

BRIEF ANALYSIS

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Cleveland, School Choice and the Constitution

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Since 1996, the Cleveland Scholarship and Tutoring Program has provided tax-funded vouchers that allow children from low-income families to opt out of the city's failing public schools. Teachers' unions and the education establishment have challenged the program in court, arguing that it violates the First Amendment because many voucher students attend religious schools. In 2002, the U.S. Supreme Court will rule on the Cleveland case, a decision that is expected to clarify whether it is constitutional for children to use tax-funded vouchers to attend religious schools.

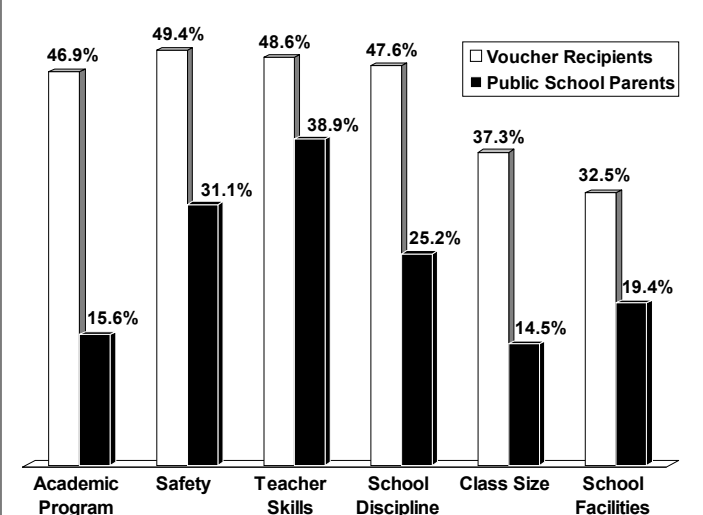
The Cleveland program expands educational choice beyond magnet schools, charter schools and schools with limited open-enrollment policies to include private schools and participating suburban public schools. The program also provides tutorial assistance for students remaining in the Cleveland public schools.

Under the voucher program, students may receive scholarships of up to 90 percent of tuition to attend the private school of their parents' choice. The scholarships are capped at \$2,250 or the amount of tuition, whichever is less, and participating private schools may not charge more than \$2,500 for tuition. If suburban public schools choose to participate, they receive more than \$6,500 from the state (the scholarship amount plus the state's regular per pupil share) for each voucher student.

The program began with students in kindergarten through third grade, expanding one grade each year through eighth grade so that once a child enters the program, he or she has the opportunity to remain through the eighth grade. If the number of children applying for new scholarships exceeds the number available, as routinely occurs, recipients are chosen by lottery with priority given to economically disadvantaged children.

In the 2000-2001 school year, 4,195 students received educational vouchers. While no suburban public schools currently participate, 46 religious and 10 nonsectarian private schools accept scholarship students.

**Cleveland Parent Satisfaction:
Voucher Parents vs. Public School Parents**



Source: Paul E. Peterson, William G. Howell and Jay P. Green, "An Evaluation of the Cleveland Voucher Program After Two Years," June 1999, Program on Education Policy and Governance.

Benefits of Participation.

Without the assistance these vouchers provide, almost all of the students in the voucher program would attend Cleveland public schools, which are among the worst performing schools in the country. In 1999-2000, the Cleveland public schools met only three of 27 minimum performance standards set by the Ohio Department of Education, and the district was deemed an "academic emergency."

Several studies and surveys have demonstrated the benefits of the program to students from

low-income families. For example:

- A 1997 Harvard University analysis of two private schools opened in Cleveland as a response to vouchers — Hope Academy and Hope Ohio City — found that student test scores in math and reading rose in their first year enrolled, and that the Cleveland voucher program had "helped improve student test scores."
- A 1999 Harvard University survey found that voucher program parents were far more satisfied

with their children's education than were parents whose children remained in the Cleveland public schools [see the figure].

- A 1999 Buckeye Institute study found that children in the voucher program attended schools that were much more racially integrated than the Cleveland public schools.
- A 2001 evaluation conducted for the Ohio Department of Education by the Indiana Center for Evaluation found that students enrolled in the voucher program perform "slightly, but statistically significantly, higher" than public school students.

Cleveland School Choice in the Courts. After the litigation by teachers' unions and others challenging the validity of the Cleveland program wound its way through the state court system, the Ohio Supreme Court rejected the unions' First Amendment claim.

Choice opponents then went to federal court, where the program was found unconstitutional by a U.S. District Judge in Cleveland and, on appeal, by the U.S. Sixth Circuit Court of Appeals. The effect of these court orders – throwing voucher students out of the participating schools – has been stayed until the U.S. Supreme Court rules on the program.

Opponents of school choice have argued that because students can use the vouchers at religious schools, the Cleveland program violates the First Amendment's prohibition on the establishment of religion. This argument fails to appreciate that the Cleveland voucher program, as set up by the Ohio Legislature, does not establish or endorse religious schools.

The U.S. Supreme Court has consistently upheld education programs even if government aid ultimately reaches religious institutions if the aid (1) is disbursed according to neutral criteria without regard to religion and (2) reaches religious institutions as a result of a genuine, independent private decision. The Cleveland voucher program clearly meets these two requirements.

First, scholarships are available to all Cleveland school children without regard to religion. The only priority given is to students from low-income families. The program does not disburse aid directly to private schools, and both public and private schools – whether religious or nonreligious – are eligible to participate.

Second, voucher aid reaches a religious school only after parents have made independent choices where to send their children to school. The check is made payable to the parents of the voucher student and is sent to the school the parents have selected. Any link between the state and the schools is determined entirely by the individual choices of the parents.

Conclusion. The Cleveland voucher program allows families who could not otherwise afford to exercise choice (e.g., by moving to another district, enrolling in private schools, undertaking home schooling) to decide what constitutes an appropriate education for their children. This was clearly a legitimate public policy goal for the Ohio General Assembly when it created the Cleveland program. The fact that no public schools have chosen to participate or that many parents and students choose religious schools under the program in no way delegitimizes the goal of providing better education alternatives for children from low-income families.

As U.S. Sixth Circuit Court of Appeals Judge James Ryan wrote in dissent, to invalidate the Cleveland voucher program would be to sentence "nearly 4,000 [at the time of the decision] poverty level, mostly minority, children in Cleveland to return to indisputably failed Cleveland public schools" from which they escaped as long as five years ago. Ryan concluded that to do so would be "an exercise in raw judicial power having no basis in the First Amendment."

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