

**The Future of Vouchers:
Lessons from the Adoption, Design, and Court Challenges of Three
Voucher Programs in Florida**

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Abstract: This study considers factors explaining why Florida has been the most aggressive state in the country in adopting vouchers and what this implies for the future of vouchers in other states. We find that vouchers represent one step in Florida's long progression of aggressive educational accountability policies. These policy directions, in turn, arise from Florida's moderate social conservatism, openness to various sorts of privatization, large and growing Hispanic population, and out-of-state "transplanted" voters who have weak ties to the state's public education system. Even with this fertile political soil, the voucher programs were adopted only after hard-fought political battles and their future is less than secure. They probably would not have been adopted without the efforts of a single individual, Governor Jeb Bush, whose tenure is almost over. Moreover, the Florida voucher programs rest on a shaky legal foundation due to two highly restrictive features of the state's constitution, the so-called Blaine Amendment and provisions for "public" and "uniform" schools. This leaves the Florida voucher programs on uncertain political and legal ground. Other states face many of the same legal restrictions—and even stronger political impediments. We argue therefore that while the adoption of vouchers in Florida does signal a continued national trend toward school choice, it does not suggest that the trend will continue in the form of state-funded vouchers or, more specifically, in forms that allow the use of state funds in religious and other private schools.

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I. Introduction

In June 1999, Florida became the first state in the nation to enact a statewide school voucher program, authorizing the use of public funds for private schools. Vouchers, like charter schools, tuition tax credits, and public school choice, provide parents with a greater role in choosing the schools their children may attend, thereby shifting control over school assignment from the school systems to parents. Together, these programs represent a general trend toward market-based accountability and, more fundamentally, a rethinking of both the objectives of public education and the best ways to attain them. In this study, we examine the adoption and design of vouchers in Florida, the state in which these trends have been most prominent.

For a number of historical, cultural, and economic reasons, the governance and funding of K-12 schooling in the U.S. has remained mainly within the public sphere—government funds expended at government-run schools under a fairly uniform set of government regulations. One reason for the emergence and endurance of this uniform delivery model has been the nation's large immigrant population and the perceived need to unify a country diverse in ethnicity, language and national origin (Coleman, 1990). It was also widely believed by many early founders of the republic that a healthy democracy required a well-educated citizenry. Both of these factors argued for a strong government involvement. Furthermore, due to the country's preference for a small and decentralized government, the responsibility for education in the American federalist system was left to the states and localities. Taken together, these factors shaped an education system in which children attended schools that were funded and run by state and local governments. While these schools were governed by thousands of separate

school districts, it nevertheless became, like the industrial economy it was increasingly meant to support, a highly uniform system of curriculum, instruction, and management—the “one best system” (Tyack, 1974).

The structure of this uniform system went relatively unchanged, even unchallenged, from the latter part of the 19th century to well into the second half of the 20th century. The first cracks started to appear as an unintended consequence of the Supreme Court’s *Brown* decision in 1954. The Court’s decision threatened the authority of states and local school boards in the South to continue the practice of de jure racial segregation of students. Around the same time, 1957, the Soviet Union launched the Sputnik spacecraft that was perceived as evidence that the country’s weak technical and scientific capabilities posed a serious threat to U.S. economic, political and military power. Additional pressures began to develop by the late-1970s and early-1980s. As noted by Harris & Herrington (2006), average scores on the SAT were apparently (although, in retrospect, not actually) plummeting and there was widespread belief that schools had lowered academic standards and shifted away from rigorous academic content. This apparent decline in educational quality was then blamed, in *A Nation at Risk* (National Commission on Excellence in Education, 1983), for the problems of the U.S. economy—high inflation, high unemployment, and heavy competition from Asian nations where, coincidentally or not, achievement test scores were higher. This combination of factors created strong pressure for change and “reform” of the traditional public school system.

A final crack in the public education armor, and the topic of the present study, came from the general trend toward marketization and privatization in all aspects of

government. As the country was reeling from economic challenges particularly from Japan and other Asian countries in the 1980s, popular management analyses suggested that companies who seemed to be faring the best in the U.S. were ones who had adopted the principles of decentralization and entrepreneurialism. A best-selling book, *In Search of Excellence*, identified these as characteristics of companies who were not just surviving but thriving in the new global economy (Peters, 1982). On a political level, just as the rise of *Sputnik* had signaled a challenge to U.S. power, the fall of the Soviet Union in the early 1990s signaled a victory over communism and the defeat of the model of strong, centralized government control. Thus in both the public and private spheres, new ways of thinking about government and public delivery of service helped usher in expanded use of markets and privatization into the provision of government services. These concepts received support from both Republicans who have traditionally supported free markets, as well as some Democrats such as President Clinton whose “third way” was very much in line with this part of the Republican tradition.¹ It is therefore no surprise that the country’s long-standing public educational system also came under the scrutiny of market reasoning.

From this discussion, it might seem that vouchers are part of a forceful trend toward fundamental restructuring of public education. But this is far from certain. To date, 12 states have actually adopted voucher policies and only 130,000 students have utilized vouchers or related forms of choice (Alliance for School Choice, 2005).² While this is a substantial number, and one that continues to grow, it is still only a tiny fraction of the more than 48 million school age children in the United States (National Center for

Education Statistics, 2005). Table 1 summarizes information about some of the earliest and largest of these programs, in Cleveland, Dayton, Milwaukee, and Washington, DC.

Table 1: First-Generation Voucher Programs

<i>Program/Location</i>	<i>Student Eligibility</i>	<i>School Eligibility</i>	<i>Number of Students Participating</i>	<i>Amount of Scholarship, Funder</i>
Milwaukee Parental Choice Program ³	Low-income families	Private schools only, including religious	13,652	\$6,351 From state gov't
Washington, DC Opportunity Scholarship ⁴	Low-income families	Private schools only, including religious	1,025	\$7,500 From federal gov't and non-profit
Cleveland Scholarship and Tutoring Program ⁵	Low-income families	Private schools only, including religious	5,675	\$3,000 From state gov't
Dayton Parents Advancing Choice in Education ⁶	Open, but voucher varies by income	Private schools only, if they register with the non-profit	465	25-75% of tuition From non-profit

Equally uncertain is the form that choice and voucher policies might take. It often goes unrecognized in the school choice discussion that there are really two separate and related debates. First is the issue of *choice* itself and the degree of control parents have regarding where they send their children to school. Less recognized is that these choices may or may not extend to private schools. When they do, choice links up with a second issue—*privatization*. At one level, the two issues are separate: a policy could be designed in which parents can have extensive choices, but limited to the public sphere; conversely, school districts could contract out with private schools, but allow parents few choices.⁷ Vouchers, by allowing parents to choose private schools, provide both choice and privatization. It has been argued that vouchers are being promoted on the basis of parental choice, but that the real objective of supporters is to use the popularity of choice

as a political vehicle for privatization, an idea that is much more controversial (Carnoy, 2000). Whatever the purpose, vouchers represent a particular form of school choice that, as we will argue, is unlikely to be the main path of choice in the long term.

As the basis for this conclusion we consider a state—Florida—in which vouchers have inarguably made the greatest inroads. The state has three voucher programs that are, collectively, the largest in the country. Of the 130,000 voucher students in the country, roughly 26,000 are in Florida. Also, while other voucher programs are focused on particular school districts, all three of Florida’s programs are applied statewide.

Is Florida a sign of things to come? In particular, does the state’s aggressive use of vouchers serve as a prelude to expansion in other states? What characteristics of the state shaped the design of the voucher programs and what does this suggest about the possibility that similar states might adopt similar voucher programs in the future? To answer these questions, we describe the distinctive features of the Florida voucher programs (section II), the state’s history with educational policy, especially accountability, and the political dynamics behind the eventual adoption of vouchers (section III), the politics of race and segregation and other aspects of Florida’s larger political environment (section IV), and the constitutional constraints affecting the adoption and design of voucher programs (section V). In section VI, we argue from these discussions that Florida voucher programs rest on uncertain political and legal ground. Other states face many of the same legal restrictions—and even stronger political impediments. Therefore, while the adoption of vouchers in Florida probably does signal a continued national trend toward school choice, we find little evidence to suggest that this trend is likely to be in the form of vouchers or, more specifically, in a form that

allows the use of public funds in religious and other private schools without government oversight. Indeed, we argue that the types of policies most likely to arise are ones that will significantly restrict the number of students who utilize them.

II. Florida's Voucher Programs

Voucher Program Descriptions

In 1999-2000, Florida adopted the first of Florida's three voucher programs—the Florida Opportunity Scholarship program. Before it was declared unconstitutional (see section V), the program was closely integrated with Governor Bush's signature "A+" accountability plan and made vouchers available to any student attending a chronically underperforming public school. (As we will see, all three Florida programs use the word "scholarship" instead of "voucher." Because voucher is a more generally recognized term, we use the term voucher throughout the paper, except when first introducing each program.⁸) The state assigns a grade, A-F, to each school based mainly on the overall student performance on the Florida Comprehensive Assessment Test (FCAT). If a school received a school grade of "F" for any two years in a four-year period, then the students in that school were eligible for a voucher that could be used at any public school that scored a school grade of "C" or better—or at a private school that had enrolled in the program and had available slots. Eligibility was based on overall school performance, thus individual students who scored high on the FCAT were eligible if they attend schools whose overall student performance was low.⁹

In 1998-1999, the first year of the A-F grading system, four schools had received grades of "F" for two of the preceding four years. However, this number fell to two in the

second year, meaning that only students in these two schools were eligible for the voucher.¹⁰ Of the 900 students in these two elementary schools, only 70 chose to apply for one of the 50 available slots. As of the 2004-05 school year, of the approximately 10,000 students eligible, there were 763 students utilizing vouchers. Of these, the percentage black is considerably higher than the state average (23 percent statewide versus 61 percent using the voucher) while the percentage Hispanic is similar to the state average (23 percent statewide versus 33 percent using the voucher).

There are eligibility requirements for both the families and the private schools that accept their children as Opportunity voucher students. Families must agree to comply with the policies of the schools including provisions such as dress codes, attendance requirements, and parent volunteer expectations. In addition, the public school district in which the student lives, along with child's parents, are jointly responsible for administering the state assessment annually to each voucher student. However, the state does not specify a minimum standard nor does it publicly report individual or average scores of voucher students in private schools.

The Florida law also establishes general requirements for fiscal and curricular soundness that private schools must meet in order to accept voucher students.¹¹ An additional noteworthy requirement is that private schools must accept the voucher as full payment for tuition and fees. This is important because it means that private schools cannot charge additional tuition that might prevent low-income parents from participating. In addition, private (and public) schools must agree admit students on a first-come, first-served basis. Schools cannot refuse admission based on religious or other beliefs or require students to participate in any religious observances. As we will

see below, private voucher schools are still excluded from a wide variety of laws that apply to public schools, a fact that has played an important role in court challenges to the state’s voucher policies.

Table 2: Florida Voucher and Tax Credit Programs

<i>Program</i>	<i>Student Eligibility</i>	<i>School Eligibility</i>	<i>Number of Students Participating</i>	<i>Amount of Scholarship, Funder</i>
Opportunity	Attend school with low test scores	Public or private	763	\$4,200 From state
McKay	Disabled, IEP	Public or private	15,000	\$4,805-\$20,703 From state ¹²
Corporate Tax Credit	Low income	Private	10,000	\$3,500 From state and non-profit

The second of the state’s voucher programs—the McKay Scholarship—is targeted to students with disabilities who attend public schools and have an individual education plan (IEP).¹³ This includes students who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, or autistic. Importantly, and unlike the Opportunity voucher, eligibility for McKay does not depend on student achievement of either the school or the individual students. Instead, parents must simply affirm that they are dissatisfied with the public school services their child currently receives. Approximately 400,000 students in the state are eligible (Florida Department of Education (FDOE), 2006). Of these, over 15,000 Florida students used a McKay voucher to change schools during the 2004-2005 school year (Alliance for School

Choice, 2005), making the McKay the largest of the state's three programs—and the largest single program in the nation.

The requirements for schools to be eligible to receive McKay voucher students are quite similar—and similarly flexible—to those of the Opportunity voucher. Again, the voucher may be used at either public or private schools chosen by the parents as long as they meet the basic conditions mentioned earlier.¹⁴

The third of Florida's programs, the Corporate Tax Credit Scholarship Program, was also adopted in 2001. The Corporate Tax Credit voucher is funded by direct corporate contributions to one of three nonprofit scholarship funding organizations as designated by the State of Florida to receive and disburse funding.¹⁵ Over 10,000 students received vouchers in the 2004-05 school year, although there has been some decline recently.¹⁶ The legislation limits each corporate contributor to a “maximum of \$5 million in Florida corporate tax credits per eligible nonprofit scholarship funding organization with an aggregate tax credit limit for the entire state of \$50 million” and the credit cannot exceed 75 percent of the corporate taxes due from the taxpayer after applying all other tax credits available to the taxpayer (FDOE, 2005). Five percent of the credits are set aside for small businesses taxpayers.

A key feature of the Corporate Tax Credit voucher that distinguishes it from the others is that students are eligible only if they are qualified for the federally funded free or reduced-price school lunches. The eligibility of the schools under this voucher program is, again, similar to the Opportunity and McKay vouchers.

Discussion of Voucher Program Features

One key dimension along which the Florida voucher programs vary, as described above, is in the degree to which they target specific student groups, based on income, achievement, or participation in other education programs. The Corporate Tax Credit voucher is targeted explicitly to low-income students. The Opportunity voucher is targeted to students in academically low-performing schools although, as indicated earlier, these schools enroll students primarily from families that are predominantly low-income and minority. Finally, the McKay is targeted to students with disabilities who come from families with relatively low achievement levels, but a wide range of family incomes.¹⁷ The use of targeting is not unusual for government programs when they are first adopted and, in these cases, the targeting appears focused on those situations where failure, or at least the public perception of failure, has been greatest. Schools with low test scores and attended by large numbers of low-income students fit this description. Also, special education programs are often criticized for being bureaucratic and for over-enrolling students. The perception of failure in these cases therefore makes the application of controversial solutions such as vouchers more politically acceptable.

The programs also have some differences that are not evident from Table 2. Most importantly, the Corporate Tax Credit voucher is not actually a voucher program but rather a tax credit. The money being used to assign children to private schools, in this case, is “donated” (with dollar-for-dollar tax savings) by private corporations and therefore never passes through any government entity. For this same reason, the Corporate Tax Credit voucher is also different from “tuition tax credit” programs being considered in other states that allow parents to write off a set amount of tuition costs from

personal, rather than corporate, income taxes. The distinction between vouchers and tax credits is, in some ways, arbitrary.¹⁸ In the case of vouchers, the government collects funds and gives them to participating schools. In the case of tax credits, the government reduces its revenue by a set amount and requires that this be used for tuition. While this is largely a difference in accounting, the courts have indicated that there are important legal differences (*Lemon v. Kurtzman*, 1971; *Rosenberger v. Regents*, 1995). By keeping the money out of government hands, tuition tax credits further distance the government from religion and therefore avoid some legal issues surrounding the separation of church and state (see further legal discussion below). In addition to this legal difference, there is a political difference between vouchers and tax credits—tax credits can be promoted as tax cuts whereas vouchers require the collection of revenue. Thus, what is really a difference in accounting might have significant legal and political implications.

Vouchers and tax credits are also different from other forms of school choice. By conventional definitions, vouchers can only be used to send children to private schools and therefore provide both choice and privatization simultaneously. In contrast, a “voucher” that is used to send children to other public schools is really public school choice. Thus, the Florida Opportunity and McKay programs represent both vouchers and public school choice. Charter schools also represent a middle ground because these schools, depending on the state and even the specific school, may be run by either governments, non-profits or for-profits. In this sense, charter schools provide choice and some degree of privatization, but the specific amount depends on state policy and implementation.

One of the basic premises of parental choice programs is that parents will make good educational decisions for their children and that they therefore are an important source of oversight and accountability for the performance of schools. This parental or “market-based” accountability is distinct from “government-based” accountability in which the government attempts to measure educational outcomes and provide rewards and sanctions to students and educators based on test scores and other performance measures (Harris & Herrington, 2006). The two forms of accountability are of course not mutually exclusive, although, in the case of the Florida voucher programs, oversight and accountability are almost entirely in the hands of parents. Recall that students in the McKay and Corporate Tax Credit voucher programs are tested only at the request of the parent and those using the Opportunity voucher are tested, but these results are not used for government-based rewards or punishments. Further, there is a separate legislative mandate that the state is expressly prohibited from regulating, controlling, approving, or accrediting private educational institutions (Florida Statutes §1002.42(2h)).¹⁹ As we will see in section IV, the fact that private schools are not held accountable by the state government in ways similar to public schools poses a significant legal hurdle based on the wording of Florida’s state constitution.

III. Accountability in Florida: A Political and Legislative History

Florida’s Long History of Accountability

The adoption of the above voucher policies are far from aberrations in the long history of educational policy in Florida. Indeed, no state over the past several decades

has a longer or more persistent record of employing accountability and assessment as a reform strategy. Florida was the first state in the nation to require:

- Annual testing of every student in select grades and subjects every year (1973)
- A high school exit exam for receipt of a high school diploma (1978)
- A college sophomore exit exam for advancement to upper division (1984).

Between 1970 and 2000, Florida repeatedly enacted into law comprehensive educational reform packages, all with the word “accountability” prominently in their titles. The 1973 *Education Accountability Act*—one of the first and arguably the most comprehensive of any that have followed—called for state curriculum standards to be set in all core subjects and for students to be tested in every grade. The assessments were to allow for comparisons among students, schools, districts, states and other countries. The *Education Accountability Act of 1976*, which sought to implement the earlier act, reduced the testing to only two subjects (mathematics and reading) and to its administration in only one grade each in elementary, middle and high schools and added a high school exit exam. In the 1980s, another comprehensive legislative initiative—the 1983 RAISE bill and its 1984 companion—created or expanded requirements for high school academic credits, length of high school day, merit pay for teachers, reduction of lower level math and English courses and enhancements in math, science and computer instruction.

In 1990 and 1991, the state legislature enacted *Blueprint 2000*, another accountability initiative resulting in the elaboration of seven (later eight) state education goals and ratcheting up the rigor and number of state assessments. A school improvement

process was established, with incentives and sanctions based on progress on the state goals. The measure called for schools to assess their own yearly progress on a number of measures, including but not limited to performance on state achievement tests, and for district or state intervention if progress was not forthcoming after three years. When virtually no schools self-assessed themselves as making inadequate progress—even when students in many schools were clearly not learning at grade level—the state tightened the accountability system, focusing almost solely on state achievement tests scores. In 1995, with this tighter protocol, the state identified 158 low-performing public schools in Florida as “critically low” (FDOE, 2004). This school grading system evolved over the next few years and served as the basis for the current A-F school grading system.

Given Florida’s historical interest in educational reform—especially accountability—it is perhaps unsurprising that the state has been one the most aggressive in pursuing vouchers as a reform strategy. The reasons why Florida identified accountability as a key reform strategy so early, and stayed with it so long, have long been a subject of debate. One hypothesis is that the state demands more engaged oversight over how funding is spent because of the historically large percentage of costs paid by the state as opposed to local districts. Second, the large size of the state’s county-based districts encompass urban, suburban and rural areas in the same district, preventing poorly performing urban districts from being a target of state interventions. Finally, the poor performance of Florida’s school children on national assessments opened the door for a more active state role. Since the state and national assessments have been in existence, Florida has suffered from one of the highest dropout rates in the country (Herrington & MacDonald, 2001). Also, scores on the National Assessment of

Educational Progress (NAEP) have routinely placed Florida in the lowest third or lowest quartile in the nation.

Though the groundwork was clearly laid, the significance of the extension of previous accountability designs to vouchers should not be under-estimated. While relatively few students so far are using vouchers, the use of government funds for education at private and religious schools is a fundamental challenge to the traditional public education system and its constituencies. Not surprisingly, such a significant change was far from inevitable and came only after some contentious and closely fought political battles, the topic to which we now turn.

The Adoption of Voucher and Tax Credit Legislation

As indicated above, Florida's two voucher and tax credit programs were adopted in a short window between 1999 and 2001. But efforts to introduce vouchers began at least as far back as the 1994 gubernatorial campaign when a small-scale pilot voucher program was introduced by then-candidate for governor, Republican Jeb Bush. At the time, he argued that state officials tend to micromanage the public schools. The apparent goal of vouchers then was to test the notion that, if freed of bureaucratic regulations, school administrators could develop programs that would more successfully meet the learning needs of disadvantaged students.

While Bush lost the 1994 gubernatorial election, it was not long before the voucher issue resurfaced. In 1997, a separate push for vouchers was made by state senator, and former state senate president, John McKay. McKay had a child who participated in special education services within the public schools—services that he

thought were inadequate. In making his case for the bill, he focused not on “micromanagement” as Jeb Bush had in his first campaign, but on the fact that “Competition is good. Public education is an unregulated monopoly. This would be real competition in education—unlike ‘choice,’ which just offers choice among the public schools” (Alliance for School Choice, 2005). The bill, however, failed to gather sufficient support in the Legislature.

A year later, Jeb Bush attempted another run at the gubernatorial seat and made vouchers central to his educational reform platform. In an effort to reach out to blacks, whose support for him had been weak four years earlier, Bush argued for vouchers less as a remedy for “micromanagement” of public schools, as he had said earlier, than as an opportunity for all parents to exert the same choice in a selection of schools that more affluent parents had always had through the choice of private schools. As the campaign progressed, Bush mentioned choice and vouchers less frequently and the focus remained on the broader components of the *A+ Plan*, especially the use of rewards and sanctions based on student test scores.

Bush’s victory in 1998 created a political environment that was the first of its kind in Florida in over a century—one-party Republican control of the Executive Office and both houses of the Legislature (see later discussion). The Republican-controlled Legislature was eager to support the new governor who had made education a clear priority. Bush also campaigned on fiscal conservatism and delivered on his tax cut promises early in his first year. It was therefore clear that the new governor’s educational program would be bold, but still inexpensive.

The A+ plan, which passed on the last day of the 1999 legislative session, was both. Most important here is the fact that it established the first of the three voucher programs, the Opportunity voucher program. Despite all the factors working in its favor, its passage was far from assured as it became part of a larger horse-trading among Republicans. Also, Democrats fought hard to amend the bill—in particular, to increase oversight over the private schools and to shift eligibility away from low-performing schools to low-performing students—but, in the end, it passed almost exactly as Bush had proposed it. In the Senate, the legislation passed 25-15 with unanimous support from Republicans and all but one of the opposing votes from Democrats. In the House, the bill passed 70-48, again largely along party lines.

The two other programs were both passed in 2001. Following the earlier bill initiated by John McKay, the legislature passed the McKay Scholarship by a vote of 76-39 in the House. Again, the vote split largely along party lines with five Democrats voting in favor and three Republicans opposing. But, in a sign that vouchers might be gaining broader political appeal, the Senate passed the bill 33-4 with significant support from Democrats.

The legislative strategy regarding the Corporate Tax Credit voucher was somewhat different although the result was much the same. Rather than being part of a package of educational reforms, the Corporate Tax Credit voucher was placed within a package of business tax breaks. It, too, passed largely along party lines.

While legislative support broadened somewhat to include some Democrats (recall the 33-4 Senate vote on the McKay bill in 2001), Republican control over the Executive Office, House and Senate was central to the passage of the voucher programs. If any one

of the three had been in Democratic hands, passage would have been far less likely. But even one party rule would not have been enough. The original McKay bill in 1997 was rejected, not by the Democratic Governor, but by the Republican Legislature. This suggests that the determination of Governor Bush, coupled with the political power of his national influence, were critical to the adoption of the first program, which then smoothed the political obstacles to later passage of the McKay and Corporate Tax Credit programs.

IV. The Larger Political Environment

We now consider the place of vouchers within the larger political environment in the state. We start by discussing the central role of racial politics surrounding the issue and follow this with a discussion of the state's broader political culture, including support for privatization of government services.

The Changing Politics of Race and Choice

We previously mentioned the Supreme Court's *Brown* decision as one of the defining moments of public education, one that led to fundamental changes in the way people think about their schools. At that time, the traditional system in the South, including Florida, required schools that were segregated by race and the *Brown* decision made this practice illegal. Less well known is that *Brown* ushered in a variety of "choice" programs intended to respond to the new federal legal pressure. Unlike the arguments advanced today to support choice, parental choice then was a mechanism to block the integration of blacks and whites in schools. Often the policies gave the

appearance of increasing opportunities for minorities but were in truth designed to continue to allow whites to attend predominately white schools. Rather than giving choice to minorities, these programs provided choice only on paper, and only for the purpose of avoiding actual desegregation (Gordon, 1994; Rabby, 1999).²⁰ Much like the Jim Crow laws that prevented minorities from exercising their right to vote, these misnamed educational “choice” policies prevented parents from exercising their new right to send their children to integrated schools.

Today, the politics of choice in the black community are quite different. Public opinion polls clearly show that a majority, though not all, blacks are supportive of vouchers. One recent poll shows that 57 percent of black adults favor vouchers—and the number increases to 74 percent when the sample is limited to black families with children (Cooper, 2005). There have also been numerous black leaders strongly and actively supporting vouchers. Polly Williams, a state representative from Milwaukee, was instrumental in promoting vouchers in that city (see Table 1) and, later, an advocacy group was created with a similar purpose: the Black Alliance for Educational Options (BAEO). Support has been more tepid, however, in the National Association for the Advancement of Colored People (NAACP). Kwame Mfume, then-president and CEO of the national NAACP, stated that “We encourage parents to look at a variety of educational opportunities for their children, whether public or private. However, there is great concern when politicians aggressively seek to spend taxpayers’ money on private religious schools at the expense of children attending public schools” (NAACP, 1998). While largely opposing vouchers, this statement still suggests some sympathy with those blacks who support the voucher approach.

Even with the remaining split on the issue in the black community, the level of support is undoubtedly stronger than it has ever been before. Such support might seem counter-intuitive at first, given that choice has been a tool of segregationists and the theoretical and empirical evidence that choice increases segregation (Glomm, Harris, & Lo, 2004). There are several reasons, however, why choice is probably more appealing to blacks now than in the past. First, the moral imperative of giving minorities the legal option of attending white schools has been achieved. There is no longer a public debate about whether blacks should be legally able to attend schools that include whites. Second, there still remains substantial segregation in the public school system, more than a half-century after *Brown* (Orfield, 2001). It may be that the desegregation movement has run its course and that no further gains are likely. Or perhaps further gains are not as desirable. There is now a larger population of black adults with college degrees who are better positioned to support and administer schools on their own. Moreover, black students now have relatively greater access to school funding and specific resources such as small classes (Boozer, 1992; Card & Krueger, 1992; Harris & Herrington, 2006). A final reason that might explain blacks' willingness to support choice is the simple fact that a quality education has become so central to achieving social and economic success in today's society. Therefore, if choice is seen as a way to improve quality, and segregation is seen as less important than in the past, then school choice logically becomes a more attractive educational policy.

The above discussion regarding choice and the black community arguably applies to most states in the country. But what makes Florida's racial politics truly distinctive is a simple demographic fact: 15 percent of the statewide vote, representing roughly one

million voters, is Hispanic (Dunkelberger, 2005). This group represents an important swing vote in the state (Word, 2004) and one with 70 percent voucher support nationwide (Pew Research Center, 2006). One reason for such solid Hispanic support may be that Hispanics identify with the Republican focus on family issues and conservative “values” platform—a point on which the public schools are perceived as vulnerable. They are also disproportionately Catholic and therefore, due to the large number of Catholic private schools, perhaps more likely to support the use of government funds for religious education.

The Hispanic community participation in education reform also plays a unique role with respect to vouchers in diffusing the racial politics of segregation. While the social and economic problems of Hispanics are similar to blacks in some ways, the underlying causes for Hispanics are rooted more in their history of immigration than in the nation’s history of slavery and segregation. Support from the Hispanic community weakens any attempts to cast vouchers as an attack on disadvantaged minorities or as a rollback of hard-fought victories over civil rights.

Governor Bush has worked hard to win the votes of both minority groups in his campaigns, in part by using the voucher issue. He partnered with a black leader, T. William Fair, the head of the Urban League in Miami, to generate support for vouchers in the state’s black community. However, overall black support for Governor Bush has not been strong. Hispanics, on the other hand, favored Jeb Bush by an overwhelming majority in his gubernatorial campaigns in 1994 and 1998 (Dunkelberger 2005). Bush’s support for vouchers may have been part of a general appeal to Hispanics. Florida polling data from 2001 also show that 59 percent of Hispanic Floridians support vouchers

(All Children Matter, 2003). Nevertheless, Bush's much stronger support from Hispanics compared with blacks was clearly due more to the general party allegiances of the two groups, reinforced in this case by the fact that Bush speaks Spanish fluently and is married to a Hispanic woman. This support has been instrumental to his own political success and to the adoption of vouchers.

Privatization of Government Services

An additional important element of the state's political culture is its long-standing privatization of governmental services. According to one report, Florida along with only a handful of other states, reportedly has privatized over a 100 state services and functions (Council of State Governments, 1997). And it is clear that the pace accelerated under Governor Bush. By some reports, the Bush Administration initiated 138 separate outsourcing projects (Cotterell, 2006). Some examples of government responsibilities that have been recently privatized include hiring private companies to collect child support payments, to identify felons on voter registration rolls, to operate public parks, and to license and monitor regulated professions such as engineers (Wasson, 2001). But perhaps the strongest evidence that Bush is taking privatization to a new level is his current attempt to privatize the \$15 billion Medicaid system, which, if successful, would be arguably the largest state-level privatization effort in American history.

The success of these privatization efforts is less clear cut, however. The stated intention is to save money and improve efficiency, by avoiding state bureaucracy. But there is a general sense that the privatization of government services has lacked oversight (Barnett, Miracle, & Vogel, 2006) and "the state has had some costly, complex flops in

contracting” (Cotterell, 2006). The most commonly cited example is the contract for the personnel system for state employees—also, the state’s largest contract.

Broader State Political Climate

Florida’s political culture is also distinctive for other reasons. Like most of the Southern states, Florida was a one party state—that is, a Democratic Party state—for the century following the Civil War. But by the 1980s, a slow build-up of Republican power was occurring throughout the state. Redistricting in 1992 resulted in the creation of majority-minority districts which, in turn, resulted in more suburban—and more Republican—districts (MacManus & Herrington, 2005; Scher, Mills & Hotaling, 1997). This further laid the groundwork for a shift in party control. In the election of 1996 the Republicans retained control of the Senate, where they held 23 of 40 seats, and took control of the House with 61 of 120 seats. Republicans held both the Senate President and Speaker of the House positions and committee chairmanships and therefore controlled the flow of legislation. With Jeb Bush winning the 1998 race for governor, Republican control of Florida’s executive and legislative branches was solidified. Further, the Republican legislators were determined to exert their new-found power in the chambers and to avoid the in-fighting that they had observed among Democrats when they were in power. They were equally determined to support their new Republican governor.

It is possible to exaggerate, however, the importance of this shift in party control for the political views of the state. From 1980-1995, the self-reported political ideology (conservative, middle of the road, liberal) has remained almost unchanged and views on

specific issues have actually become somewhat less conservative (Parker, 1996). Going back even further, Florida has supported Republicans in 11 of the 14 Presidential elections since 1948, despite being controlled by Democrats throughout most of that period (Huckshorn, 1998). In short, Florida remains the moderately conservative state that it has always been.

The state has also long been inhospitable to one of the interest groups that has been a pillar of Democratic Party nationally—labor unions. Florida is a “right to work” state, requiring employers to be open to non-union members even where unions are present. The constitution also makes it illegal for public employees, including teachers, to strike. Partly as a result, unions have organized few workers in the state and therefore have little political power (Parker, 1998). As of 1996, only 9.6 percent of the state’s workers were unionized compared with 25.4 percent in California and 33.7 percent in Michigan. Teacher unions are in a somewhat stronger position (indeed, a large proportion of the state’s unionized workers are teachers), but there is little public appetite in the state for the aggressive political and negotiating tactics that might be used in other states. It is therefore not surprising that the unions in Florida have been unable to turn their opposition to vouchers into the legislative victories seen in so many other states.

Finally, the state’s political culture is undoubtedly influenced by the large percentage of its population that was born and raised in other states and countries. In addition to the large in-migration from other U.S. states, Florida has a relatively high percentage of foreign born citizens (16.7 versus 11.1 percent nationally) and the highest state-to-state in-migration in the country.²¹ It is likely, though difficult to prove, that the

state's citizens have looser ties to public institutions, such as public schools, and are therefore more open to experimentation with alternatives such as vouchers.

V. Constitutional Constraints

The initial whirl of political activity around vouchers has recently been followed by a complex series of legal challenges that have resulted in mostly negative court decisions. One issue in the Florida courts, as well as nationally, has been the separation of church and state. However, as we will see, the legal challenges in Florida have also involved state constitutional provisions that the education system be “public” and “uniform.”

Separation of Church and State

Given that most private schools are religious, it is perhaps unsurprising that the separation of church and state, as required by the First Amendment of the U.S. Constitution, is the most commonly advanced argument against vouchers at both the state and federal levels. In the courts, the amendment is interpreted based on a three-pronged “Lemon test,” named after the 1971 decision *Lemon v. Kurtzman*, in which the Supreme Court struck down a state program providing aid to religious elementary and secondary schools. A law or other government action passes the Lemon test and is therefore constitutional if the law or action: (a) has a secular purpose; (b) does not have the primary effect of advancing or inhibiting religion; and (c) does not excessively entangle religion and government. While it has been changed slightly in recent years, and other test of

religious “establishment” have been articulated by federal courts, the Lemon test is still used widely in cases involving separation of church and state.

The most relevant federal case on vouchers, *Zelman v. Simmons-Harris*, was decided on the basis of this constitutional provision. Focusing on the voucher program in Cleveland, Ohio (see Table 1), a majority of the Supreme Court ruled that the program was constitutional because it was neutral with respect to individual religions—that is, the money could be used at schools associated with any specific religion—and because the decisions regarding whether and where to use the vouchers were being made by parents rather than the government, thus these were considered private choices that avoided the appearance of government sponsorship of religion.

The U.S. Constitution is, however, less restrictive than many state constitutions due to a now-century old campaign by Congressman James Blaine of Maine to ensure that religious institutions, especially religious schools, did not receive public funds. In 1875, growing from a strong anti-Catholic sentiment, Blaine proposed a Constitutional amendment barring the federal government from providing public funds to any religious organization. While this proposal did not receive sufficient support at the federal level, supporters of the idea took it to the states and eventually 37 states—including Florida—passed amendments similar to Blaine’s original. These so-called Blaine amendments are legally more restrictive than the Establishment Clause of the U.S. Constitution because the Blaine amendments specifically prohibit the use of public funds for religious education. For example, the Florida Blaine Amendment prohibits taxpayer money from going “directly or indirectly in aid of any church, sect, religious denomination or in aid of any sectarian institution.”²²

In June 1999, as soon as the Opportunity voucher became law, teacher unions and other special interest groups challenged the vouchers as a violation of the Florida and U.S. constitutions, partly on the grounds of separation of church and state. Two lawsuits were filed—one by the ACLU, the National Education Association, People for the American Way, and others, and the second by the American Federation of Teachers. These two lawsuits were combined into one case *Holmes v. Bush*. The trial court eventually ruled in 2000 that the Opportunity voucher program violated the Blaine amendment—frequently referred to as the “no aid” provision—and this was upheld in Florida’s First District Court of Appeals (where it became *Bush v. Holmes*). The Florida Supreme Court did not rule, however, on the “no aid” provision in its subsequent decision, letting stand the District Court’s rejection of the voucher program on this basis.

Uniformity and Public Schools

Separation of church and state is not the only—or even the main—legal obstacle to vouchers in Florida. In 1885, the state constitution was amended to read that “the Legislature shall provide for a uniform system of public free schools.” The specific wording has changed over the years and with the most recent changes in 1998, the key wording now says that the state must make “adequate provision . . . for a uniform, efficient, safe, secure, and high quality system of free public schools.” Despite the recent change, two key words—“uniform” and “public schools”—have remained unchanged since 1885. The significance of these words has been clear from the initial decision of the trial court all the way through the Florida Supreme Court’s final ruling on the matter.

In 2000, the trial court initially decided that the Opportunity voucher violated only the “public” and “uniformity” provisions and did not mention the no aid provision. However, the District Court of Appeals rejected this reasoning and remanded the case back to the trial court for further consideration on the no aid provision. The trial court again ruled that the Opportunity voucher was unconstitutional, this time on the basis of no aid, and this decision was subsequently affirmed by the First District Court, which noted that “while the voucher program satisfies the federal Establishment Clause under the three-pronged *Lemon v. Kurtzman* test, the state constitution’s ‘no aid’ provision contains a broader prohibition against expenditure of state revenues that imposes an additional restriction.”

In the final appeal, the Supreme Court was silent on the no aid provision and returned to the reasoning used in the initial trial court decision, focusing on the public and uniformity provisions. The Court rejected the program for three specific reasons (*Bush v. Holmes*, 2006): First, the justices noted that “The OSP [Opportunity voucher] violates this provision by devoting the state’s resources to the education of children within our state through means other than a system of free public schools.” Second, the court reasoned that “the OSP does not supplement the public education system. Instead, the OSP diverted funds that would otherwise be provided to the system of free public schools.” These two arguments focus mainly on the constitutional requirement that the system of education must be public. Finally, the Court concluded that by excluding private voucher schools from the regulations applied to public schools, the vouchers necessarily created a non-uniform system. The court pointed out the general, and often explicit, lack of oversight by the government over private schools accepting voucher

students and referred specifically to examples such as teacher certification and curriculum standards that are required of public schools but not to participating private schools.

Collectively, the series of court decisions on the Opportunity voucher mean that the state constitution would have to be changed in three ways to make the Opportunity voucher program constitutional: While the U.S. Supreme Court's decision in *Zelman* largely puts to rest the federal challenge under the Establishment clause, Florida's District Court rejecting the opportunity voucher based on the no aid provision still limits the use of public funds to provide education in religious private schools.²³ In addition, the Florida Supreme Court's decision means that the words uniform and public would have to be dropped or otherwise modified to be less restrictive.

Given that all but two states include these same provisions in their own state constitutions (Thro, 1993), it is likely that similar legal challenges would await programs in other states if the vouchers policies were designed in similar ways. The presence of the "uniformity" clause also means that the traditional "one best system" form of education may represent not only a choice of policy design but, apparently, a constitutionally required responsibility of state government.

VI. Florida and the Future of Vouchers

The discussion of vouchers in this study presents a paradox. On the one hand, Florida has a constitution that significantly limits the adoption and design of vouchers and the state's constitution would have to be altered to allow for vouchers like the Opportunity program. This may be true of the state's other voucher programs as well,

although no court decisions have been made as of this writing. Similar restrictions may be present in other states as well, although, courts in other states, while they may be influenced by the Florida decisions, are not bound by them.

While Florida is similar to other states in its constitutional provisions, it has a distinctive, perhaps even unique, political soil that supports the growth of vouchers. The state has a history of moderate political culture, weak labor unions, and active educational accountability and privatization of government services, of which vouchers can be seen as one example. The recent emergence of one-party Republican control over the Legislature and Executive Office has reinforced tendencies toward privatization of government and especially of education.

The state's racial politics are especially distinctive. First, the Hispanic population is large and usually supportive of vouchers. In addition to the immediate electoral power this provides to voucher supporters, it diffuses possible attacks of racial prejudice and segregation. In contrast, in other Southern states and Northern states, blacks represent the predominant minority group and issues such as vouchers are more likely to be framed in terms of the decades-old effort to desegregate schools.

Notwithstanding the distinctive political features of the state, we suspect that vouchers still would not have been adopted in Florida, certainly not to the extent seen, if not for one individual—Governor Jeb Bush. More than a decade ago, he was the first politician in the state to push strongly and persistently for vouchers. It was a signature piece of his campaign platform in 1998 and was presented to the Legislature for adoption soon after he was sworn into office. The Republican legislative leadership wanted to support the first Republican governor in eight years and to show that Republican-led

legislative houses could work with him cooperatively. There was also an awareness of the national prominence of the Bush family and a desire to support Republican ascendancy nationally.

No other state has all of the political features that have made vouchers a reality in Florida. Only Arizona, California and Texas share similar demographics. Of these, only Arizona and Texas have the type of moderate conservatism, political independence, and weak unions. Indeed, these two states fit well with our logic: Both states are among the 12 that have voucher programs and Arizona is one of few to have a statewide tuition tax credit program, a program put in place when the state, like Florida during the period of voucher adoption, was under one-party Republican control.

In addition to the issue of policy adoption, the discussion here provides insight into how voucher policies might be designed. If the recent history of voucher programs is any indication, it is likely that policymakers will continue to target the program to low-income populations and other disadvantaged populations. For both legal and political reasons, they may also be limited to tuition tax credits, but this creates a dilemma. Because tuition tax credits require families to pay tuition up front, and receive reimbursement later, they may prevent low-income families from participating. Therefore, the actual usage of vouchers may be small even if they are adopted.

The legal and political issues surrounding vouchers are also closely connected with a single feature of all three vouchers programs—lack of oversight. As discussed in section II, private schools can accept voucher students and funds without complying with most of the restrictions applied to public schools. Perhaps most importantly, most voucher students do not take the state's standardized test and those scores are not used as

the basis for accountability. The differences in oversight applied to voucher schools is both a legal issue (recall the majority opinion in *Bush v. Holmes*) and, in the long term, perhaps a political one as well. The same lack of oversight has been an issue in the state's other privatization efforts, but there is building pressure to change course and more closely monitor private contractors.

There are several key questions going forward: First, how might other state courts interpret their Blaine amendments and provisions for uniform public schools? Even if the Blaine amendments were worded identically across states, which they are not, a state court in one state is not bound by the decisions courts in other states. But, if the Florida decisions are any indication, the Blaine amendments will remain a significant impediment to vouchers. Second, will the state constitutions be amended to lower or eliminate these hurdles? This is unlikely in most states, but much more likely in places like Florida where the constitution is relatively easy to change and where, as part of the Bible Belt, religion is a prominent part of the state's social fabric. Third, will evaluations of the voucher programs show that they are effective? So far, it has been difficult to evaluate the programs because of the lack of data available from the private schools the students attend. What evidence does exist seems to show that vouchers do not pressure public schools into making significant improvements (Figlio & Rouse, 2005; Harris, 2001), although it remains unclear whether students learn more when they use vouchers to attend private schools. These issues will probably remain unresolved unless the state decides to require testing of voucher students and to allow access of these data to researchers. Of course, requiring such testing is itself controversial because such

accountability would reduce the flexibility that private schools now have in how they educate voucher students.

The answers to these questions will have a significant influence over the future adoption and design of vouchers. But the fact that vouchers have expanded as much as they have is still a noteworthy, and potentially fundamental, new development in the history of public education. Even when adopted in a limited form, vouchers represent another fundamental break with the nearly century-old idea of a one best system of public education. As the experience of the *Brown* decision highlights, once such a break occurs, it can completely reorient the political and legal landscape, in ways that make it exceedingly difficult to make long-term predictions. For this reason, the ongoing experience with vouchers in Florida warrants close attention.

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Zelman v. Simmons-Harris, 536 U.S. 639 (2002).

Notes

¹ President Clinton also supported charter schools as a means of introducing choice and privatization into public schools.

² This number includes vouchers and tuition tax credits (discussed later in the text) and excludes charter schools, magnet schools, and public school choice.

³ Specifically, to be eligible for the Milwaukee voucher program, students' family income must not exceed 175 percent of federal poverty guidelines. In order to be eligible a school must register with the Wisconsin Department of Instruction and demonstrate that they have a building in which to hold classes. However, beginning in 2007, this rule is being changed so that participating private schools must be accredited. The tuition level is the lower of the figure in the table (\$6,351) and the private school's debt and operating service cost per student. The tuition figure applies to the 2005-06 school year.

⁴ Specifically, to be eligible for the DC voucher program, household income can not exceed 185 percent of federal poverty guidelines. Also, the voucher applies only to children who are entering grades K-5 in school year 2006-07. The \$7,500 voucher value represents the maximum amount and can be used to cover tuition, fees and transportation. The program is capped at \$13 million per year. Students attended 53 different private schools in 2004-05. The tuition figure applies to the 2004-05 school year.

⁵ Under the Cleveland program, the state pays either 75 percent or 90 percent of the tuition (depending on family income) not exceeding \$3,000 for elementary schools. High school vouchers were a maximum of \$2,700. All tuition figures were for the 2003-04 school year. Also, up until 2004, applicants for the Cleveland voucher were categorized into three groups according to income within the poverty level. The first group consisted of applicants whose families earned less than 100% the federal poverty index; the second group consisted of applicants whose families earned between 100% and 200% of the poverty level index; the third group consisted of applicants whose families earned more than 200% the federal poverty index. When the number of applicants in the first two groups exceeded the number of available vouchers, the lottery occurred amongst applicants in the first two groups and the remaining vouchers were made available to the third group. Beginning in 2004, available scholarships were first awarded to eligible kindergarten students, with priority given to families who were in the lowest income category. Remaining scholarships were awarded to families of students in first through eighth grades using a random lottery, again with priority given to families within the lowest income levels.

⁶ In Dayton, students must now submit standardized test scores to show improvement. The percentage of tuition covered depends on family income.

⁷ There is also an important distinction between privatization and free markets. One of well recognized problems involved with privatizing government services is that there may be a very small number of contractors willing to provide services. In this case, the contractors have considerable control over the market, resulting in little genuine competition.

⁸ The term "scholarship" normally refers to an award for strong academic outcomes. As discussed in the text, the voucher programs, in contrast, are more likely to be received by students who have low academic outcomes. The use of the term scholarship is itself an interesting aspect of the politics of vouchers, although one that is outside the scope of the present study.

⁹ This description of the Opportunity voucher is in the present tense and therefore assumes that the program

¹⁰ The drop in the number of F schools was initially attributed to the pressures placed on schools by the voucher threat (Greene, 2001), although subsequent analyses have shown that the effects was small, if it existed at all, and that some of the effect initially attributed to vouchers was actually the result of the "scarlet letter" effect that induced schools to improve their scores because of the negative public attention (Figlio & Rouse, 2005; Harris, 2001). There is also some question as to whether these effects represent real learning gains or whether schools simply focus more on tested material and test preparation.

¹¹ Private schools participating in the Opportunity and other voucher programs must demonstrate "fiscal soundness." This can be accomplished by being in operation for one school year, providing evidence that the school is insured and the owner or owners have sufficient capital or credit to operate the school, or by providing a letter of credit for the amount equal to the opportunity scholarship funds. Private schools must also notify the Florida Department of Education and the school district in whose service area the school is located of its intent to participate in the program by May 1 of the previous school year and indicate the number of slots being opened to voucher students. They must also comply with the antidiscrimination

provisions and meet state and local health and safety laws and codes; use accredited instructional practices and curricula; furnish a school profile which includes student performance; employ or contract with teachers who hold a baccalaureate or higher degree, or have at least three years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught; comply with all state statutes relating to private schools (FDOE, 2006).

¹² The dollar value of the McKay voucher is identical to what the state provides to public schools for special education students. The average value of the voucher is \$6,897 (FDOE, 2006).

¹³ The full name of the program is the McKay Scholarships for Students with Disabilities Program. The IEP must be written in accordance with rules of the State Board of Education.

¹⁴ Like the Opportunity voucher, students may use the McKay voucher at either public or private schools. All private schools are eligible to participate, however, to be eligible to receive McKay voucher students, a private school must be a Florida private school, may be sectarian or nonsectarian, and must demonstrate fiscal soundness; comply with the antidiscrimination provisions; meet state and local health and safety laws and codes; be academically accountable to the parent for meeting the educational needs of the student; employ or contract with teachers who hold baccalaureate or higher degrees or have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught; comply with all state laws relating to general regulation of private schools; and, adhere to the tenets of its published disciplinary procedures prior to the expulsion of a scholarship student. If the parent chooses the private school option, the parent of the student must notify the school district 60 days prior to the first scholarship payment and before entering the private school in order to be eligible for the scholarship when a space becomes available for the student in the private school. In order to be eligible for the McKay scholarship, a student must have been enrolled and reported for funding in a Florida public school during the October and February FTE surveys (Grades K-12). The student must also have an Individual Education Plan (IEP) and have completed a year of kindergarten.

¹⁵ On of the non-profit scholarship funding organizations, Children First Florida, serves students in 43 counties comprising all of north, central and east Florida. Florida PRIDE serves 19 counties including west and south Florida. YES! Opportunities serves students in Marion and four surrounding counties.

¹⁶ Of Florida's three scholarship programs, only the Corporate Tax Credit Scholarship Program has seen a slight decline in student participation. This decline is due to variables such as uncertainty in scholarship contributions, transportation challenges, and families not meeting income levels or renewal timelines. (FDOE, 2005).

¹⁷ In a study of one Florida school district, Duval County, Weidner (2005) finds that more than 30 percent of McKay voucher users have family incomes above \$50,000 per year. The overall distribution of income for McKay users is also quite similar to parents of special education students who remain in the public school system.

¹⁸ In addition to those mentioned in the text, tuition tax credit are distinct because they are harder to use for low-income residents who must come up with the money in advance and be reimbursed much later by the government.

¹⁹ The statute reads, "It is the intent of the Legislature not to regulate, control, approve, or accredit private educational institutions, but to create a database where current information may be obtained relative to the educational institutions of this state coming within the provision of this section as a service to the public, to governmental agencies, and to other interested parties. It is not the intent of the Legislature to regulate, control, or monitor, expressly or implicitly, churches, their ministries, or religious instruction, freedoms, or rites..."

²⁰ Rabby (1999) writes that in the aftermath of Brown, "many states . . . were able to forestall integration by developing ingenious desegregation 'plans' that appeared on the surface not to violate the intent of the Court. These so-called pupil placement or freedom-of-choice plans were meant to dissuade all but the most courageous and determined blacks from applying to white school" p.201. In addition, Rabby describes how states implemented private school funding plans to allow whites to leave schools that were threatened with segregation.

²¹ The source for the foreign-born population is the U.S. Census Bureau (2006). The largest state-to-state migration in the United States is from New York to Florida, a move made by more than 300,000 U.S. citizens between 1995 and 2000 (U.S. Census Bureau, 2003).

²² Article IX, section 6 of the state constitution might be also be viewed as part of the “no aid” provision. It reads: “the income derived from the state school aid fund shall, and the principal of the fund may, be appropriated, but only to the support and maintenance of free public schools.”

²³ There has been some debate about whether the Blaine amendments are consistent with the U.S. Constitution (Mauro, 2002). This issue was recently addressed in *Locke v. Davey*, which was brought before the U.S. Supreme Court in 2003. The case involved a theology student in the state of Washington who was denied a college scholarship because his intent was to use the public money to pursue a double major in pastoral studies and business management. In this case, the state argued successfully that its constitution—specifically, its own Blaine amendment—prohibited the use of state money for the study of devotional theology. Justice Rehnquist wrote for the majority: “The State of Washington established the Promise Scholarship Program to assist academically gifted students with postsecondary education expenses. In accordance with the State Constitution, students may not use the scholarship at an institution where they are pursuing a degree in devotional theology. We hold that such an exclusion from an otherwise inclusive aid program does not violate the Free Exercise Clause of the First Amendment” (*Locke v. Davey*, 2004). This decision implicitly accepts the constitutionality of Washington’s Blaine Amendment and may indicate similar constitutional status of those in other states.