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THE DC CHOICE INCENTIVE ACT OF 2003: A HISTORIC MOMENT FOR CHILDREN

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Voucher programs have long endured intense legislative challenge and judicial scrutiny. This article details the recent history of a successful voucher implementation plan for the District of Columbia. The importance of a broad base of politically active and astute citizens, parents, religious leaders, and Federal legislators is highlighted. The success of the voucher program detailed here may serve as a model for other programs.

INTRODUCTION

The more than decade long struggle to enact a federally funded voucher demonstration project came to a successful conclusion with the historic 65 to 28 vote in the United States Senate on January 22, 2004, passing the Consolidated Appropriations Act, 2004 and the signing of the bill (H.R. 2673, 2003) into law by President Bush on January 23, 2004. Public Law 108-199 contains the fiscal year 2004 appropriations for the District of Columbia within Section 2, Division C; Title III of these appropriations contains the DC School Choice Incentive Act of 2003, a 5-year pilot scholarship demonstration program for children living in the District of Columbia.

BACKGROUND

While many view school choice as a relatively new and novel approach in education, the reality is that it has been around for a long time. One can find the concept in the writing of the philosophers Adam Smith and John Stuart Mill; the politicians Thomas Paine, Thomas Jefferson, George Bush, and Ronald Reagan (Kirkpatrick, 1990) and the economists Milton Friedman (1955, 1962) and Rose Friedman (Friedman & Friedman, 1980). Paine, advocating for achieving an educated citizenry early in the life of this country, developed a voucher proposal that would have allowed the government

to pay for the education of those seeking to attend private schools. American higher education has been using a form of vouchers (e.g., “G.I. Bill” and Pell Grants) for almost a half century (Kirkpatrick, 1990). Child care certificates have been available for use in public and private settings since 1990. Many public school districts pay to have children with educational disabilities educated in private and religious schools (Bolick, 2003).

Statements outlining the Catholic Church’s position on education, whether developed by Roman Curial Congregations or the bishops of the United States, have consistently supported the fundamental right and responsibility of parents, as the primary educators of their children, to choose the setting they feel is most responsive to the needs of their children. These statements are also clear that public officials have a duty to protect that right and to provide the appropriate condition under which this right is able to be exercised by parents.

Support for this position can be found in *The Declaration on Christian Education* of Vatican II (1987), the Congregation for Catholic Education’s *The Catholic School* (1977), *Lay Catholics in Schools: Witnesses to Faith* (1982), and *The Catholic School on the Threshold of the Third Millennium* (1997). Finally, the *Charter of the Rights of the Family* (Holy See, 1983) stresses that parents have an “original, primary and inalienable right to educate...their children” and that parents “should also receive from society the necessary aid and assistance to perform their educational role properly” (para. 5a). The Charter continues and states that such support will allow parents to be truly free to exercise this right without having any unjust, direct or indirect, burden placed on them so that they might be denied the ability to exercise this basic right.

The United States Catholic Conference (USCC), in statements issued in both 1990 and 1995, has affirmed their support of this parental right. In 1990, they advocated launching “new initiatives...to secure sufficient assistance from both private and public sectors to exercise this right” (USCC, p. 6). In 1995, the bishops stated that “no single model or means of education is appropriate to the needs and desires of all persons” (USCC, p. 3) and that the nation’s leaders should provide “the broadest variety of educational opportunities...including public, private, and religious models” (USCC, p. 3). The bishops also advocated for government and private sectors to provide the assistance necessary to access the variety of educational opportunities including “charter schools; magnet schools; and public, private, and religious school choice programs” (USCC, 1995, p. 8).

These principles were re-affirmed in the bishop’s presidential election year statements *Faithful Citizenship: Civic Responsibility for a New Millennium* (USCC, 1999) and *Faithful Citizenship: A Catholic Call to Political Responsibility* (United States Conference of Catholic Bishops

[USCCB], 2003). The bishops' Committee on Education adopts a public policy agenda at the start of each new Congress. In the most recent agendas approved by the Committee, the bishops identified two governing principles for our federal public policy efforts. The first principle is that the Committee supports legislation that "allows all parents, but especially low and middle income parents, to choose the education they believe is best suited for their children, whether that is a public, private, or religious school" (USCCB, 2004, ¶ 2) Under the heading of "Parental Rights in Education," the Committee states that it supports legislation that: "provides an adequately funded student scholarship demonstration project of educational choice for parents, especially those most in need (USCCB, 2004, ¶ 3). The bishops set this specific policy goal because they saw this issue as a matter of justice for parents.

UNSUCCESSFUL FEDERAL SCHOOL CHOICE INITIATIVES

Federally funded school choice initiatives began to be introduced in Congress during the administration of the first President Bush, when Lamar Alexander was the Secretary of Education. While none of these initiatives were specifically aimed at the District of Columbia, it was conceivable that the District could be one of the recipients of federal funds if enacted into law and the District officials fulfilled the requirements. These initiatives laid the foundation for future attempts that would follow during the Clinton Administration, especially after the Republicans would take over control of both Houses of Congress.

In 1993, during the 103rd Congress, Representative Tom DeLay of Texas introduced House of Representatives Bill 2270, a school choice demonstration bill aimed at providing scholarships for elementary and secondary students in the District of Columbia. The bill was referred to the House Committee on the District of Columbia, but no action was ever taken on the bill.

In the 104th Congress, Representative Steve Gunderson of Wisconsin introduced a floor amendment (H.AMDT. 891, 1995) to the District of Columbia appropriations bill (H.R. 2546, 1995) that provided for a comprehensive set of reforms of the District of Columbia elementary and secondary schools including the creation of a non-profit corporation that would offer scholarships for poor residents that could be used at private schools. The amendment was adopted by a vote of 241 to 177, with one member voting present. The Senate passed a DC appropriations bill without any provisions for the school choice proposal. The scholarship language from Gunderson's amendment was then incorporated into the DC

Appropriations Conference Committee Report, but supporters in the Senate were unable to obtain the necessary 60 votes needed to invoke cloture to end a filibuster, and the Gunderson language was eventually stripped from the final version of the appropriations bill.

The next attempt at creating a DC scholarship program came in 1997, during the 105th Congress, when House Majority Leader Dick Armey of Texas introduced House of Representatives Bill 1797 and Senator Dan Coates of Indiana, introduced an identical bill (S. 847) in the Senate. Later in the session, Coates would introduce a different choice bill (S. 1502, 1997) which passed in the Senate on a voice vote. The House then took up Senate Bill 1502, and it passed by a vote of 214 to 206, with one member voting present. The bill was sent to President Clinton who vetoed the bill on May 20, 1998. Based on the votes to pass Senate Bill 1502, no attempt was made to override the President's veto.

There were no DC choice initiatives introduced during the 106th Congress. In 2002, with the Supreme Court's positive decision in the Cleveland voucher program, *Zelman v. Simmons - Harris*, Majority Leader Armey introduced House of Representatives Bill 5033 and Senator Judd Gregg of New Hampshire introduced a similar bill (S. 2866) in the Senate. Neither bill was ever reported out of committee, thus dying at the close of the 107th Congress.

Early in the 108th Congress, Representative Jeff Flake of Arizona and Senator Gregg introduced similar DC scholarship bills (H.R. 684, 2003; S. 4, 2003). Neither bill was approved by the appropriate committees.

THE SUCCESSFUL EFFORT TO PASS THE DC CHOICE INCENTIVE ACT OF 2003

In June 2003, Representative Tom Davis of Virginia, Chairman of the House Government Reform Committee, which has jurisdiction over the District of Columbia, introduced House of Representatives Bill 2556 which would provide scholarships to poor residents to attend private and religious schools. The Mayor of the District of Columbia testified in favor of a DC voucher bill that was based on a three-sector approach that provides funds for choice scholarships as well as additional funding for regular DC public schools and for charter schools (School Choice, 2003). The Mayor had the support of the President of the DC Board of Education and the Chair of the City Council's Education Committee. House of Representatives Bill 2556 was reported out of the Committee by a vote of 22 to 21, but did not contain funding for the DC public or charter schools. House of Representatives Bill 2556 was later incorporated as an amendment to the DC Appropriations Act (H.R. 2765, 2003) which was sponsored by Representative Rodney

Frelinghuysen of New Jersey, the Chairman of the District of Columbia Appropriations Subcommittee. The amendment passed by a vote of 205 to 203. DC Delegate Eleanor Holmes Norton, a leading opponent of any DC voucher proposal, using arguments that this was an attempt to force a voucher program on an unwilling District and that this would ultimately lead to efforts to force additional federal voucher proposals on other urban centers with troubled educational and financial situations, then attempted to strip the funding of the program from the bill, but this effort failed on a tie vote of 203 to 203.

The DC appropriations legislation was included in a Senate omnibus appropriations measure, but the DC scholarship language was stripped from the Senate version of the bill. The scholarship language was reincorporated in the House Conference Report on H.R. 2673 (2003). This report also contained the three-sector approach that Mayor Williams and other supporters of the scholarship program, including Cardinal Theodore McCarrick and *The Washington Post* editorial board, had advocated. The House passed House of Representatives Bill 2673 by a vote of 242 to 176 on December 8, 2003. When the Senate returned after the Christmas and New Year's recess, the leadership's effort to obtain a floor vote on the Conference Report was successful when the necessary 60 votes to invoke cloture were finally obtained. On January 22, 2004, the Senate passed House of Representatives Bill 2673 by a vote of 65 to 28. President Bush signed the bill into law the next day.

THE DC SCHOOL CHOICE INCENTIVE ACT OF 2003 – HOW WILL IT WORK?

The DC School Choice Incentive Act of 2003 spells out in detail the steps that will be required to implement this legislation. The U.S. Department of Education will award grants to one or more non-profit entities to run the scholarship program. On February 4, 2004, the Department published the procedures and priorities for this selection process in the *Federal Register* (2004b). Until that selection process is complete, the Department has assigned project management support efforts to a Vienna, Virginia based organization called Fight For Children. In addition, the Act calls for the Secretary of Education to carry out the program in cooperation with the Mayor of the District of Columbia, in accordance with a memorandum of understanding which was agreed to and signed in early February 2004 (U.S. Department of Education, 2004c). The memorandum of understanding is to address the program design, the selection of the entities who will receive grants, and the overall implementation of the program. Finally, the Act calls for the Secretary and the Mayor to jointly select an independent

agency to conduct an evaluation of the program.

On February 11, 2004, the U.S. Department of Education released a document entitled *DC Choice Incentive Program: Frequently Asked Questions* (2004a). This document is especially helpful as it outlines the key aspects of the Act, including sections on the purpose of the program, student eligibility and selection, participation of private schools program administration, amount of scholarships, parent information, program evaluation, testing requirements, and when the program will begin.

Some critical questions are addressed in this document. The maximum value of a scholarship will be \$7,500 given to low-income students in the District to cover tuition, fees, and transportation expenses for private elementary and secondary schools within the District. This will allow for approximately 2,000 scholarships. Tuition charged to scholarship students cannot be higher than that charged to non-scholarship students. Accepting a scholarship student will not make the private school a recipient of federal financial assistance. Priority will be given to students attending public schools identified as low-performing. Private schools will not be required to participate in the program, but to participate they must be operating lawfully in the District. If more eligible voucher students apply than a participating private school can accommodate, the school must accept scholarship students through a lottery. Participating private schools cannot discriminate on the basis of race, color, national origin, religion, or sex. Single sex schools are permitted, and religious schools may continue to exercise their rights in employment matters consistent with Title VII of the Civil Rights Act of 1964. The entity that administers the scholarship program must select students who are eligible to participate through a lottery that does not discriminate on the basis of disability and will help place those students in schools that best meet their needs. Participating schools must provide information to grantees, evaluators, and parents on such issues as school philosophy, curriculum, staff, admissions criteria, academic achievement, and school environment. Scholarship students will be tested using the same assessments that the DC public schools are using when the program begins. Private schools participating in the program will maintain their traditional independence in areas such as hiring, qualification for teachers, selecting curricula, and setting standards for grading and promotion. Participating schools may hold scholarship students to the same rules of conduct as other students. The independent research group jointly chosen by the Department and the DC Government will evaluate the program but will not be able to use the information to compare one private school to another. The program is scheduled to begin in the fall of 2004.

WHY SUCCESS THIS TIME?

Considering the almost universal record of failure in earlier efforts to enact a federally funded voucher demonstration program, it is important to see what was different this time around. The first thing to understand is that this successful initiative took time and lots of effort by a significant number of people. The political decision by DC Mayor Anthony Williams, the Chair of the DC Council's Education Committee, Kevin Chavous, and the President of the DC Public School Board, Peggy Cooper Cafritz, all elected Democrat politicians, to support this effort was crucial. It is important to note that each of these officials had opposed all previous voucher programs for the District. The active support of the program by Cardinal Theodore McCarrick, the Catholic Archbishop of Washington, his archdiocesan schools office, and the DC Catholic Conference, was important since the Catholic schools in the District had the best potential for providing slots for eligible voucher students. A significant group of leaders in the District business community were willing to join in efforts to push this program. Additional assistance was given with the consistent editorial support of *The Washington Post*, the area's largest newspaper, and a number of the paper's regular op-ed writers; most of whom were listed as opponents of earlier voucher proposals. This proposal also had the steady support of the Republican leadership in Congress. This was evident during some of the crucial votes on the proposal, especially on the House floor and in efforts to invoke cloture in the Senate. Special note should be made of the efforts of Congressmen John Boehner, Tom Davis, and Rodney Frelinghuysen and Senators Judd Gregg and Mike DeWine, each of whom chaired key committees in both the House and Senate that dealt with this issue; their support clearly helped to move the proposal to a successful conclusion.

When the fate of the proposal in the Senate Appropriations Committee seemed to be at a low point, due to the announcement that Republican Senator Arlen Specter would vote to reject the proposal, the decision of Democrat Senator Diane Feinstein to support it ultimately helped to provide the vote needed for passage. In the actual final Committee vote, Senator Feinstein was also joined in supporting the proposal by the Ranking Member, Senator Robert Byrd, who had not signaled his willingness to support the proposal, thus giving the bill a two vote margin of victory and sent it to the Senate floor for final approval. The support of the Administration and especially the Department of Education was also important to this endeavor. This was ultimately shown by the fact that, unlike the unsuccessful effort in 1997 where the bill was vetoed, this time the President was willing to sign the bill into law. The proposal also had the support of a dedicated group of DC parents and grandparents who would

not let this proposal die.

Additionally, the tactical decision by the supporters to push a three-sector approach, which Mayor Williams outlined in his June 24, 2003, testimony before the House Committee on Government Reform, helped to carry the day. This three-sector approach provided new funds for scholarships to attend private schools and additional funds for traditional public schools and public charter schools, thus benefiting all aspects of the District's educational scene. Cardinal McCarrick, in his *Catholic Standard* column reported that he emphasized this approach in conversations with the District's former Superintendent of Schools, stressing the fact that he supported high quality public education based on the fact that many Catholic children in the District attend public schools (2004, p. 5). This approach also weakened one of the major anti-voucher arguments: that any such proposal would take much needed money away from the public schools in the District.

The last positive contribution was that the final version of this legislation was inserted into the omnibus appropriations bill in the House Conference Report on H.R. 2673 (2003). That report, in the end, contained a number of other contentious issues that drew the attention of people away from the voucher proposal. Opponents in the Senate, if they had been successful, might have had to face the possibility of not passing a Fiscal Year 2004 budget since House leaders had said they would not revisit the issue and would seek a continuing resolution which would have effectively retained spending levels at the 2003 budget level; not an attractive political situation in a presidential and congressional election year. Efforts to defeat the report finally failed when, after several tries, the Senate cut off debate and then voted to pass the Omnibus Conference Appropriation Report.

LOOKING TO THE FUTURE

This victory, which was not obtained without a major struggle, will probably be tested by its opponents. Some, like Delegate Norton and Senator Edward Kennedy, have stated that they will attempt to revisit this program and seek to have it repealed or, failing in that effort, will try to strip the funding of the program from future appropriations bills. There are some concerns that the program only covers tuition, fees, and transportation, and does not address the real total cost of educating children in many Catholic schools, where diocesan, parish, and private subsidies help to cover that real cost. The delay of the Senate to vote on the bill, more than 669

weeks after the House voted, also shortens the time available to work out all of the plans needed to implement the proposal for the opening of the 2004-2005 school year. Secretary of Education Paige outlined the necessary steps in a talk at the Heritage Foundation on January 28, 2004. This will be especially true with efforts to provide the information necessary for parents to make informed decisions about their children's future.

The Department of Education seems to have moved fairly quickly in this regard by publishing its proposal for awarding grants to run the program in the *Federal Register*, naming a temporary entity, Fight For Children of Vienna, Virginia, to handle initial management support systems, and publishing the *Frequently Asked Questions* (2004a) which provide some needed guidance to the public and also to private schools considering the implications of this new program. Fight For Children has prepared a number of items to launch the crucial public education campaign to alert DC parents to the program, including radio and television ads, a print brochure, a toll free phone number – 1-888-DC-YOUTH – and a website – www.dcscholarship.org. The public education campaign began in March 2004.

The DC Choice Incentive Act is only one piece of a process to improve the educational options for children in all of the schools in the District of Columbia. The ultimate goal of this total process is to make this program work and then to address other issues that will make all of the children of the District the true beneficiaries.

In a column published in the archdiocesan newspaper, the *Catholic Standard*, on January 29, 2004, Cardinal Theodore McCarrick stated:

For more than a year, many of us in Washington have been working hard on a three-sector proposal for the better education of children here in the District of Columbia. . . . This is not a victory for parochial schools or for a voucher program. It is a victory for poor families who now have a choice in the education of their children. The monies which will come for education in Washington will strengthen the public schools and charter schools. It will make it possible for independent schools, such as our Catholic parochial schools, to continue to offer excellent education and even to make them stronger. Obviously, there are challenges we will have to face in bringing this three-sector program to fruition, but we will work together on this as we have worked together to bring it about. . . . I truly believe that we all took one historic step forward last week. (2004, p. 5)

The Mayor, Cardinal McCarrick, and the other supporters of this legislation, have expressed how grateful they are to all those who came together to produce this new day for education in the District of Columbia. Those who labored long and hard to bring this historic event to fruition will now

have to work diligently for its proper implementation in order to ensure that this program does work to the benefit of children and that what happens in the District of Columbia will provide a successful model that can benefit parents and children in other parts of our nation as well. That implementation dialogue between the various agencies and interested parties has begun and will continue in the days ahead.

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