99 academic year.
May 27, 1999	Ohio Supreme Court rules The Cleveland Scholarship and Tutoring Program unconstitutional due to a procedural flaw in how the program was enacted. The Court states that the Program did NOT violate federal precedent regarding the separation of church and state.
June 29, 1999	The Ohio General Assembly reenacted the Program with recommendations of the Attorney General to ensure it met all state constitutional requirements.
July 20, 1999	The ACLU, PAW, and Teacher Unions file suit against The Cleveland Scholarship and Tutoring Program alleging that the Program violates the separation of church and state.
August 24, 1999	Federal Judge Solomon Oliver Jr. grants a temporary injunction, shutting down the Program pending full hearing. Defendants appeal decision in US Court of Appeals for the Sixth Circuit.
August 27, 1999	Judge Solomon Oliver Jr. amends his decision to allow only previously enrolled scholarship students to return to school. This decision leaves 817 students who received their scholarship in March of 1999 for the first time shut out of the program. Defendants appeal decision in US Court of Appeals for the Sixth Circuit.
October 19, 1999	With no response from the US Court of Appeals for the Sixth Circuit, Defendants appeal to the United States Supreme Court.
November 5, 1999	The US Supreme Court overruled Judge Oliver's injunction & restores scholarship funding to 817 children. After confusion caused by the injunction is settled, 3,406 children had stayed in the Scholarship Program.
December 20, 1999	Judge Oliver rules the Program unconstitutional, stays his Decision, children remain in school and defendants appeal to the Sixth Circuit US Court of Appeals.
June 20, 2000	Oral Arguments before the Sixth Circuit Court of Appeals in Cincinnati, Ohio.
August 2000	3,783 students enter the school of their choice using scholarships for the '00/'01 academic year.
December 11, 2001	The three-judge panel of the Sixth Circuit Court of Appeals ruled in a split decision against the School Choice Program. This decision contained language that supports logical legislative remedies to satisfy the court. The state's en banc request seeking a rehearing by the full court was filed.

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