

RESEARCH ORGANIZATION

Texas House of Representatives

FEB 28 1999

focus

UNIVERSITY OF TEXAS PAN AMERICAN
EDINBURG TEXAS 78539-2999 December 22, 1998

The School Voucher Debate

Proposals to use tax dollars to provide a voucher to pay for the education of students at private schools have been considered at both the state and national level in recent years. But students in only two cities, Milwaukee, Wisconsin, and Cleveland, Ohio, can now attend private schools using a publicly funded voucher.

The Wisconsin program, originally established in 1990, has been through numerous court battles, including two decisions from the Wisconsin Supreme Court, which has twice upheld the constitutionality of the program. On November 9, 1998, the U.S. Supreme Court refused without comment to consider a challenge to the Wisconsin court's latest ruling, allowing the program to continue. While the U.S. Supreme Court's action has no direct precedential effect in any state other than Wisconsin, voucher supporters across the nation have called the decision a victory for the continued expansion or creation of voucher programs elsewhere. Voucher opponents caution that the court's action should not be interpreted beyond what it is, a refusal to hear a case.

Vouchers, a broad term used for any public payment for private school tuition, are hailed by supporters as the solution to fixing public schools by forcing them to be competitive. In the short term, providing vouchers to students in low-performing public schools would help improve their achievement by putting them in a better learning environment, say supporters. In the long run, the pressure exerted on public schools by competition with private schools would force better teacher pay, leaner, more efficient administration, and eventually, better public schools, they say.

Opponents of vouchers counter that using public dollars to subsidize private schools would not improve the public schools, but rather would signal their eventual demise. As the best students leave public schools to attend private ones, those who remain would face a system with fewer dollars to spend on the most needy students, say opponents. Nor has any convincing evidence shown that private schools provide a better academic environment than public schools, they say.

Other voucher opponents assert vouchers would add a layer of government control on private schools that accept voucher students because of the strings that inevitably would be attached to any public funds.

Vouchers and School Choice

Vouchers are a subset of a larger political movement referred to as "school choice." Among the options considered part of school choice are:

- ◆ publicly funded vouchers to private schools, either limited to secular schools or also including parochial schools;
- ◆ privately funded vouchers;
- ◆ tax deductions or tax credits for tuition to private schools;
- ◆ interdistrict and intradistrict open enrollment in public schools on a mandatory or voluntary basis; and
- ◆ charter schools.

Texas already has a number of these options available. Charter schools have been allowed since enactment of SB 1 by Ratliff in 1995, and the Legislature expanded the allowable number of charter schools in 1997. The State Board of Education has approved 159 charters to date; so far, 65 have opened their doors to students.

Voluntary transfers within individual school districts are allowed, depending on each district's policy. A growing number of districts are allowing open enrollment, permitting students to choose the school that they wish to attend in the district.

Voluntary transfers between school districts are available through the Public Education Grant (PEG) program, originally created under SB 1 in 1995, or by voluntary agreements between districts. Under the PEG program, students in a low-performing school may ask to transfer to a school in another district that is not low performing. A district is not required to accept the transfer, but HB 318 by Cuellar, enacted in 1997, provides financial incentives to districts that accept PEG transfers. To date, few students

— only 470 in 1998 — have received PEG transfers because the districts to which most students have applied already are at their enrollment limits.

Privately funded vouchers also are available in certain areas. One such program, recently begun by the Children's Educational Opportunity Foundation (CEO) in the Edgewood school district in San Antonio, already has given scholarships of \$3,600 to \$4,000 to 726 students, nearly 5 percent of the district's enrollment, to attend private schools in the area. The CEO program plans to provide as much as \$50 million in scholarships to students, which would make it the largest privately funded voucher program in the nation. A large portion of the CEO program is funded by James Leininger from San Antonio, a longtime supporter of vouchers. Edgewood school officials estimate that the loss of students to CEO scholarships will cost the district \$3 million in state funding this year. Other privately funded programs are available in most urban areas in Texas, but most cover a smaller portion of tuition.

Three school choice options not available in Texas are tax credits or deductions, mandatory transfers between school districts, and publicly funded vouchers. Tax credits or deductions are currently available in Arizona, Iowa, Minnesota, and Puerto Rico. All of those jurisdictions also have an income tax to which the deduction or credit is applied. Mandatory interdistrict transfers are used in 18 states and Puerto Rico. Under most mandatory interdistrict transfer laws, districts must accept transfer students from other districts as long as space is available.

Texas Voucher Proposals

In Texas, many proponents of a voucher system have recommended funding a pilot or test program that would target special populations, such as students who live in urban areas, are enrolled in low performing schools, or are economically disadvantaged.

The Senate-passed version of SB 1 by Ratliff, enacted in 1995, included a proposed public education scholarship pilot program. The pilot program would have provided funds to "educationally disadvantaged" students in 20 low-performing school districts whose combined enrollment was less than 10 percent of the state's students. The students would have been allowed to attend private schools, which would have received the state and local funding allotted to that student in lieu of tuition. Those schools would have been required to comply with non-discrimination provisions in the bill, provide services to special education students, and provide transportation and lunch programs at no additional charge. The students would have been given the TAAS test as part of the evaluation of the four-year pilot program. The House version of SB 1 deleted the pilot program, and it was not included in the conference committee report on the final version of the bill.

In 1997, two voucher proposals were considered by the 75th Legislature. SB 1206 by Bivins would have established a 10-year public education scholarship pilot program similar to the Senate-passed version of SB 1. Students would have been eligible for the program if they had failed the TAAS test, were enrolled in a low performing school, had applied for a PEG transfer and were denied, and were not enrolled in a private school. Provisions in SB 1206 on funding and responsibilities of private schools accepting students were similar to those in the Senate version of SB 1. SB 1206 was reported favorably by the Senate Education Committee but was not considered by the full Senate.

Another voucher proposal considered in 1997 was an amendment by Rep. Ron Wilson offered to HB 318 by Cuellar, which revised the PEG program. Under the Wilson amendment, if a student were rejected for enrollment at a public school under the PEG program, that student could have attended a private school at public expense. The Commissioner of Education would have been charged with creating rules for the transfer of funds. A private school accepting a student would have been prohibited from charging the student tuition beyond what the PEG program would provide. A motion to table the amendment failed by a vote of 68 to 68, but the amendment subsequently was withdrawn by the author.

The Debate

Would vouchers help or hurt the public school system?

Voucher supporters say competition would improve the overall quality of education. If public schools were forced to compete with private schools, they would have a greater impetus to improve their quality, which is clearly lacking. The dropout rate remains high, too many students are unable to pass basic skills tests such as the Texas Assessment of Academic Skills (TAAS), scores on college entrance exams are slipping, more students graduating from high school must take remedial courses once they enter college, and students continue to be promoted through the system without mastering such basic skills as reading, writing and mathematics. The problem with the system is that every state has created a tremendous educational bureaucracy that prevents the natural force of competition from improving the school system.

Increased competition would promote efficiency in schools and innovation in learning programs to attract students. Charter schools already use competition to promote new learning environments for students not successful in the traditional school structure. Increasing student access to innovative private schools would further expand the pool of competitive ideas from which parents and students could draw.

A voucher-based school choice program could be structured in such a way that it would alleviate many concerns of voucher opponents. Among the suggestions would be the creation of a short-term test project in certain urban areas that would allow policymakers to study the results of such a program in Texas. With a finite time limit, a voucher program would not be continued or expanded unless it proved beneficial to student achievement.

A pilot program could target students from low-performing schools, with economically disadvantaged students or at-risk students given priority in receiving vouchers. The private schools, if they chose to participate, could be required to accept any student who applied, regardless of their abilities. The students also could be required to take the same standardized tests as those in public schools so their performance could be measured.

Voucher opponents say voucher programs would further degrade the quality of public schools. If a voucher program were instituted to subsidize private schools with taxpayer dollars, the likely result would be the flight of the best and most motivated students to private schools. Once those students, and the funds that support them, were removed, the public schools would be left with fewer resources to handle the increased burden of teaching the average and low-performing students who remain. Those remaining students would have the greatest need for additional help. They would be the ones penalized by a voucher program when funding for programs targeted to help them is cut as revenues are drained away to private schools.

Competition with private schools may spur some public schools to change some policies or procedures in order to staunch the flow of students leaving their schools. But with dramatically reduced budgets per pupil and an increasing percentage of students for whom it costs more to educate, the level of innovation that these schools could undertake would be significantly limited. Public schools would be caught in a downward spiral that could lead to their ultimate destruction.

Other voucher opponents say vouchers would hurt private schools by adding greater government control and could eventually lower standards and eliminate the uniqueness of private schools. Once private schools accepted publicly funded vouchers, they would have to accept an increasing level of government regulation over the way they operate. Controls initially may be limited to checking for safety compliance and requiring financial reports. However, some proposals would require that students in private schools be tested using the TAAS or other tests given to children in public schools. Such testing may force private schools to alter their curriculum or instructional practices to fit into the public school mold.

As in the Milwaukee program (see pp. 4-5), parochial schools may be forced to exempt voucher students from religious instruction under a parental opt-out provision. Because in many schools religious instruction is infused throughout the curriculum, such opt-out provisions may force parochial schools to modify their curriculum. While there may be no requirement that private schools accept voucher students, they may feel financially obligated to do so since they would be competing with other schools that accept vouchers.

In *Choice of Schools in Six Nations* (U.S. Department of Education, 1989), Charles Glenn, surveying the results of school choice systems in Belgium, Britain, Canada, France, Germany and the Netherlands, concluded that the result of school choice was to erase the line between public and private schools. The private, religious schools lost their uniqueness and became nearly identical to public schools in their curriculum and methodology.

Does private school attendance increase student achievement?

Voucher supporters say several studies have found improved student achievement based on private school attendance. The leading study on the impact of vouchers on student achievement was conducted by Peterson and Greene in 1996. In *The Effectiveness of School Choice in Milwaukee: A Secondary Analysis of Data from the Program's Evaluation* (available on the Internet at <http://data.fas.harvard.edu/pepg/op/mil.htm>), the authors found improved performance by students who had participated in the program for three to four years. Specifically, reading scores improved by as much as five percentile points, and math scores improved by as much as 12 percentile points on average. The study is unique in that it compared students admitted to the choice program to students who applied, but were not admitted, to the program. While the sample size for the Peterson and Greene study was small (less than 80 students), this was necessary to compare similarly situated students.

Other non-voucher studies have shown the benefits of private school for student achievement generally. A 1990 study performed by the Rand Corporation found 95 percent of students in Catholic parochial schools in New York City graduated, compared to only 50 percent in public schools, and 85 percent took the SATs as opposed to only 33 percent in public schools.

Although some other studies have found less significant differences in achievement between public and private school students, they are not comparable because of the difficulty in studying equally situated students in private and public schools. Without vouchers, private schools generally enroll statistically different students than public schools; most private school students come from more

Current Voucher Programs

Milwaukee

The Milwaukee Parental Choice Program (MPCP) (Wis. Stat. §119.23), as originally enacted in 1990, allowed as many as 1.5 percent of Milwaukee public school students to attend private, nonsectarian schools. To be eligible to receive a voucher, the student had to be from a family whose income did not exceed 1.75 times the federal poverty level and could not already be attending private school without public help.

The state originally provided public funds to the private school directly in an amount equal to the state aid provided for students within Milwaukee public schools. Private schools participating in the program had to comply with federal anti-discrimination and state health and safety requirements applicable to public schools and meet annual performance criteria. At the height of the original program in 1995, approximately 1,600 students were attending 17 private schools under the program.

The original Milwaukee voucher program was upheld by the Wisconsin Supreme Court in *Davis v. Grover*, 480 N.W.2d 460 (1992). It was challenged as being a local bill, violating the uniformity clause of the Wisconsin Constitution, and failing to satisfy a sufficient public purpose. No church/state separation challenges were brought as the program was then limited to nonsectarian schools.

The Wisconsin legislature made significant changes to the MPCP in 1995, expanding the program to many as 15 percent of Milwaukee public school students and allowing parochial schools to participate. Among other changes, it

affluent families, have parents with higher educational achievements, and have better academic records themselves.

School choice also improves family participation in education, one of the driving factors towards better educational achievement. When parents are involved in their children's education, the children tend to perform better in school. Some studies also have shown that having a choice of which school a child attends improves both parents' and students' satisfaction with the school, whether it is public or private. Increased satisfaction may lead to improved achievement over the long run.

Voucher opponents say school achievement by similarly situated students in public and private schools is not significantly different. Numerous studies conducted concerning achievement levels of students have produced the same result: private school attendance is not directly

removed yearly financial and performance audits and a limitation that no more than 65 percent of a private school's enrollment consist of MPCP students. It added an opt-out provision so that any student attending a parochial school could be exempted from participating in religious activities, if that child's parent or guardian requested such an exemption.

The 1995 amendments also changed the way payments were made. Tuition payments for students under the MPCP now are made out to the parents, but are sent to the schools for the parents to endorse. Vouchers now are limited to the lesser of the state aid for Milwaukee public school students, currently about \$4,900, or the "operating and debt service cost per pupil that is related to educational programming," as determined by the state for each private school.

Students wishing to participate in the program must submit an application to the private school of their choice. Acceptances are based on a random drawing, but if a student chosen at random has a sibling who also applies to the school, that sibling is given preference in admission. If the student is not one of those chosen, that student's application can be transferred to another private school that has space available. In 1998, nearly 6,000 Milwaukee public school students attended 110 different private schools under the program.

The amended MPCP was challenged in state court on the same grounds as the original program and on the additional grounds that it violated the Establishment Clause of the First Amendment to the U.S. Constitution and similar provisions of the Wisconsin Constitution. The challengers charged that the MPCP created an unconstitutional entanglement between church and state and had the primary effect of advancing religion with public

connected to student achievement when the background characteristics of students are taken into account; see *School Choice: Examining the Evidence*, Rasell & Rothstein, eds., (Economic Policy Institute, 1993). While many private schools claim to have higher student achievement levels, often those levels are artificially inflated because of the selectivity of the school or the relative economic advantages of students attending those schools. Yet, scores on national tests like the National Assessment of Educational Progress (NAEP) show little difference between public, private or parochial schools.

Studies specifically examining the students participating in the Cleveland and Milwaukee voucher programs, including the official state evaluations, also show no significant differences in achievement. The only study to date that has shown some support for greater achievement

funds. The program was upheld in *Jackson v. Benson*, 578 N.W.2d 602 (1998), available on the Internet at <http://www.courts.state.wi.us/html/sc/97/97-0270.htm>. The Wisconsin court held that the primary effect of the program was to expand student educational choices and not to benefit any particular religion. As noted earlier, the U.S. Supreme Court on November 9 declined to review the Wisconsin court's decision.

Cleveland

The Ohio Legislature created a voucher program in Cleveland in 1995 (Ohio Rev. Code §3313.974). The Cleveland program provides a voucher to students to attend a private school in the area. The amount of state aid available to fund the voucher is limited to 90 percent of the school's tuition, up to \$2,250, for students whose family's income is less than twice the federal poverty level, and 75 percent of the tuition, up to \$1,875, for all other students. Any additional tuition costs must come from private funds. The program allows suburban public schools to participate in the program and receive \$3,300 in state aid for each Cleveland student admitted to their district.

Only students in kindergarten through the fourth grade are eligible to enter the program, but once they start, they may receive vouchers until the eighth grade. The program was originally limited to 2,000 students, but was expanded to 4,000 students in 1998. Students already attending private school also are eligible for the program, but can constitute no more than 25 percent of the students receiving vouchers.

Under the Cleveland program, participating private schools must meet minimum standards for state-chartered schools. Each private school admits students based on the

following priorities: students who were enrolled during the previous year; siblings of students enrolled in the previous year; a random selection of low-income students from within the district where the school is located; children whose parents are affiliated with an organization that provides financial support to the schools; and a random selection of all other applicants.

A state appeals court determined in 1997 that the Cleveland program violated the Ohio Constitution because it provided for public support of religious institutions. That decision is currently on appeal to the Ohio Supreme Court, which has allowed the program to continue to operate until it renders a decision.

Puerto Rico

In 1993, Puerto Rico enacted a pilot voucher program to enable students whose family income was less than \$18,000 per year to attend the public or private school of their choice. In 1994, the Puerto Rico Supreme Court ruled that the program was unconstitutional under the commonwealth's constitutional provision stating, "No public funds shall be used for the support of schools or educational institutions other than those of the state." The program was then amended to provide open enrollment to all public schools. The Puerto Rico legislature also created a private, non-profit corporation, the Educational Foundation for the Free Selection of Schools, to provide up to \$1,500 in tuition assistance to economically disadvantaged students. While no money is provided directly by the government, a tax credit of up to \$250 for individuals and \$500 for businesses is allowed for donations to the foundation, and contributions above those amounts are deductible.

in private schools under a voucher program, the Peterson and Greene study, has been criticized repeatedly by other researchers for its initial bias, methodological flaws in sampling, and lack of peer review. Paul Peterson is a long-time voucher proponent, and the study was funded by pro-voucher organizations. The study only examined 80 students in three schools out of nearly 3,000 in the program. Also, the study was released directly to the press and pro-voucher advocacy groups before being subjected to the normal process of peer review and publication in a scholarly journal that is expected of sound research work.

Pilot voucher programs may appear to provide a semblance of improvement among those students who participate, but no real improvements in achievement have ever been documented. Because private schools can cherry pick the best students and leave problem students in the

public schools, achievement scores for those participating in pilot voucher programs appear to be better than those at public schools. Even using a blind admissions system, only the most motivated students would apply for a voucher. That motivation can go a long way towards improving test scores regardless of the learning environment.

Some voucher programs, including the privately funded program in San Antonio, have spurred the growth of new schools designed to draw voucher money. These schools may use questionable educational practices and simply hope that they can make a quick buck before the state determines that they are not suitable to teach children. Other schools may promote extremist philosophies that most taxpayers would not wish to subsidize with public funds, which could lead to government regulation of the curriculum of private schools that accept vouchers.

Who benefits from voucher programs?

Voucher supporters say choice allows economically disadvantaged students equal opportunities. Under the current system, the only people who can afford to send their children to private schools are those who can pay for the cost of tuition out of their own pockets. These families are actually being charged twice for such a privilege – not only must they pay the private school tuition, but they also must pay school property taxes to support public schools from which they receive no direct benefit.

Students of poorer families who cannot afford private schools have only the limited choices available in the public school system. Even a small voucher that does not completely cover the full cost of the private school would expand opportunities because it would increase the number of people who could afford to choose the school to which to send their child. Voucher programs simply level the playing field by allowing students to take the money the state would have spent on them in public schools and use it at whatever school they think will provide them the best opportunity for educational advancement.

While private voucher programs may provide some assistance for underprivileged children, the numbers benefited by such programs are minuscule compared to the large numbers denied equal opportunity for educational choice due to their lack of financial resources.

A competitive system also would benefit teachers. In other businesses, competitive forces have driven up professional salaries, but teacher salaries have not similarly risen. Without competition, teachers are paid according to set scales. Efficient schools and districts also are not encouraged because the teachers and administrators receive few benefits for extra effort.

If schools competed for greater numbers of students based on the quality of education they provide, the demand for the most desirable teachers would increase, giving them the bargaining power to boost their salaries. As salaries increased, so would the standing of teachers in the community, and a number of teachers who have left the profession for higher-paying jobs could be lured back into teaching.

Voucher opponents say vouchers would help only the best public school students at the expense of other students, particularly special needs students. Public schools are universal service providers because they serve all children in the community regardless of their abilities or needs. Private schools do not have to teach all students, only those they choose to admit. Student cherry picking artificially maintains the high achievement levels at those schools, but does nothing to help those students who are most in need.

Because private schools can be selective, they also can help to control costs by denying admission to special needs students. If a voucher program were implemented, special needs students could continue to be denied admission because many private schools do not have the facilities, staff or resources to educate such students. A higher and higher percentage of special needs students would remain in public schools that have fewer and fewer resources to adequately support such students. Additionally, voucher programs could lead to greater segregation of students by wealth, family background and race/ethnicity.

Voucher programs would not provide additional choices for students in those rural areas without private schools. In many rural areas, the public school is the only school available. Forcing all taxpayers to pay for a program that would benefit only those in certain areas of the state would be an unfair burden on rural taxpayers.

The greatest beneficiaries of a voucher program ultimately would be those already paying to attend private schools. No matter how limited a voucher program may be initially, pressure eventually would build from those who already pay to send their children to private schools to have that cost subsidized by the government.

Do private schools cost less than public schools?

Voucher supporters say private schools cost less than public schools. While a few elite private schools may charge as much as \$10,000 per year, most private schools are less expensive than public schools. Data from the U.S. Department of Education show that in the 1995-1996 school year, the average cost of private school tuition was \$3,116. Average private elementary school tuition was \$2,138, and the average for secondary schools was \$4,578. In comparison, the average per pupil expenditure in the United States for public schools was \$6,459. In Texas, the average per pupil spending in 1998 is \$5,597, according to the Texas Education Agency.

These figures demonstrate that a relatively small voucher of \$2,500 to \$5,000, like those currently available in Milwaukee and Cleveland, would go a long way toward paying the full tuition cost at most private schools. Although many private schools may receive additional donations beyond tuition to subsidize their costs, and religious schools may benefit from lower labor costs, those sources of savings would continue to keep private school tuition costs low under a voucher program.

Voucher opponents say vouchers would cost taxpayers more money. The cost of paying private tuition would not be less than or equal to the cost saved by not educating the same child in public schools. In reality, there are fixed costs in the public school system that removing

students would not reduce. Additionally, the administration of a voucher program would not be covered in the cost of each voucher.

When voucher students leave a public school, the costs associated with educating that student do not diminish. Once the student leaves, there remain the cost of debt service for school facilities, maintenance and upkeep, and the remaining instructional and administrative staff.

Administrative costs of a voucher program should not be overlooked. Even a pilot program would need a centralized office and staff to administer the program, accept and resolve complaints, and monitor the progress of students in the private schools. Additional staff may be necessary to monitor compliance with any standards and requirements made applicable to private schools. If the state provided transportation for voucher students, that amount also would be added to existing transportation costs.

Parents would have to pay the additional tuition cost for those private schools that charge more than the voucher would cover. Such costs would be prohibitive to economically disadvantaged students and most at-risk students. Some of the most elite private schools cost twice as much as what a voucher would provide. If the pilot program prohibited schools from charging more for tuition than the voucher provided, many of the most expensive schools likely would choose not to participate in the voucher program, limiting choices and thereby defeating the purported purpose of the program.

Many private schools rely on funds other than tuition for support, such as donations from parents, benefactors and the community, fund raisers such as bake sales or raffles where parents are the primary contributors, and support from the religious community or church. Many religious schools also keep costs low by employing religious personnel as staff and hiring uncertified teachers. Many schools also charge for items not covered by tuition, such as books, supplies, uniforms and lunches.

Other voucher opponents say more money should be spent directly to improve the public school system rather than depend on the vague possibility that private school competition may force improvements. Rather than spending public money for private school subsidies, the most effective course of action would be to fix the public schools using techniques known to work, such as reducing class sizes and increasing teacher pay, rather than destroying the system in favor of an untested approach.

In Schools and Student Achievement: More Evidence from the Milwaukee Parental Choice Program (Economic Policy Review, March 1998, available on the Internet at www.ny.frb.org/rmaghome/econ_pol/398crou.pdf), Cecilia Rouse found that while there was statistically little or no

difference in student achievement between voucher and non-voucher students in Milwaukee, there were measurable improvements among students in smaller classes, regardless of which school they attended.

Does the public support vouchers?

Voucher supporters say public support of vouchers is growing. An October 1998 Scripps Howard Texas Poll, conducted by the Office of Survey Research at the University of Texas surveying 1,009 adult Texans, found 51 percent of respondents in favor of a pilot voucher program and only 41 percent opposed. When asked more generally about using tax dollars to allow public school students to attend private school, 46 percent supported the idea, while 43 percent were opposed. While the numbers are still close, the number of people supporting vouchers has been growing steadily in Texas and the nation generally.

Voucher opponents say that when given the opportunity, voters have rejected vouchers at the polls. Over the past five years, voters have rejected voucher initiatives in California, Colorado, Oregon and Washington state. No voucher program has been directly approved by voters at the polls. In all, publicly funded voucher programs, tax credits, or deductions have been defeated in 21 states. The U.S. House of Representatives, under a veto threat from President Clinton, also rejected a voucher program for students in District of Columbia schools.

Public opinion polls on the voucher issue often turn significantly on how the question of vouchers is phrased. Poll respondents generally oppose using public funds to pay for private schools, and couching voucher programs in other terms hides the true issue. A recent survey by the Texas Federation of Teachers, which opposes vouchers, found nearly 70 percent of Texans were against vouchers.

Are voucher programs constitutional?

Voucher supporters say the recent U.S. Supreme Court action refusing to overturn the Wisconsin Supreme Court decision upholding vouchers against legal challenge should go a long way toward settling the constitutional issues involved. Properly constructed voucher programs do not conflict with the First Amendment because they neither hinder the practice of religion nor lead to the establishment of religion. The separation of church and state envisioned in the First Amendment is not an impenetrable wall. If it were, not only would Pell Grants and the GI Bill, which provide federal assistance for students to pay tuition to private colleges, be unconstitutional, but tax deductions and exemptions related to religion also would be forbidden.

Actually, a voucher program is, in a sense, more constitutional than the current system because it gives parents a greater opportunity for religious expression by



providing them the means to choose to send their child to a religious or non-religious school without having to be charged twice for that privilege – once for the private school's tuition and again in paying taxes for a school system that they do not use.

All voucher programs must be considered under state constitutional standards as well. The applicable Texas constitutional provision provides:

No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the state be appropriated for such purposes. (Art. 1, sec. 7)

The Texas constitutional provision is similar to Art. 1, sec. 18, of the Wisconsin Constitution: "...nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries." The Wisconsin Supreme Court in *Jackson v. Benson* focused on the phrase "for the benefit of" in determining the constitutionality of the Milwaukee voucher program. The court stated that the crucial question under such an inquiry was not whether any benefit accrues to a religious institution as a consequence of the legislative program, but whether its principal or primary effect is to advance religion. The court found that the principal effect of the MPCP was not the advancement of a religion, but the expansion of educational opportunities for students. The neutrality between religious and secular institutions under the program further bolstered the court's determination that the program did not advance religious interests.

Voucher opponents say the U.S. Supreme Court's refusal to hear the Wisconsin voucher case by no means

establishes the constitutionality of vouchers. Nor does it settle the question of constitutionality under the various state constitutions. Wisconsin's program is the only voucher program that has been upheld by the highest court in any state. The Puerto Rico Supreme Court found a pilot voucher program unconstitutional. A challenge to the Cleveland program in Ohio is proceeding, and challenges to tax credits or deductions for private school tuition are moving forward in other states as well.

Vouchers for private religious schools create an unconstitutional entanglement of church and state. Long standing U.S. Supreme Court precedent holds that spending taxpayer money to support religious schools is constitutionally suspect, *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973). Because such programs have the primary effect of advancing religion, they violate the Establishment Clause of the First Amendment, according to the court.

A voucher program also would be challenged under the Texas Constitution. While the Wisconsin Supreme Court ruled that the Milwaukee voucher program did not violate that state's constitution, the similarity of the constitutional provisions between Wisconsin and Texas does not mean that a Texas court would find such a program constitutional. A similar provision in the Puerto Rico constitution was found to prohibit vouchers.

Even if the U.S. Supreme Court eventually rules that voucher programs do not violate the federal constitution, the Texas Supreme Court could still find such a program unconstitutional in this state. The commentary to Art. 1, sec. 7, of the Texas Constitution explains that the original purpose of the provision was to prevent using public funds to support private schools.

— by **John J. Goodson**

House Research Organization

Texas House of Representatives
Capitol Extension
Room E2.180



P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0752
FAX (512) 463-1962

Steering Committee: Henry Cuellar, Chairman • Peggy Hamric, Vice Chairman

Tom Craddick

Dianne White Delisi

Harold Dutton

Roberto Gutierrez

John Hirschi

Bob Hunter

Mike Krusee

Brian McCall

Elliott Naishtat

Al Price

Bob Turner

Leticia Van de Putte

Steve Wolens

Staff: Tom Whatley, Director; Rita Barr, Office Manager;
Patricia Tierney Alofsin, Kellie Dworaczyk, John J. Goodson, Ann Walther and Kristie Zamrazil, Analysts