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The Establishment Clause, School Choice, and the Future of Catholic Education

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This article reviews several recent court cases at the federal and state levels related to school choice initiatives in the United States. Through this review, the article sheds light on the enduring question of whether these programs are unlawful bonds between church and state. The review includes details about choice programs that exist (or have existed in the past) in the states where the cases originated: Ohio, Washington, Indiana, Arizona, and Colorado. Following this review, the article examines relevant, large-scale evaluations of choice programs and concludes with a discussion of the place of Catholic education in the school choice movement.

Keywords

School choice, Supreme Court cases, Lower Court cases, school choice evaluation research

Introduction

Catholic school enrollment in the United States has dropped considerably over the last 50 years, causing many schools to close (Walch, 2003). As a result, diocesan officials and Catholic school leaders have been compelled to create and implement innovative policies and practices—i.e., tuition assistance programs, marketing plans, alternative governance and finance structures, fundraising, foundations, etc.—in order to remain a viable and impactful option within the U.S. education system (Goldschmidt & Walsh, 2011). Not all of these programs have sustained the test of time; much of the ongoing struggle to survive occurs in inner-city Catholic schools serving mainly low-income students of color (DeFiore, Convey, & Schuttloffel, 2009). That such schools struggle most should come as no surprise, as tuition is typically the largest funding source for most Catholic schools and those in the inner-city have significantly discounted tuition rates compared to schools in wealthy neighborhoods (McDonald & Schultz, 2013), resulting in less annual revenue.

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It would be a mistake to assume that lowering tuition rates and providing families additional financial assistance will automatically solve inner-city Catholic schools' enrollment problems. Lowered tuition costs and additional financial assistance result in less revenue and smaller operating budgets, making it difficult for already under-resourced schools to provide a quality, well-rounded education. In addition, the discounted tuition rates inner-city Catholic schools offer to low-income families do not necessarily make Catholic schooling affordable for those families. For example, if a family of four with two children and an annual household income of \$40,000 were required to pay \$4,000 per child per year in tuition costs to the local Catholic school, they would be paying the same percentage of their annual household income—20%—as a family of four with two children and an annual household income of \$100,000 paying \$10,000 per child per year in tuition costs—a 150% increase from \$4,000. Much of the disparity lies in the amount of income left after tuition is paid; the former is left with \$32,000 to support a family of four over the course of a year whereas the latter has \$80,000, undoubtedly a far more feasible financial situation.

Having exhausted many sustainability plans with varying degrees of success, while taking into account the admirable, yet seemingly inconceivable financial sacrifices many families make to put their children through Catholic schools, some Catholic education leaders and advocates have turned their attention and efforts to the school choice movement, believing that state and citywide programs such as vouchers and tax credits offer ways to expunge the tuition variable from the Catholic school funding formula, making a Catholic education accessible to all desiring families regardless of income level (Huchting & Cunningham, 2013). Essentially, school choice programs offer students either public or private monies in the form of vouchers or scholarships that can be used for tuition at private schools of their choice, including Catholic schools (Howell, Peterson, Wolf, & Campbell, 2006).

The school choice movement gained considerable momentum in the 1990s with the increased number of charter schools and voucher programs and then hit its stride during the second Bush administration and its implementation of No Child Left Behind (NCLB, 2001). Since President Obama's 2009 inauguration, many states have enacted new laws that allow parents access to public tax dollars for the funding of their children's private education. As of 2014, 50 school choice programs exist in 23 states and Washington, DC; of the 50, there were 23 voucher programs, 17 tax credit scholarship programs, eight individual tax deduction programs, and one

education savings account program (Friedman Foundation for Educational Choice, 2014). However, similar to most new educational policies, with popularity and growth comes controversy and debate.

School choice has rapidly developed into one of the more contested and politicized issues around educational policy in the US (Ravitch, 2010; Stewart & Wolf, 2014). As of 2012, 68.4% of all private K-12 schools in the US were religiously affiliated (Broughman & Swaim, 2013); therefore, droves of parents are either utilizing publicly funded vouchers to send their children to religious schools or making tax-creditable donations to organizations that offer scholarships to students attending religious schools. As these state and citywide programs continue to increase in number, so too has the volume of litigation challenging their constitutionality (McCarthy, Cambron-McCabe, & Eckes, 2014) and questioning their adherence to the Establishment Clause of the First Amendment of the U.S. Constitution: “Congress shall make no law respecting an establishment of religion...” (U.S. Const. amend. I). The following is a review of recent federal and state cases related to school choice, the purpose of which is to clarify the enduring question of whether these programs are unlawful bonds between church and state. Included in the review are details regarding the different choice programs that exist in the states where the cases originated. The article then segues into a summary of relevant, large-scale evaluations of choice programs and concludes with a discussion of Catholic education’s place in the school choice movement.

United States Supreme Court Cases

Zelman v. Simmons-Harris

Prior to 1995, the Cleveland City Ohio School District had an abysmal performance record (*Zelman v. Simmons-Harris*, 2002). As a result, the state of Ohio officially took control of the district and ultimately created and implemented the controversial Pilot Project Scholarship Program (PPSP). The PPSP provided publically funded tuition scholarships—usable at both private and public schools—for students who lived in the district and whose families lived below 200% of the poverty line. The program also provided funding and resources for tutorial aid for students who remained in public schools. Even though both religious and nonreligious schools could participate in the PPSP, by the year 2000, “82% of the participating private schools had a religious affiliation, none of the adjacent public schools participated, and 96%

of the students participating in the scholarship portion of the program were enrolled in religiously affiliated schools” (p. 3).

Eventually, a group of Ohio taxpayers brought suit in the U.S. District Court for the Northern District of Ohio in order to enjoin the PPSP on grounds that the program was in violation of the Establishment Clause (*Zelman v. Simmons-Harris*, 2002). The District Court initially issued a preliminary injunction, then granted summary judgment in favor of the plaintiffs, which “permanently enjoined administration” of the PPSP (p. 3). The Sixth Circuit Court of Appeals upheld the District Court’s decision, stating that the PPSP “had the primary effect of advancing religion” (p. 3), thus violating the Establishment Clause.

After the Sixth Circuit’s affirmation of enjoinderment, the case was once again appealed and argued in front of the U.S. Supreme Court in February of 2002; ultimately, it was reversed in June of 2002. The Court decided that the PPSP was constitutional and not in violation of the First Amendment’s Establishment Clause. Concurring Justices portrayed the program as “neutral in all aspects of religion” (p. 3) because it offered assistance to students based on financial need not religious affiliation; all school types within the district—including private religious, private non-religious, community schools, and traditional public—were permitted to enroll scholarship recipients; and the scholarship funds were awarded to parents, not the schools themselves. In other words, parents were left solely responsible for private religious schools’ receipt of public funds, a freedom of choice the Court was willing to ensure.

Since *Zelman v. Simmons-Harris* (2002), school choice programs in Ohio have expanded. Currently, Ohio has five choice programs: (a) the Cleveland Scholarship and Tutoring Program, formerly referred to as PPSP, (b) the Educational Choice Scholarship Program, (c) the Autism Scholarship Program, (d) the Jon Peterson Special Needs Scholarship Program, and (e) the Income-Based Scholarship Program (Friedman Foundation for Educational Choice, 2014). The district-wide Cleveland Scholarship and Tutoring Program (formerly known as PPSP) was explained during the *Zelman v. Simmons-Harris* (2002) summary.

The details of the second Ohio choice program, the Educational Choice Scholarship Program, are similar to those of the Cleveland Scholarship and Tutoring Program—private school scholarships are provided to students who attend and wish to leave low-performing public schools. However, this state-wide program is not confined to a single district. The Autism Scholarship Program and the Jon Peterson Special Needs Scholarship Program both pro-

vide public funding in the form of supplemental educational services and private school tuition for students with special needs. The Autism Scholarship Program limits its eligibility to students diagnosed with an autism spectrum disorder and currently enrolled in the public school system, whereas the Jon Peterson Special Needs Scholarship Program is open to students with varying disabilities. The recently launched Income-Based Scholarship Program provides vouchers for private school tuition to kindergarteners from families with household incomes that do not exceed 300% of the federal poverty level. Each subsequent year of the program will include the next highest grade until all grades, kindergarten through 12th, are eligible (Friedman Foundation for Educational Choice, 2014).

Locke v. Davey

Currently, the state of Washington does not have any K-12 school choice programs. However, a case regarding higher education funding, the Free Exercise Clause of the First Amendment of the U.S. Constitution—“Congress shall make no law respecting an establishment of religion or **prohibiting the free exercise thereof**” (U.S. Const. amend. I)—and state funding of religious education surfaced over a decade ago and has since significantly influenced court decisions of school choice cases.

The state of Washington established the Promise Scholarship Program to assist high achieving students from low-income families with the cost of college education (*Locke v. Davey*, 2004). To qualify for a Promise Scholarship, students had to graduate in the top 15% of their high school class, earn either a 1,200 or better on the Scholastic Assessment Test I (SAT) or a 27 or better on the American College Test (ACT), and the student’s family income had to be “less than 135 percent of the State’s median” (p. 1). Although, due to a certain provision in Washington’s state constitution, not all otherwise-qualified students were eligible to receive a Promise Scholarship. This provision states that no public money or property shall be used for any religious worship, exercise, or instruction (*Locke v. Davey*, 2004).

While the Promise program allowed students to use the scholarship to attend accredited religious educational institutions and enroll in religious classes, the program did not permit students to use the scholarship to pursue a degree in devotional theology. This became an issue when a Promise Scholarship recipient who “wished to pursue a degree in pastoral ministries at a private, church-affiliated college” (p. 2) was required to sign a form stat-

ing he was not pursuing a theological degree. He refused, did not receive any scholarship funds, claimed that his rights under the Free Exercise Clause of the First Amendment were being violated, and brought suit in the U.S. District Court for the Western District of Washington “to enjoin the state from refusing to award the scholarship...solely because the student was pursuing a devotional-theology degree” (p. 2). In the case of *Locke v. Davey* (2004), the District Court granted summary judgment in favor of the state.

The case was appealed in the Ninth Circuit and reversed; “the denial of a scholarship to a student solely because the student decided to pursue a degree in theology from a religious perspective infringed the student’s right to the free exercise of religion under the Federal Constitution’s First Amendment...” (p. 2). The Ninth Circuit’s decision was based on two main points: (a) the state of Washington subjected religion to adverse treatment and (b) the state failed to effectively portray its concerns pertaining to government funds being used toward the establishment of religion.

In December of 2003, *Locke v. Davey* (2004) was argued before the U.S. Supreme Court and in February of 2004, the Ninth Circuit’s decision was reversed. The provision was found not in violation of the Free Exercise Clause because it does not suggest animosity or discrimination toward religion, does not single out religion for unfavorable treatment, imposes no penalties on religion, and does not force any student to choose between religion and the receipt of government benefits. The Court determined that the state of Washington has a substantial interest against the establishment of religion by way of funding religious degrees, thus there exists a rational basis for the law. Additionally, the denial of funding for religious degrees places a “relatively minor burden” on the scholarship recipients (p. 1).

Arizona Christian School Tuition Organization v. Winn et al.

Arizona’s school choice programs were built mostly on individuals and corporations’ yearly donations to School Tuition Organizations (STO); any person or corporation that makes a donation to an STO receives a dollar-for-dollar tax credit (Friedman Foundation for Educational Choice, 2014). STOs are non-profit organizations “that provide private school scholarships”, including religious schools, to qualifying students (Friedman Foundation for Educational Choice, 2013, p. 7). In addition, some families have the opportunity to withdraw their portion of public funding and use it for their children’s education as they see fit.

Arizona has five school choice programs: (a) the Original Individual Income Tax Credit Scholarship Program, (b) the Low-Income Corporate Income Tax Credit Scholarship Program, (c) Lexie's Law for Disabled and Displaced Students Tax Credit Scholarship Program, (d) the Empowerment Scholarship Accounts (ESA) program, and (e) the Switcher Individual Income Tax Credit Scholarship Program (Friedman Foundation for Educational Choice, 2014). As referenced above, the first two programs allow people and corporations to make tax creditable donations to STOs that are earmarked for private school scholarships to qualifying students. Each STO within the personal tax credit program sets its own student eligibility guidelines; whereas, the corporate tax credit program STOs limit their eligibility requirements to students from families with household incomes that are 185% below the reduced-price lunch guidelines (Friedman Foundation for Educational Choice, 2013).

The third and fourth tax credit programs in Arizona are slightly more specialized (Friedman Foundation for Educational Choice, 2013). Similar to the corporate tax credit program, the Lexie's Law program allows corporations to donate to STOs; however, these STOs must specialize in offering private school scholarships to students with disabilities and those students in foster care. The ESA program "allows parents of children with disabilities to withdraw their children from district or charter schools and receive a portion of their public funding deposited into an account with defined, but multiple, uses..." (Friedman Foundation for Educational Choice, 2013, p. 13). These uses can include "private school tuition, online education, private tutoring, or future college expenses" (Friedman Foundation for Educational Choice, 2013, p. 13). The Switcher program is a supplement to the Original program; if, and only if, an individual reaches her maximum credit amount in the latter (\$528) then she can obtain an additional dollar-for-dollar credit by donating up to \$525 to the former (Friedman Foundation for Educational Choice, 2014).

In 2010, a group of taxpayers in Arizona brought suit against the State Department of Revenue, challenging the Arizona law that provides individuals "tax credits for contributions" to STOs (*Arizona Christian STO v. Winn*, 2011, p. 1). The plaintiffs originally filed suit in U.S District Court, "claiming that the law is unconstitutional because it impermissibly subsidizes religious schools" (Legal Clips, 2011) and therefore violates the Establishment Clause. During the first year of this program, 94% of the donated funds went to STOs that limit their scholarships to students attending religious schools (*Arizona Christian STO v. Winn*, 2011).

The district court dismissed the suit due to the plaintiffs' failure to state a valid claim. However, the Ninth Circuit Court of Appeals reversed the district court's decision stating that the plaintiffs did, in fact, have legal standing to bring the suit. After reviewing the plaintiffs' Establishment Clause claim, the Ninth Circuit ruled the statute unconstitutional on the grounds that the law had no valid secular purpose, despite any legislative history that revealed otherwise (*Arizona Christian STO v. Winn*, 2011).

The case eventually reached the U.S. Supreme Court where, in a five to four vote, the Ninth Circuit decision was reversed (*Arizona Christian STO v. Winn*, 2011). The Court decided that the respondents lacked standing to bring the suit under Article III of the U.S. Constitution because taxpayers, in general, lack standing to object to government expenditures they believe to be unconstitutional and the two exceptions to this rule, set forth in *Flast v. Cohen* (1968), were not met; there was neither a "logical link" between taxpayer status "and the type of legislative enactment attacked" nor "a nexus" between taxpayer status and "the precise nature of the constitutional infringement alleged" (p. 102). The majority reiterated that the plaintiffs' tax dollars were not being used in direct support of religious education and the STO tax credit is not a religious tax or tithe. Instead, people choosing to donate to STOs that provide scholarships to students who attend religious schools are doing so on their own accord with their own money (*Arizona Christian STO v. Winn*, 2011).

Cases in Lower Courts

Meredith v. Daniels

Similar to most other state voucher programs, Indiana's version of the Choice Scholarship Program (CSP) provides vouchers "worth up to 90% of the state per-student spending amount for the sending school district" (Friedman Foundation for Educational Choice, 2013, p. 31) to students from low- and middle-income families. Eligible students must come from families earning up to 150% of the federal free and reduced-price lunch program and the vouchers are to be used for private school tuition (Friedman Foundation for Educational Choice, 2013).

In late 2011, a group of Indiana taxpayers brought suit in the Marion County Superior Court against the state of Indiana and its implementation of the CSP, alleging that the program violates Article 8, Section 1; Article 1, Section 4; and Article 1 Section 6 of the Indiana Constitution. Article

8, Section 1 provides that it is the duty of the general assembly to encourage education “by all means possible,” and to require “a general and uniform system of Common Schools, wherein tuition shall be without charge and equally available to all” (*Meredith v. Daniels*, 2012, p. 3). Article 1, Section 4 states, “No preference shall be given, by law, to any creed, religious society, or mode of worship; and no person shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent” (p. 5). Article 1, Section 6 states, “no money shall be drawn from the treasury, for the benefit of any religious or theological institution” (p. 7). The plaintiffs also argued that the religious schools participating in the CSP had a collective degree of religiosity—“the extent to which religion is pervasive” (p. 2)—that demonstrated unconstitutionality.

In the case of *Meredith v. Daniels* (2012), the plaintiffs’ motion for a preliminary injunction was denied and the court granted summary judgment in favor of the state. The court found the CSP not in violation of Article 8, Section 1 because “the ‘all suitable means’ clause authorizes educational option outside of the public school system” (p. 5). According to the court, Article 1, Section 4 does not prohibit the state from providing public tax dollars to private citizens in order to make personal, independent choices regarding their children’s places of education, even if they choose private, religious schools; therefore, the CSP was found not in violation of Article 1, Section 4. The court found the CSP not in violation of Article 1, Section 6 because the program was not created specifically to benefit religious schools, but rather to provide parents the right to choose where their children attend school, whether it be at public, private religious, or private non-religious schools. Lastly, the court found the plaintiffs’ claim regarding CSP schools’ degree of religiosity to be “immaterial” (p. 2). After the Marion County Superior Court ruled in favor of the defendants, the plaintiffs brought the case to the Indiana Supreme Court where the trial court’s decision was affirmed (*Meredith v. Daniels*, 2013).

Besides the CSP, Indiana currently has two other school choice programs—the School Scholarship Tax Credit, and the Private School/Home-school Deduction (Friedman Foundation for Educational Choice, 2014). The School Scholarship Tax Credit program allows individuals and corporations to make tax-deductible donations (50% tax credit) to Scholarship Granting Organizations (SGO). SGOs are similar to Arizona’s STOs; they are non-profit organizations that provide scholarships in the form of private school tuition for students who live at or below 200% of the free and reduced-price

lunch income guideline. The Private School/Homeschool Deduction program allows parents to make tax deductions up to \$1,000 per child for expenses such as private school tuition, textbooks, fees, software, tutoring, and supplies (Friedman Foundation for Educational Choice, 2014).

Niehaus v. Huppenthal

In *Niehaus v. Huppenthal* (2013), the plaintiff, Sharon Niehaus, first brought suit in the Maricopa County Superior Court against the defendant, John Huppenthal, the Arizona State Superintendent of Public Instruction, and his capacity to implement Arizona's ESA program (*Niehaus v. Huppenthal*, 2013). Niehaus claimed that the ESA program violated the Religion and Aid clauses of the Arizona Constitution. The Religion clause—Article II, Section 12—states that “no public money...shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment” (p. 7). The Aid clause—Article IX, Section 10—states that “no tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation” (p. 11).

In January of 2012, the Superior Court denied the plaintiff's motion and ruled in favor of the defendant, declaring Arizona's ESA program not in violation of the Religion and Aid clauses of the state constitution (*Niehaus v. Huppenthal*, 2013). The court held that scholarships from ESAs approximately equivalent to the annual per-pupil cost of a public education provide parents the opportunity to choose the appropriate educational experiences for their children and the public funds do not directly support any religious establishment, church, and/or school. A year later in October of 2013, the case was appealed and the Arizona Court of Appeals upheld the Superior Court's decision along with refuting the plaintiff's additional claim that the ESA “unconstitutionally conditions receipt of a government benefit on the waiver of a constitutional right because it requires that the parent of a qualified student promise not to enroll the student in public school” (p. 16).

Taxpayers for Public Education v. Douglas County School District

In 2011, the Douglas County School District (DCSD) in Colorado established their version of the Choice Scholarship Program (CSP). The Douglas County CSP—Colorado's only school choice program—provides vouchers for private school tuition to DCSD students who have lived and attended public school in the district for at least one year. Students may use

the vouchers at any private school, secular or religious, with the exception of online schools and home schooling (Friedman Foundation for Education Choice, 2013). Not long after the CSP was first implemented, plaintiffs including students, parents, taxpayers, and non-profit organizations filed suit in district court claiming that the CSP violated Colorado's Public School Finance Act of 1994 (PSFA) and numerous state constitutional provisions. The District Court ruled in favor of the plaintiffs (*Taxpayers v. DCSD*, 2013).

Taxpayers for Public Education v. Douglas County School District (2013) was brought to the Colorado Court of Appeals and, regarding the CSP's violation of PSFA, the district court's decision was reversed, concluding that the plaintiffs did not "have standing to seek redress for the claimed violation by the CSP of the PSFA..." (Legal Clips, 2013). Due to the complexity of this case, the appellate court's analyses of the CSP's constitutionality pertaining to each of the seven state provisions in question are discussed below along with the court's conclusion.

Article IX, Section 2: Thorough and Uniform System of Free Public Schools. According to the court, the CSP is "entitled to a presumption of constitutionality" (*Taxpayers v. DCSD*, 2013, p. 21). The plaintiffs argued "that because students participating in the CSP may not receive a free education (because parents must pay the difference remaining after remittance of the scholarships, the CSP necessarily violates Article IX, Section 2" (p. 21). The court disagreed and stated that the plaintiffs misunderstood the provision; "it requires that a thorough and uniform system of free elementary through high school education be made available to students" (p. 25) and a school district is not in violation of the mandate if it chooses to offer alternative educational choices "in addition to the free system the constitution requires" (pp. 25-26). Moreover, participating private schools are not automatically transformed into public schools "subject to the uniformity requirement" (p. 27) simply because they receive funds through the district. Therefore, the court decided that the plaintiffs failed to prove beyond a reasonable doubt that the CSP violates Article IX, Section 2.

Article IX, Section 3: Use of the Public School Funds. This provision applies to the required state distributions of monies from the Public School Fund to school districts. Once the state makes the distribution from the Public School Fund, those monies belong to the district. In addition, only a small portion (2%) of a district's money comes from the Public School Fund. Based upon the presumption of constitutionality, the court assumed that the CSP is funded by the remaining 98% (to which Article IX, Section 3 cannot

apply, as the funds do not stem from the Public School Fund). Therefore, the court decided the plaintiffs failed to meet their burden of proof and the CSP was not in violation of Article IX, Section 3.

Article IX, Section 15: Local Control. This provision “is aimed at ensuring the state does not encroach upon the prerogative of local school districts to control the instruction in the public schools within their districts” (p. 34). Because participating private schools “retain their character as private, not public”—as stated in the Article IX Section 2 ruling—“the provision does not relate to instruction in private schools” and therefore Article IX, Section 15 does not apply to the CSP” (p. 34).

Article II, Section 4: Required Attendance or Support. This provision is aimed at upholding constitutional neutrality and preventing a state-supported establishment of religion. The court decided that the CSP was designed to support and benefit students, not schools, and all district students and any private schools had the choice to participate, which met the “neutral eligibility criteria” (p. 39). According to the U.S. Supreme Court, a court is in violation of the First Amendment of the U.S. Constitution if it inquires “into the extent to which religious teaching pervades a particular institution’s curriculum” (p. 41). The state must remain neutral and objective if it chooses to utilize a set of criteria for purposes of evaluation. The court thought this principle applied “with equal force where the program at issue is facially neutral toward private religious schools because it is open to all private schools” (p. 44). According to the court, the CSP “is neutral toward religion generally and toward religiously affiliated schools specifically” (p. 45); it neither promotes a religious cause nor supports religious institutions; and, it does not favor any one religion or denomination over and above all others. Furthermore, to the extent students may attend CSP schools that require participation in religious services, “they would do so only as a result of parents’ voluntary choices” (p. 47) and not as a result of CSP compulsion. Therefore, the court ruled it not in violation of this article.

Article IX, Section 7: No Aid to Religious Organizations. According to the court, the CSP “is intended to benefit students and their parents, and any benefit to the participating schools is incidental” (p. 49). The CSP was found to be neutral toward religion because parents make the autonomous choice to use the funds at religiously affiliated private schools. For “essentially the same reasons” the court “concluded that the CSP does not violate Article II, Section 4”, it also concluded “that it does not violate Article IX, Section 7” (p. 48).

Article IX, Section 8: Religion in Public Schools. The court ruled that this article does not apply. In the decision, the court made the link between parents having the autonomous choice to enroll their children in participating, religiously affiliated private schools—that it is not required—and participating private schools retaining their status and not automatically transforming into public schools.

Article V, Section 34: Prohibited Appropriations. As interpreted by the court, no disbursements of state funds “would occur under the CSP” (p. 56). “The General Assembly appropriates” money for students’ education to the Colorado Department of Education; at that point, it is distributed to the “local school districts in the form of total per-pupil revenue” (p. 56). The school districts then take legal ownership of the funds and can use them as they see fit. In the court’s opinion, this should not be considered an “appropriation by the General Assembly” (p. 56). Again, if any benefit befalls the participating private schools, it does so as a result of parents’ individual choices. Therefore, the CSP was found not in violation of this provision.

In summary, the Colorado appellate court found the CSP not in violation of any “constitutional provisions raised by the plaintiffs” (Legal Clips, 2013).

All aforementioned cases—with the exception of *Locke v. Davey* (2004), which pertained to the Free Exercise Clause of the First Amendment, not the Establishment Clause—concluded in favor of state, city, and district-wide school choice programs, including vouchers and tax-deductible donations to STOs that subsidize tuition to schools with religious affiliations. Three very important conclusions related to the persisting skepticism surrounding school choice programs and their connection to the Establishment Clause can be made from these court decisions. First, the courts ruled the various school choice programs constitutional because the funds (i.e., vouchers) were initially dispersed not directly to the schools but to parents, providing them the autonomous choice as to where to enroll their children in school—whether it be public, private secular, or private religious—so long as the school is eligible for receipt and does not discriminate on the basis of race, color, or national origin. Second, people who choose to make tax-deductible donations to STOs (or, in Indiana, SGOs) that fund scholarships to religious schools are doing so on their own accord, with their own money, and therefore not causing direct harm to fellow taxpayers not in receipt of said scholarships. And third, neither vouchers nor STO scholarships that fund tuition to private, religiously affiliated schools should be considered unlawful amalgamations of church and state.

School choice programs appear to have passed the constitutionality test at both the federal and state levels. Advocates plan to maintain and improve the existing programs while promoting legislation that would enact new programs in states that have yet to venture into the realm of school choice outside of the charter school movement. As school choice continues to spread across the US, it is vital for consumers (such as parents) to remain abreast of the impact these programs and their participating schools have on students' educational experiences. The following is a brief discussion of a few of the larger school choice evaluation studies.

The Efficacy of School Choice Programs

Approximately 15 years ago, around the initial implementation of NCLB (2001), Howell, Peterson, Wolf, & Campbell (2006) evaluated three citywide, privately funded voucher programs located in New York City, Dayton, Ohio, and Washington, DC over a three-year span. Utilizing random field trials—a research design that utilizes random assignment to place participants into either a treatment or control group—and numerous indices, Howell and colleagues compared voucher students in private schools (treatment group) to their demographically similar, qualifying counterparts who chose to stay in public schools (control group). Baseline student selection data showed negligible demographic differences between the treatment and control groups—a necessary criterion for ensuring internal validity—and the voucher programs did not partake in “significant skimming” (Howell et al., 2006, p. 88), which is the practice of recruiting, selecting, and retaining only the seemingly most talented and committed students.

Private schools that participated in these three programs and enrolled voucher students had similar class sizes to their neighboring public schools. Even though most private schools operate with much smaller budgets, there were a few instances when private schools had smaller class sizes than neighboring public schools. Private schools in the studies were perceived emphasizing “school-parent communication, homework, and orderly classrooms” (Howell et al., 2006, p. 113), and helped “reduce racial isolation” (p. 138). Voucher students in these programs demonstrated higher levels of self-confidence than their public school counterparts and voucher parents were much more satisfied with their children's schools than eligible parents who decided to keep their children in public schools. There were no significant differences in achievement test data between the treatment and control groups, with one

exception. Over the course of the three-year evaluation study, African American voucher students outperformed their African American counterparts who remained in public schools (Howell et al., 2006).

The state of Wisconsin currently has four school choice programs: (a) the Milwaukee Parental Choice Program, (b) the Parental Private School Choice Program in Racine, Wisconsin, (c) the statewide Parental Choice Program, and (d) the K-12 Private School Tuition Deduction program (Friedman Foundation for Educational Choice, 2014). Witte, Carlson, Cowen, Fleming, and Wolf (2012) conducted a longitudinal, five-year evaluation of the Milwaukee Parental Choice Program (MPCP)—a voucher program for Milwaukee residents with a household income that does not exceed 300% of the federal poverty level (Friedman Foundation for Educational Choice, 2014). MPCP students' math and reading achievement data in grades three through eight and grade 10 were compared to those of "carefully matched" Milwaukee Public Schools (MPS) students (Witte et al., 2012, p. ii).

Findings showed no significant differences in achievement growth between MPCP and MPS students over the course of the first four years of the study. However, when fifth-year test scores—the 2010-2011 school year—were included in the longitudinal analysis, the five-year achievement growth data revealed significant differences favoring the MPCP students. Witte et al. (2012) explained that differences in favor of MPCP students could have been a result of the implementation of a new policy during the fifth year of the evaluation. Beginning in the 2010-2011 school year, for the first time, all MPCP students were required to take the same end-of-year standardized tests—the Wisconsin Knowledge and Concepts Examinations in math and reading—as MPS students (Witte et al., 2012).

Florida currently has two school choice programs: (a) the John M. McKay Scholarships for Students with Disabilities Program and (b) the Florida Tax Credit Scholarship Program (FTCSP; Friedman Foundation for Educational Choice, 2014). The FTCSP—one of the largest school choice programs in the US.—“provides a tax credit on corporate income taxes for donations to scholar-funding organizations, which use the funding to provide K-12 private school scholarships to low-income students” (Forster & D’Andrea, 2009, p. 4). There were two different evaluations of this program. The first attempted to measure parental satisfaction via 808 phone interviews of parents of scholarship recipients (Forster & D’Andrea, 2009). The second, which was a line of seven separate annual evaluations, sought to confirm ongoing state testing

and reporting compliance, describe scholarship recipients' attributes, and assess their academic performance and progress (Figlio, 2014).

Findings from the parent phone interviews determined that, when asked about their children's new schools and educational experiences, the overwhelming majority of parents of scholarship recipients—62% to 80% ($M=74.8$) depending on the question—reported being “very satisfied” (Forster & D’Andrea, 2009, p. 1) with academic progress, the amount of individual attention at school and in class from teachers and administrators, teacher quality, “responsiveness” (p. 1) to children’s needs, and overall student behavior. The latest results in Figlio’s (2014) line of annual evaluations showed that compliance levels were high throughout the program, participants tended to come from “less advantaged families” and “lower-performing public schools” and “tend to be among the lowest-performing students in their prior school” (p. 1), and there were no identifiable differences in the cohort of low-income FTCSPP students’ test data when compared to those of a national sample of students of all socioeconomic backgrounds.

These three evaluation studies—hardly an exhaustive list—addressed, among others, three looming concerns regarding choice programs. First, adding voucher and tax credit programs to cities and states does not further segregate local public and private schools. In fact, according to Howell et al. (2006), at times, these programs actually promote racial integration by somewhat negating the segregated housing variable. Second, participating private schools were not skimming. Howell et al. (2006) found among the baseline data inconsequential differences in demographics and academic achievement between treatment and control groups and Figlio (2014) reported FTCSPP participants as being some of the lowest performing students from vastly underperforming local public schools. Regarding the third concern, student achievement, these choice programs were far from panaceas. There is not enough evidence in the data to make a claim that choice programs are better academic options for students. This can be interpreted one of two ways: (a) choice programs failed in their attempt to improve student achievement because they fared no better than neighboring public schools, or (b) choice schools are at least performing on par with their public counterparts so parents should be awarded the right to choose an alternative education for their children because the funds would be put to good use and not wasted. These two interpretations offer very different visions of the future of K-12 education in the US.

Conclusion

The purpose of this article was to use a portion of the available information on the constitutionality and efficacy of school choice programs to reiterate an opportunity for Catholic educators and advocates to curb the nationwide enrollment decline faced by Catholic schools and dioceses. It has long been the mission of Catholic educators to serve the poor and marginalized (Massaro, 2008; Scanlan, 2009) and, unfortunately, due to tuition costs, many Catholic K-12 schools have priced themselves out of fulfillment of this mission. As Catholic education leaders continue to brainstorm methods of addressing the enrollment decline and marketing to inner-city families, it may behoove them to consider stronger advocacy for school choice in their cities and states, especially those still without school choice programs. A lesson can be learned from the residents of Cleveland, Ohio in the mid 1990s. Parents fed up with what they believed to be incompetent local public schools turned to advocacy for a voucher program that would make private schools more affordable and ultimately an option for their children. The result was the Cleveland Scholarship and Tutoring Program, which has been in existence for almost 20 years, has served nearly 90,000 students, and was the subject of the famous *Zelman v. Simmons-Harris* (2002) case—the U.S. Supreme Court’s first major decision related to school choice.

With that said, critics of school choice are correct in their skepticism toward voucher and tax credit programs. By no means have all questions been answered and the investigation of their impact on students, families, and the public school system in the US should undoubtedly continue. However, according to the myriad of information that currently exists on school choice—i.e., legal history and evaluation research—it would be worth the attempt to continue finding ways to improve students’ educational experiences.

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