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**Trapping Students in Failing Schools
Violates Their Equal Protection Rights**

May 2024

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Trapping Students in Failing Schools Violates Their Equal Protection Rights

QUESTION:

Should poor students be required to attend a particular failing public school simply because of the randomness of their parents living within the geographic confines of that failing district, or is the students' inability to attend a different school a violation of their equal protection rights under the U.S. Constitution?

ANSWER:

Courts have held that the Constitution prohibits the denial of a basic education based on racial factors. Courts have also held that inadequate funding for poorer students may violate their constitutional rights. One New Jersey court held that it may not be unconstitutional to require a student to attend his local public school as opposed to being able to attend a different public school. But when the matter was brought up again in 2009, a New Jersey court withheld judgment on the constitutional claim, given that inadequate time had transpired to first determine if the reform measures promoted under the federal Common Core program and various reforms proposed by the state, would improve academic conditions at these poorer schools.

THE NEXT STEP:

Since that case, ample evidence has surfaced that neither enhanced funding to these failing districts nor academic reforms such as those embodied in Common Core or statewide proposals have had any positive effects on improving these failing schools.

In the interim, many states have been promoting new systems whereby tax dollars for education can flow with the parent and student so that they may attend

the school of their choice. Other states have shut poorer students out from this option.

The time is ripe for yet another challenge to the obsolete laws of the past that confine a student to a failing school district based simply on the randomness of where they live. The data is overwhelming that more funding doesn't work, but competition does.

Is there a law firm through a student/parent advocacy foundation ready to bring this test case?

PREVIOUS CASES:

As noted above, the case of *Crawford v. Davy*, New Jersey Appellate Division, 2009 NJ Super. Unpub. LEXIS 3226; 2010 WL 162061, provides some guidance of where we presently stand on the issue of school choice.

Plaintiffs initiated litigation against various school districts seeking an injunction to end enforcement of statutes that created local school districts for public education and the requiring of attendance at those schools by those unable to afford private school tuition. They also sought a corresponding ruling requiring such failing schools to permit students in their districts to attend any other schools at their choice, public or private, via a transferable voucher.

The case in the lower court was dismissed because the matter was not judiciable, and that it was premature due to an absence of a well-developed record.

Plaintiffs noted that 50% of the students had failed both the language arts and mathematics sections of the state mandated assessment tests.

The suit alleged the system violated the equal protection rights of Article 1, Paragraph 1 of the New Jersey Constitution by allowing district boundaries and mandatory attendance zones to consign plaintiffs to those schools only. Students are confined to schools that are failing, while other similarly situated school children are assigned to schools that are prospering from an academic perspective. It was alleged that these discrepancies violated the students' equal protection rights under the 14th Amendment of the United States Constitution on the same basis, and violated the New Jersey Civil Rights Act by depriving them of their constitutional rights.

The lower court rejected the equal protection argument on the grounds that:

Plaintiffs could not state a cause of action on the basis of an equal protection violation under either the state or federal constitution, because there were no allegations that the legislature intended to discriminate against any class when creating the state school systems on the basis of districts primarily congruent with existing municipal boundaries.

The appellate court claimed that this is a matter primarily for the state legislature:

The political branches of government, however, are entitled to take reasonable steps, even if the outcome cannot be assured to address depressing, social, economic, and educational challenges confronting our state. They should not be locked into a constitutional straight jacket. **SFRA deserves the chance to prove in practice that as designed it satisfies the requirements of our Constitution. (Emphasis added)**

(The SFRA was the School Funding Reform Act.)

This was back in 2009. How much time do the legislators get to correct this broken system? Every effort undertaken has failed.

The court specified some of the many programs that were implemented to erase the student performance gaps between the good schools and the bad.

The court required:

*The implementation of full day kindergarten and a half-day preschool school program for three and four-year-olds,

*Implementation of programs for technology, alternative schools, accountability and school to work and college transition programs,

*Enacting procedures and standards to enable schools to adopt additional or extended supplemental programs,

*Seeking funds necessary to implement these programs, as well as getting funding to remediating identified lifecycle and infrastructure deficiencies, and the cost of providing space necessary to house students adequately.

In efforts to erase the achievement gap, state legislatures time after time have opted for more money and more programs as opposed to breaking up the system and allowing the student to attend the better school.

The good news is that the court also stated:

Consequently it is clear that the court will under appropriate circumstances, and on an appropriate record, go beyond the issue of funding.

As to the requirement that a student be mandated to attend a specific public school, the court said:

While we declined to address the hypothetical issue of whether such a remedy would ever be appropriate to facilitate the proper implementation of the thorough and efficient education clause, we agree with the general equity judge that even to contemplate such a remedy at this time is exceedingly **premature** and consequently inappropriate. (Emphasis added.)

The court added:

While plaintiffs may have the right to pursue their claims under the ‘thorough and efficient’ education clause in an appropriate forum at some point in the future, they cannot do so until SFRA has had the opportunity to operate as required by Abbott XX. (Emphasis added.)

Abbott XX was a case dealing with school funding.

The court declined to consider the question of equal protection.

Although the Supreme Court in *Robinson v. Cahill*, Supra, 62 NJ at 482-501, found New Jersey’s then existing system of providing a thorough and efficient public education to be unconstitutional, it declined to do so on either state or federal equal protection grounds... Consequently, we conclude that there are no viable equal protection claims and affirm that dismissal.

The Jersey court did not rule on it simply because the Supreme Court did not rule on the equal protection argument. Ultimately it was never addressed.

***Robinson v. Cahill* 62 NJ 473. 1973**

The Robinson court stated:

“In these circumstances, we will not pursue the equal protection issue in the limited context of public education. “

The Robinson court found New Jersey’s then existing system of financing elementary and secondary public schools to be unconstitutional.

Abbott v. Burke, 119 NJ 287 also found the school funding formula unconstitutional.

(The last Abbott decision in 2009 declared the current school funding, evaluation and remuneration system to be constitutional.)

The trial court held that the existing school system discriminated against students in low real property districts and discriminated against taxpayers by imposing unequal burdens. They were in violation of equal protection mandates to the federal and state constitution. The lower court held that prospectively they must change the taxing system.

The New Jersey Supreme Court stated:

Obviously, equality of dollar input will not assure equality in educational results. There are individual and group disadvantages, which play a part.

The Supreme Court in New Jersey held it does not accept the constitutional thesis espoused by the trial court.

It would then follow that a state aid program which did not neutralize local inequities would itself deny equal protection as to the beneficiaries.

The court in Robinson held:

In light of the foregoing it cannot be said the 1875 amendments were intended to ensure state wide equality among taxpayers. But we do not doubt that an equal educational opportunity for children was precisely in mind.... Whether the state acts directly or imposes the roll upon local government, the end product must be what the constitutional commands. A system of instruction in any district of the state which is not thorough and efficient falls short of the constitutional command. Whatever the reason for the violation, the obligation is the state's to rectify it. If the local government fails, the state government must compel it to act, and if the local government cannot carry the burden, the state must itself meet its continuing obligation.

The court added:

The constitution's guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip the child for his role as citizen and as a competitor in the labor market...

The trial court found that the constitutional demand had not been met and did so on the basis of discrepancies in dollar input per pupil. We agree.

The court basically ordered the state to come up with more money.

THE STEVENSON CASE

Stevenson v. Blytheville School District 8th Circuit 2015 800 F3 955

Arkansas passed the broad school choice transfer option in 2013, but included an exemption if the school district is subject to a desegregation porder mandated by the federal government. Plaintiff sued under due process and equal protection claims. The District Court rejected the request for declaratory judgment and injunction.

The Arkansas law allows a parent to petition a neighboring public school district to allow their child to gain entry. The school district must approve and give the

parent a yes or no answer. If the district applied to says no, the parent can appeal to the state education department, which can overturn the district. However, an exemption existed where it was deemed that the transfer would be violative of prior federal mandates to eliminate racial segregation. Plaintiffs sued claiming the exemption violated their equal protection and due process rights.

To win on due process one must show 1) that the subject had life, liberty and property interests protected by the due process clause, 2) that he was deprived of this interest, and 3) the state did not afford him procedural rights prior to depriving him of the interest.

The lower court stated that there was no case they could find “holding a parent’s ability to choose where his or her child is educated within the public school system is a fundamental right or liberty.”

In the 1997 case, *Washington v. Glucksburg*, the US Supreme Court stated there was a right “to direct the education and upbringing of one’s children.” 521 US 702.

Pierce v. Society of Sisters of the Holy Names of Jesus and Mary, 268 US 510, held that state compulsory education laws requiring students to attend solely public schools “unreasonably interferes with the liberty of parents... to direct the upbringing and education of children under their control.”

In *Swanson v. Guthrie Independent School District*, 135 F third 694, 10th Circuit (1998), it was stated that:

The case law in this area establishes that parents simply do not have a constitutional right to control each and every aspect of their children’s education and the state’s authority over that subject.

The court in *Pierce v. Society of Sisters* held that the Oregon law requiring parents to send a child to public school on pain of criminal liability unreasonably interferes with the liberty of parents to direct the upbringing of their children.

But the court also said that the case lent “no support to the contention that parents may replace state educational requirements with their own idiosyncratic

views of what knowledge a child needs to be a productive and happy member of society...”

Pierce simply “affirmed the right of private schools to exist, and to operate...”

The Stevenson case stated:

In summary, Meyer and Pierce stand for the propositions that ‘the 14th Amendment prevents a state from denying parents the right to choose private schools for their children’s education.’... Here the district ‘has not restricted the appellants’ constitutional rights to educational choice. The appellants are free to send their children to public school , or to send them to private school or to educate them at home. They have freely chosen to send their children to public school. We agree with the District Court, that neither Meyer or Pierce nor any other relevant precedent, support the proposition that ‘a parents ability to choose where his or her child is educated within the public school system as a fundamental right or liberty.’
Adkissin v. Blytheville School District 2014 324-cv-00127-kgb.

The Stevenson case held that as to equal protection, strict scrutiny applies to state action where “a state treats persons differently based on a suspect classification such as race... if no suspect classification is involved, the state need only show the differential treatment is rationally related to a legitimate state interest.”

The 2009 8th Circuit case *Flowers v. City of Minneapolis*, 558 F 3d 794, stated that to establish a violation of the equal protection clause, the plaintiff must demonstrate that he was treated differently than other persons who were in all relevant respects similarly situated. To demonstrate this, the appellant must prove similarity to other individuals receiving favorable treatment.

The Stevenson court held this didn’t exist in their case because all district students, regardless of race, had an equal opportunity to transfer, emphasizing the lack of any evidence that the district permitted African-American, but not Caucasian students to transfer out of the district.

The court claimed that the district had a rational basis for believing that it was subject to the mandate of the federal court regarding desegregation.

Our Analysis of Stevenson

The Stevenson decision relied on a series of earlier cases that held that parents had a right to send their children to private schools so long as those schools abided by state standards. However, these cases also held that the parents could not compel public schools to accept out of district residents.

Equal protection arguments were denied because this public school need only have shown a rational basis for denying out of district residents and that there was no evidence of deliberately trying to exclude minority students.

While a rational basis may have existed in the past, that rationality has dissipated as new policy initiatives have been developed. Those policies include allowing taxpayers to tap tax dollars for a school of their choice. This process has been upheld and can revolutionize our education systems by freeing poorer children, especially minority students, from being trapped in failing schools.

But this new freedom is worthless if state legislatures beholden to powerful teachers unions prohibit parents from using their proportional tax dollars for the schools they deem best for their children. Thus, their due process and equal protection rights have been stymied.

While it may not be violative of the equal protection clause when states refuse to allow students to go to the public school of their choice, courts should hold it a violation of their equal protection rights when states place an artificial cap on the number of private or charter schools, or deny parents of those students to transfer their tax dollars from the public schools to the private institutions. (This all assumes that the private institutions would be following state guidelines for the educational curriculum.)

In such a case, the parents would not be seeking to force a public school district, in which the parent does not reside, to accept their child. Rather, they would be seeking to prevent the state from stopping them from going to a private or charter

school funded (directly or indirectly) by the taxpayers, where the charter or private school welcomes the student with open arms.

Espinoza v. Montana

In 2020, the U.S. Supreme Court weighed in on a Ninth Circuit case, *Espinoza v. Montana* 591 U.S. ____ (2020). Montana's legislature provided tuition assistance to parents who send their children to private schools. A tax credit was made available to anyone donating to organizations that award scholarships to students attending the private schools, which included religious institutions.

Justice Roberts, speaking for the majority, stated:

A state need not subsidize private education. But once a state decides to do so, it cannot disqualify some private schools, solely because they are religious.

Thus, it is now the law that private, even religious, schools can be funded through this indirect method. That is not the same as saying a state must enact such a private school subsidy. But once established, the state cannot fund some private schools while refusing to give students at religious institutions the same opportunity.

This is a good first start, but a case needs to be brought before the court that asks the justices to consider why states can continue to refuse any subsidized private school mobility, given the many options that are now available (as evidenced by the growing prevalence of voucher programs).

OUR FAILING SCHOOLS

An examination of scholastic performance of K-12 students in various states and localities provides clear proof that simply allocating more funding to failing schools accomplishes little, if anything.

BALTIMORE

For example, 40% of the high schools in the City of Baltimore failed to have a single student pass the math proficiency exam. NOT A SINGLE STUDENT. Even more staggering is the fact that 75% of students earned the lowest possible score on the exam.

FOX 45 in Baltimore reported:

“At 13 of the school district’s 32 public high schools, 1,295 students of the 1,736 who took the exams scored a 1 out of 4, meaning they were nowhere close to proficiency.”

Many tried to tie these terrible results to a theory that these schools are not receiving enough funding. However, these underwhelming test scores come despite the fact the Baltimore City Public Schools had a 2022-23 budget of \$1.6 billion, its largest ever, as well as almost \$800 million in COVID-19 grants.

BOSTON

We can also look to Boston, a city deeply associated with academia and the concept of scholastic excellence. Even in this district, where student spending was an astounding \$31,397 in 2020-21 (at the time, more than any other large school district in the nation), reading and math scores for fourth and eighth grade students reached their lowest point since 2011. Moreover, “less than a third of students in grades 3-8 met expectations on the state’s standardized test, and enrollment also declined by 2,500 students.”

NEW YORK

While the Boston district topped per pupil spending on a city level in 2021, New York City's per pupil spending soared to a breathtaking \$38,000 in 2023.

The state legislature just added billions more in spending for its aid package to local schools, even though New York spends the most per pupil of all the fifty states.

This is hardly an anomaly, as more clearly expressed in a recent NY Post op-ed, which noted:

“Between 2002 and 2020, before the massive infusion of federal COVID-19 aid for schools, New York led the nation in inflation-adjusted public-school spending, going from \$18,054 to \$30,723 per student.”

Despite this spending, “National Assessment of Educational Progress test scores barely budged from 2003 to 2019, ranking in the bottom half of states in the four reading and math assessments Reason Foundation examined.”

The lack of progress is especially alarming for low-income students, whose scores stagnated.

“New York’s low-income fourth graders ranked 41st in the country in math, behind students in states such as Arkansas, Mississippi and Georgia, where far less money is spent on public schools.”

NEW JERSEY

Many of the New Jersey school districts mentioned in *Crawford v. Davy*, including the Bound Brook, Woodlynne Boro, Irvington, and Englewood Schools, continue to rank below the New Jersey state averages in proficiency in both Math and ELA, even after major increases in education aid were awarded. Maybe the court's decision to not intervene from an equal protection perspective, and simply increase funding isn't really working out for these public schools.

HOW CAN WE FIX THIS?

One solution is by offering parents the ability to send their children to better performing schools, including charter schools. Studies confirm that in many instances charter schools are outperforming traditional public schools. This past summer, a nationwide study conducted by Stanford University's Center for Research on Educational Outcomes (CREDO) found that "public charter schools outperform traditional public schools across a variety of educational metrics."

For example, "research found that, over the course of a school year, charter students advanced learning in math by an additional 6 days. In reading, charter students advanced an additional 16 days."

Another major takeaway from the CREDO study is that significant progress was shown among disadvantaged students who attended charter schools, compared to those who attended public schools. Black and Hispanic students showed improvements in math and reading by large margins compared to their public school peers, the study showed.

We can look at a separate study to see the same positive outcomes happening in New York City. The non-profit New York City Charter School Center found that:

"New York City charter school students outscored their public school peers on the state's standardized reading and math exams for grades 3-8 last academic year."

Similarly, the national CREDO study noted that Black and Hispanic students benefited most from charters, "with those at charters scoring leaps beyond their counterparts in public schools."

Black charter school students outperformed their public school counterparts by 19 percentage points (59% vs. 40%) on the ELA, and by 27 percentage points on the math exam (61% vs. 34%).

Hispanic charter school students outperformed their public school peers by 16 percentage points (55% vs. 39%) in English and by 25 percentage points (61% vs. 36%) in math.

Overall, charter school students scored 7 percentage points higher on the English Language Arts (ELA) exam, with 59% passing versus 52% at schools run by the city's Department of Education. On the Math exam, a similar trend emerged, as charter students scored 13% higher at a 63% pass rate compared to the public school pass rate of 50%.

There are various efforts across the country being undertaken to expand school choice. [A 2023 Empire Center article](#) noted how Pennsylvania and Iowa last year took major steps towards allowing more options for their students.

“Pennsylvania expanded its scholarship tax-credit program which provides tuition support for low-income families to send children to private schools.”

In Iowa, “Families will soon have their own education savings accounts, giving them access to a portion of their students’ funding allotment for use at any school of their choice.”

Currently 10 states have universal, or near universal, school choice: Arkansas, Iowa, Oklahoma, Utah, Florida, Indiana, Ohio, North Carolina, Arizona and West Virginia.

Six of these states [rank in the top half of the country in Pre-K-12 education](#) (Indiana at 7th, Utah at 9th, Florida at 14th, Iowa at 16th, North Carolina at 18th, and Ohio at 21st).

Last year alone, 17 states enacted legislation that would either establish new choice programs or expand current ones. Currently in Pennsylvania, a bill that has been introduced by a Democrat and co-sponsored by a Republican, would create the Educational Freedom Act Program to offer scholarships to low-income students zoned to low-performing public schools.”

There are also currently bills in Tennessee and Missouri that would, in some capacity, allow for near universal choice.

When looking at states that have full or partial school choice programs the number leaps to thirty three. Most noteworthy in the analysis conducted by [EdChoice](#) is that while only 36% of the parents polled wished to remain in their present public school district, the actual number of students confined to the public schools is 86%.

Despite this keen desire for American parents to place their children elsewhere, the outdated requirements in many of our states continue to demand that

students be sent solely to the schools corresponding to the area in which they reside, or to pay out of pocket.

We can look to Florida as a major success story when it comes to school choice. According to the Miami Herald, “In Florida, charter schools outperform district-run schools in virtually every major category tested. Charters bested traditional schools in 58 of 77 measures in students' achievement.”

Also of note is how “charters are better at addressing the achievement gap between white and African-American students in 18 of 22 comparisons, charter schools beat district schools in 81 of 96 comparisons in learning gains.”

PUBLIC SCHOOLS CAN ACTUALLY IMPROVE VIA CHARTER COMPETITION

Some will seek to make the case that allowing parents to remove their child from a public school in the neighborhood to attend a public school in an adjacent district will create chaos within the public school system. That does not have to be the case.

But let's submit for the moment that it would be too problematic. There should be no impediment to that parent being able to send his or her child to a private or charter school nearby via mobility of the tax dollars assigned to that family, or through tax credits and subsidies granted to the family.

This isn't a problem in those jurisdictions that have passed legislation allowing parents to move to the charter of their choice via tax credits and subsidies.

The problem exists in those jurisdictions that either: 1) do not allow the parents to utilize those tax dollars for the private or charter schools, or 2) prohibit, or limit, the number of charter schools within their state.

New York is an example where families, particularly minorities, are clamoring, even begging, for the ability to transfer their children from violent, dangerous and failing public schools, especially in the inner cities, to thriving, productive charter schools

Getting any type of authority for charter schools in New York has been quite a battle. It was only in 1998 that then governor, George Pataki, was able to leverage a requested pay raise by the legislature to a linkage with their approval for a small number of charter schools. It was a major breakthrough, but nevertheless was saddled with a cap on the number of charters that would be authorized.

State leaders saw that as soon as new charters were created, the slots would be gobbled up in a matter of nanoseconds. So why would there be so much resistance by the legislature?

The answer is simple and obvious: the power of the teachers unions.

The unions have claimed that the charters pose a threat to the public school system. The theory is that if money flows to the charters, it will strangle needed aid to the public schools. As noted above, the evidence shows that this is simply not true. In fact, the competition created by the charters wound up actually improving the public schools in various jurisdictions. It is clear that the main reason for the unions' opposition is a potential decrease in their membership, and consequently dues paying members.

The public school should not be any less well off because the student chooses to attend the private or charter school. While some money will now be funneled to the private school, the public school will no longer have the obligation or expense of educating that child. It would be nonsensical to suggest that the public school should retain those tax dollars even though their enrollment would have dropped, but most are keeping their prior levels of funding - and in most cases are getting more - even as charters are obtaining state assistance.

A 2019 Heritage Foundation article states that school choice actually benefits public schools by applying competitive pressure. Heritage references research which showed “that public school student performance in both Florida and Milwaukee improved after the launch of new school choice opportunities.”

The article also mentions how granting parents the ability to take their children and dollars elsewhere can in turn create an incentive for schools to improve, otherwise running the risk of losing too many students.

The Heritage Foundation cited a study that found that students in the Milwaukee public school system were “performing at somewhat higher levels as a result of competitive pressure from the school voucher program.”

In Florida, studies found that “the test scores of students in public schools that risked losing students to private schools through the tax credit program improved relative to students in public schools that were less affected by the scholarship program.”

Twenty-five of the twenty-eight studies on the topic of charter schools and their effect on public schools found statistically significant positive effects of private school choice competition on student outcomes in public schools.

This phenomenon was also evident in yet another Florida study - conducted in 2021 - which found that “program expansion modestly benefited students (through higher standardized test scores and lower absenteeism and suspension rates) attending public schools closer to more pre-program private school options” with effects most pronounced with lower income students.

A 2020 analysis conducted by The Hoover Education Success Initiative at Stanford showed:

Ten of the eleven studies conclude that school choice in Florida consistently improves the achievement of students in affected public schools. Only one study finds no significant effects of private school choice competition on public school achievement in Florida....

Currently, a student in one of the nine cities in our sample forgoes, on average, \$8,938 in per-pupil funding per year if they decide to attend a charter school rather than a traditional public school, yet on average, they score 2.2 points higher on the eighth grade NAEP reading exam and 0.6 points higher on the math exam. Perhaps these charter schooling gains would be even larger if charter school funding was equitably matched to TPS funding

The Manhattan Institute noted that Florida’s low-performing schools are improving in direct proportion to the challenge they face from voucher competition.

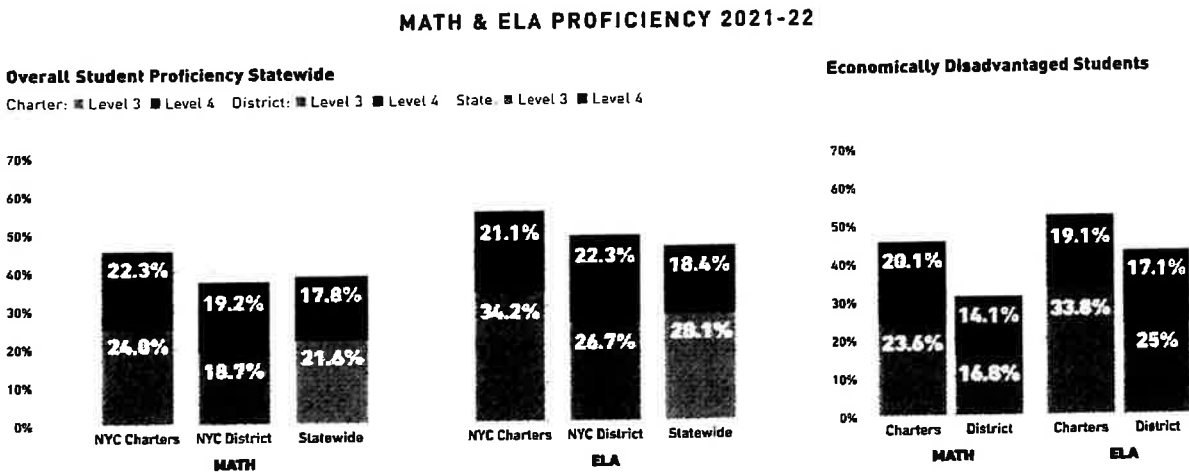
Schools already facing competition from vouchers showed the greatest improvements of all five categories of low-performing schools, improving by 9.3 scale score points on the FCAT math test, 10.1 points on the FCAT reading test, and 5.1 percentile points on the Stanford-9 math test relative to Florida public schools that were not in any low-performing category.

Schools threatened with the prospect of vouchers showed the second greatest improvements, making relative gains of 6.7 scale points on the FCAT math test, 8.2 points on the FCAT reading test, and 3.0 percentile points on the Stanford-9 math test.

The Heritage Foundation mentions numerous reasons why school choice is winning, including:

- Improving for school safety,
- Increasing parental involvement,
- Giving students education tailored to their needs,
- Providing more options for low income families,
- Higher graduation rates,
- Savings for taxpayers,
- Placing more competitive pressure on public schools.

The below chart from New York City Charter School Center illustrates how charter school students in New York had higher proficiency standards in both Math and ELA.



CHOICE LEADS TO SAVINGS AND ECONOMIC BENEFITS

School choice also provides various economic benefits. For example, in a [2023 article](#) from The Daily Signal, Bartley Danielsen, an Associate Professor of Finance and Real Estate at North Carolina State, is quoted as saying that school choice benefits the economy because it “allows families to remain in their dwellings, rather than feeling led to switch neighborhoods based on school districts.”

Professor Danielsen added: “Out of 52 analyses on the fiscal impact of private school choice programs, 47 were found to generate overall [savings for taxpayers](#).”

Another [study](#) from 2018 stated that school choice programs led to anywhere from \$12.4 to \$28.3 billion in tax savings.

Charter schools also offer teachers more flexibility in the curriculum they can teach, which in some cases help to better prepare students for college and the real world. For example, they tend to offer more of a STEM focused approach to education which can prepare them for college and life after school.

We can also look at the efforts led by Facebook CEO Mark Zuckerberg in Newark. While [a study](#) found that “by 2016, Newark students were making greater gains on English tests than they were in 2011, it found that “the results were not uniformly positive.” However, the same study mentioned that “a lot of the improvement, researchers found, was due to district officials closing underperforming schools and opening new schools, both district and charter schools, to replace them. That move alone accounted for nearly two-thirds of students’ gains in English.”

It becomes clear that allowing students to attend better schools is the path toward academic improvement.

FAILING PUBLIC SCHOOLS DESTROY THE WEALTH OF MINORITY FAMILIES

This analysis provides for a fascinating talking point on how the lack of choice for students and parents has a deleterious impact on the minority population. Being trapped in poor performing schools is known to significantly decrease property values within a locality. It is easily provable that schools with a predominantly minority population have lower student performance, thereby stigmatizing entire African-American and Hispanic communities.

It has been found that growing up in poor communities has the ability to hold people back for life, and affect their ability to move up the income ladder. A big reason for that is the school quality in these poorer communities. [A Vox article](#) quotes research which states: "We know school quality is highly correlated with neighborhood income, and experimental evidence shows that poor children have higher cognitive scores and lifetime earnings when they attend good schools."

What is the solution according to researchers? Providing lower-income students with higher quality schools.

Courts have been far more likely to invalidate academic systems where the policies have a detrimental impact from a racial perspective.

Any future challenge to the existing system prohibiting students to attend the school of their choice must take up the issue of the impact these restrictive policies have on minority homeowners.

The prospect of minorities in America being trapped in failing neighborhood public schools not only raises a question of equal protection arguments as to the quality of their education, but it also deleteriously impacts the property values of minorities living in failing school districts. Wealthier minorities, who might otherwise stay in their hometown, are incentivized to move out of that hamlet if the school system is failing.

On the other hand, if they could transfer the tax allocated to that public school to a private or charter school within travel distance for their children, or receive

significant tax credits and subsidies, they would be more likely to remain in that neighborhood.

The great sucking sound that poor minorities hear in their communities are the higher wage earners leaving the community for other neighborhoods simply so that their children will not be stranded in a failing public school.

As noted above, the trapping of minority students in failing public schools has the effect of limiting their options for the rest of their lives.

It leads to lower chances to attain a higher living standard and better job opportunities, it also impacts the ability to have an equal shot at buying a home or having a home value that is commensurate with the same home owned by a white resident in an area with better schools.

Twin Cities Habitat for Humanity issued a publication stressing that:

Homes in historically Black neighborhoods are consistently valued at lower rates than those in White neighborhoods. A study by the Brookings Institution estimates that devaluing has caused \$156 billion in cumulative losses for Black families as of 2018, exacerbating the wealth gap between White and Black homeowners.

The Michigan Journal of Economics concluded: “Those who live close to highly regarded private schools, can typically command higher income values due to their proximity to the private school.”

Opening up more options to these poor children has benefits for the surrounding community as well. The Michigan study goes on to note: “Not only do good schools add tremendous value to the surrounding housing, but higher home prices feed back into schools.”

A New York Times expose stated: “Economists have estimated that a 5% improvement in test scores in suburban schools can raise home prices by 2.5%.”

HOW THE CHARTER MONEY FLOW WORKS

Florida

The vouchers of approximately \$8,000 per year can be used at accepting private schools. Students are eligible to receive vouchers if they are "a resident of this state" and "eligible to enroll in kindergarten through grade 12" in a public school.

The bill includes a tiered "priority" system for the vouchers. Students whose household incomes are less than 185% of the federal poverty level, or roughly \$51,000 for a family of four, get first priority. Next are students whose family incomes are from 185% of the poverty level to 400% - about \$111,000 for a family of four.

Arizona

School vouchers provide recipients 90% of the amount of state funding that would have been given to a public or charter school - regardless of what type of school was attended.

For most students, this is about \$7,000. However, the amount may vary for students with disabilities and can be upwards of \$30,000. The average school voucher is \$15,225.39.

A voucher can be used to pay for private school attendance, to support homeschooling, for therapies or for other educational services.

Iowa

Gov. Kim Reynolds' new voucher program - called the Students First Education Savings Accounts—provides applicants with \$7,635 in taxpayer funds toward a private school education. The program had 16,757 certified participants this year, which comes out to \$127,939,695 in taxpayer funds going to the state's private schools.

THE BOTTOM LINE

1). Allowing money to flow with the student and parent to any charter or private school does not diminish the quality of the public school in that area.

In fact, the evidence shows that it actually improves public school performance.

2). Charter schools dramatically outperform typical public schools, especially in inner cities.

3). Wealthy people have the luxury of affording the tuition for private or charter schools, while their poor neighbors do not.

4). Previous court cases have held that separate, but equal, schools are unconstitutional.

5). Courts have also held that funding scenarios that provide inadequate resources for poor and minority students may indeed be unconstitutional, leading courts to require state legislatures to take action to remove those disparities. In the past, the remedies have revolved around simply coming up with more money to throw at the problem within the present public school systems. In fact, the Crawford case held off on declaring the disparity as being a violation of the equal protection clause simply because there had not been enough time for officials to gauge whether new legislative proposals from the federal, state and local governments would work in removing these disparities.

Well, years later, the evidence is in, and it is unquestionably clear that simply throwing more money at the educational disparities within the systems has had no positive effect.

6). Given that we now have this information at our disposal, it is time for the courts to take another look at the equal protection argument.

7). Prior to the advent of charter schools, and the ability for parents to obtain tax dollars for whatever school they desire, there might have been a legitimate reason to strike down efforts to break apart the local school monopoly. However,

times have changed. The ability for parents to control those taxpayer dollars has been upheld in many states.

It can most assuredly be held in the present era that those states that continue to place caps on charter school expansion or prohibit parents from controlling their tax dollars is an unconstitutional violation of the equal protection rights that should be afforded these parents and students, especially those in minority communities.

8). Brown v. Board of Education in 1954 was supposed to have paved the way for equal opportunity in education. However, housing segregation has led to many minority children being stuck in failing, violent public schools. This leads to lower property values, lower incomes, and less opportunity than their white counterparts living in areas with better schools. If we want the true intent of Brown to come to fruition, we need to give all students access to better schools.

EPILOGUE

As this white paper was in its final stages, we came across a study issued in April 2024 by Available to All entitled, “The Broken Promise of Brown v. Board of Ed.”

The conclusions listed in the report are remarkably similar to those laid out in this analysis.

The report noted that the intent of the Brown holding, which ended separate, but equal accommodations for Black students, has been dramatically diluted by the fact that redlining and housing discrimination has still kept schools segregated and relegates African-American and Hispanic students to failing schools.

The study revealed how two districts, one primarily Black, and one primarily white, existing adjacent to each other, had remarkably different outcomes in student performance.

This educational redline explains how neighboring schools like Lincoln Elementary and Manierre elementary – two campuses serving Chicago’s Old Town neighborhood – can end up so starkly different. At Manierre, where 98% of students are Black and Latino, not a single graduating eighth grader could read a grade level in 2023. Just a mile away at Lincoln, a school that is majority white, over 84% of eighth graders can read proficiently. The two populations are completely separated by an attendance zone line drawn down the middle of North Avenue by the school district.

The fact that these Black students are prevented from getting into a white school because of discriminatory redlining shows that a similar discriminatory condition exists today as it did back in 1954, as Brown was being decided.

This is the Equal Protection argument that must be adjudicated in yet another challenge to the public school monopoly.

The study listed a number of recommendations to ameliorate the problem. They revolve around obtaining legislation on the state level to guarantee greater access to better schools for minorities.

Our study goes beyond the legislative path, given that passing such reforms in states such as New York, California, Illinois, or New Jersey, where the teachers unions are so powerful, will be unlikely in the decades to come.

Thus, the more likely path toward eliminating this discriminatory process is through the courts.

Race is the basis by which equal protection was upheld in *Brown*. Race will also be the basis for opening up other options to the public school monopoly.