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# Information Access Inequities: A Fatal Flaw in Educational Voucher Plans

MICHAEL A. OLIVAS\*

In a system with no options, ignorance might be bliss. In a system based on choice, ignorance is ruin.

J. Coons & S. Sugarman  
*Education by Choice* (1978)

## Introduction

Although educational vouchers and other American methods of financing private elementary and secondary schools with public funds can trace their intellectual roots to Adam Smith and Tom Paine,<sup>1</sup> actual voucher experiments and serious legislative proposals have a more recent history. In 1972, a modified voucher plan was implemented in San Jose, California, but was limited to the public elementary schools in the Alum Rock Union Elementary School District.<sup>2</sup> Postsecondary voucher systems have existed since the GI Bill, and federal legislation establishing Basic Educational Opportunity Grants (BEOG) in 1972 created a massive entitlement program that has incorporated many features common to voucher plans.<sup>3</sup> Since it is with the common features that this article deals, it will include the BEOG program in the generic term "voucher." In the late 1970's two legisla-

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<sup>1</sup> West, *Tom Paine's Voucher Scheme for Public Education*, 33 SOUTHERN ECONOMIC JOURNAL 378-382, (1967).

<sup>2</sup> WEILER, A PUBLIC SCHOOL VOUCHER DEMONSTRATION: THE FIRST YEAR AT ALUM ROCK (1974).

<sup>3</sup> Sterling, *The G.I. Bill: An Education Entitlement*, in ENTITLEMENT STUDIES, Kurland (1977), 123-144; OLSON, *THE G.I. BILL, THE VETERANS, AND THE COLLEGES* (1974).

tive plans proposed quantum leaps in governmental assistance to the private elementary and secondary education sector: a state voucher proposal in California<sup>4</sup> and a federal bill to extend the BEOG program to parents whose children attended private elementary and secondary schools.<sup>5</sup> Although neither plan was enacted into law, it is clear that political agendas will include increasing attention to voucher plans, at all levels and in many guises.

Although programs with direct<sup>6</sup> or indirect<sup>7</sup> tuition assistance, tax credit<sup>8</sup> or exemption<sup>9</sup> benefits, have been before the courts and declared unconstitutional, the issues addressed in these cases have been whether the schemes violated the Establishment Clause,<sup>10</sup> under the test enunciated most recently in *Committee for Public Educ. v. Regan*.<sup>11</sup>

Under the precedents of this Court a legislative enactment does not contravene the Establishment Clause if it has a secular legislative purpose, [if] its principal or primary effect neither advances nor inhibits religion, and if it does not foster an excessive entanglement with religion.<sup>12</sup>

This test, while ostensibly simple, is a poor predictor of outcome as recent history demonstrates.<sup>13</sup> While a detailed analysis of these

<sup>4</sup> Initiative for Family Choice in Education (California, 1980) reprinted in Appendix. (hereinafter California Initiative (1980)).

<sup>5</sup> Unpublished Amendment 1268 to S. 1839, 96th Cong., 2d Sess. (1980); 126 CONG. REC. 7842 (June 26, 1980).

<sup>6</sup> *Essex v. Wolman*, 342 F. Supp. 399 (S.D. Ohio 1972), *aff'd mem*, 409 U.S. 808 (1972).

<sup>7</sup> *PERL v. Nyquist*, 413 U.S. 756 (1973); *Sloan v. Lemon*, 413 U.S. 825 (1973).

<sup>8</sup> *Kosydar v. Wolman*, 353 F. Supp. 744 (S.D. Ohio 1972), *aff'd mem sub nom. Grit v. Wolman*, 413 U.S. 901 (1973).

<sup>9</sup> *Beggens v. Public Funds*, 442 U.S. 907 (1979).

<sup>10</sup> "Congress shall make no law respecting the establishment of religion. . . ." U.S. CONST. amend. I. The clause is applicable to the states through U.S. CONST. amend. XIV. *Cantwell v. Connecticut* 310 U.S. 296 (1940); *Meek v. Pittenger* 421 U.S. 349, 362 n. 12 (1971).

<sup>11</sup> 100 S. Ct. 840 (1980).

<sup>12</sup> *Id.* at 846.

<sup>13</sup> Commentators have alternatively characterized the Supreme Court's recent record in these cases as a "drunkard's reel," Lewin, *Disentangling Myth from Reality*, 3 J.L. & EDUC. 107 (1974); or as "a landmark in the history of religious liberty and church-state separation in our country." Robinson, *Little Room Left to Maneuver*, 3 J.L. & EDUC. 123, (1974). Since *Everson v. Board of Education*, 330 U.S. 1 (1947) (upholding a New Jersey transportation plan) state legislators have become adept at the following cat and mouse game: drafting legislation increasing aid to private schools, appropriating funds until litigation is initiated, arguing the case all the way to the Supreme Court, and beginning the process over Robinson, *supra* at 123-28; Pfeffer, *Aid to Parochial Schools: The Verge and Beyond*, 3 J.L. & EDUC. 115 (1974). As an example, Ohio's tuition grant program was held unconstitutional in *Essex v. Wolman*, 342 F. Supp. 399 (S.D. Ohio 1972), *aff'd mem*, 409 U.S. 808 (1972) its revised tax law for parochial school credits was invalidated in *Kosydar v. Wolman*, 353 F. Supp. 744 (S.D. Ohio 1972) *aff'd mem sub nom Grit v. Wolman* 413 U.S. 901 (1973) but the state's plan to supply standardized tests and scoring services, Ohio Rev. Code Ann. § 3317.06 (J) (Supp. 1976), was upheld in

cases is unnecessary here, it should be noted that the California Initiative and the BEOG proposal have a scope far surpassing the incremental programs or tax plans previously considered by the Supreme Court. Indeed, a major attraction of the proposals to parochiaid proponents is that these programs have such a reach that the assistance to sectarian schools will be sufficiently proportionally small to escape some of the strictures of the establishment clause. But beyond the constitutionality of radical proposals such as the California Initiative or BEOG bill under the establishment clause<sup>14</sup> lies the as yet unexamined problem of equity in the administration of a voucher plan, whatever its configuration.

This article explores the California Initiative and the BEOG proposals and examines the fundamental premise upon which such "free market" proposals are based, namely, that adequate information delivery systems are in place that will allow poor and rich, majority and minority, and educated and uneducated parents to make truly informed, reasoned judgments on the quality of schools to which they might choose to send their children, i.e., that the programs can operate equitably. A convincing web of evidence shows this premise to be flawed.

## Major Provisions of Parochiaid Legislative Proposals

### *The California Initiative*

The 1980 attempt to place a voucher initiative upon the California ballot has several important contexts, including national and state factors. Spending and tax limitations measures have become com-

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Wolman v. Walter, 433 U.S. 299 (1977).

The usual mode of assistance adopted in legislation has been categorical program aid or aid directly to schools. Board of Education v. Allen, 392 U.S. 236 (1968) (textbook loans to private schools); Marburger v. Public Funds, 413 U.S. 916 (1973) (aid to purchase secular, monidiological textbooks) Meek v. Pittenger, 421 U.S. 349 (1975) (provision of auxiliary services and textbooks and equipments loans to private schools) Lemon v. Kurtzman, 403 U.S. 602 (1971) (salary supplements to private school teachers and reimbursement to private schools for private schools for educational services); Sanders v. Johnson, 403 U.S. 955 (1971) (purchase by State of educational services from private schools); PERL v. Nyquist, 413 U.S. 756 (1973) (financial aid to private schools and parents of children attending private schools). Since in categorical programs, benefits accrue either to the students in the form of services and supplies available in the private schools, few delivery problems, discretionary allocations, or queueing difficulties occur. Information access inequities, therefore, do not create problems since the choice to attend the private school has already been made.

<sup>14</sup> Scholars have ventured opinions on how the Court would react to a voucher case. See, e.g., Pfeffer, *Aid to Parochial Schools: The Verge and Beyond* 3 J.L. & Educ. 115 (1974); Wedlock & Jasper, *Parochiaid and the First Amendment: Past, Present, and Future*, 2 J.L. & Educ. 377 (1973). See also KIRP & YUDOF, *EDUCATIONAL POLICY AND THE LAW* at 32-84 (1974).

monplace in many states. In 1978, twelve of the sixteen states that held elections to consider eighteen such measures passed laws, amended state constitutions, or enacted other means to limit public spending or alter school finance.<sup>15</sup> In addition, a federal tax limitation measure, proposed in the Congress, the "Kemp-Roth" bill,<sup>16</sup> reflects the general tax revolt. In California, voters may circulate petitions to amend the state constitution, and this popular referendum procedure has become the vehicle for radical tax and educational finance reform.<sup>17</sup> This method of cutting tax liabilities has obvious applicability for school finance reform, particularly in the state where major school finance litigation has forced educators and legislators to confront inter-district inequities in their method of financing public elementary and secondary education.<sup>18</sup> Additionally, a limited voucher program has been in operation in a California school district since 1972,<sup>19</sup> so the voters have a model experience to guide their judgment.<sup>20</sup> Although the California Initiative failed to make the ballot, efforts at state and school finance reform through voucher proposals are continuing.<sup>21</sup> The important elements of the California Initiative include:

modifying the California Constitution to eliminate property taxes as the major vehicle for funding elementary and secondary education;<sup>22</sup>  
placing expenditure ceilings upon state educational expenditures, including

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<sup>15</sup> EDUCATION COMMISSION OF THE STATES, LEGISLATIVE REVIEW (1978).

<sup>16</sup> As of this writing (Summer, 1981, the "Kemp-Roth" proposal is pending before the House Ways and Means Committee (H.R. 1598) and the Senate Finance Committee (S. 33). Congress has approved a budget guideline for 1982 of \$695.4 billion, which is designed to accommodate the deep tax and spending cuts proposed by the Reagan administration.

<sup>17</sup> See CATTERALL & THRESHER, PROPOSITION 13: THE CAMPAIGN, THE VOTE, AND THE IMMEDIATE AFTER EFFECTS FOR CALIFORNIA SCHOOLS (1979). For background on the initiative process, see West's Cal. Elec. Code §4000-23 (1978), implementing Cal. Const. art. IV, §25; for the referendum process, see West's Cal. Elec. Code §4050-57 (Supp. 1975). See generally, Oren, *The Initiative and Referendum's Use in Zoning*, 64 CAL. L. REV. 74 (1976); Radin, *Popular Legislation in California: 1936-1946*, 35 CAL. L. REV. 171 (1947).

<sup>18</sup> *Serrano v. Priest*, 5 Cal.3d 584; 487 P.2d 1241 (1971).

<sup>19</sup> For more detailed analyses of entitlement or voucher plans, see EDUCATION VOUCHERS: CONCEPTS AND CONTROVERSIES (La Noue, ed. 1972); Coons & Sugarman, *Family Choice in Education: A Model State System for Vouchers*, 59 CAL. L. REV. 321 (1971); Harvard Center for the Study of Public Policy, *Education Vouchers* (1970) reprinted in KIRP & YUDOF, EDUCATIONAL POLICY AND THE LAW 62-68 (1974). For more detailed criticism of the California Initiative, see LEVIN, EDUCATIONAL VOUCHERS AND SOCIAL POLICY, (1979).

<sup>20</sup> COBB & ELDER, PARTICIPATION IN AMERICAN POLITICS: THE DYNAMICS OF AGENDA-BUILDING (1972) at 122; see generally, Coser, CONTINUITIES IN THE STUDY OF SOCIAL CONFLICT (1967).

<sup>21</sup> See, for example, the failed Missouri Constitutional Amendment Proposal H, a voucher plan for public, private, and parochial schools.

<sup>22</sup> California Initiative (1980), art. I § 3.

administration of the Department of Education,<sup>23</sup> establishing 3 classes of schools (public, independent, family choice) and certificates redeemable at independent or family choice schools<sup>24</sup> and establishing notice requirements (independent of school systems) for parents.<sup>25</sup>

In essence, the proposal would create a new, hybrid "independent" school category, and grant to parents a certain sum of money to enable their children to attend either the incorporated, public, non-profit school or a traditional private school, incorporated as a public benefit or mutual benefit corporation. Children who did not enroll in one of these two categories of schools would be enrolled in the traditionally public school system. This plan would almost certainly introduce a dynamism into the system, and would probably increase options for parents, to the extent that public funds would be available to spend upon more services in the open educational marketplace. In this regard, the proposal shares a major purpose with the BEOG proposal, the deliberate stimulation of competition between public and private schools through public entitlements redeemable in private schools.

### *The BEOG Proposal*

Senator Moynihan's proposal sought this end through a different means: an amendment<sup>26</sup> to the Higher Education Act of 1972,<sup>27</sup> which was being reauthorized for five years. His proposal, though broader in scope than the California Initiative, was attractively but deceptively simple. The amendment would have extended BEOG eligibility to parents with children in private elementary and secondary schools, provided the schools were incorporated non-profit organizations, under §501(c)(3) of the Internal Revenue Code.<sup>28</sup> In short, eligible parents would receive non-reimbursable grants to help enable their children to attend private elementary and secondary schools. Each child would be eligible for 12 academic years worth of BEOG eligibility;<sup>29</sup> the existing BEOG program allows college students 4 academic years (5 in special circumstances).<sup>30</sup>

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<sup>23</sup> *Id.* at §§4 and 5.

<sup>24</sup> *Id.* at § 6.

<sup>25</sup> *Id.* at § 16.

<sup>26</sup> Unpublished Amendment No. 1268 to S. 1839, 96th Cong. 2d Sess., 126 CONG. REC. S 7842 (June 26, 1980).

<sup>27</sup> 26 U.S.C. § 50 (c) (3) (West Supp. 1981).

<sup>28</sup> Unpublished Amendment No. 1268 § 403 (e), *supra* note 26.

<sup>29</sup> *Id.* at § 403 (d) (2).

<sup>30</sup> For purposes of "non-credit remedial courses of study," or for five-year curricula. Higher

The legislative simplicity of the BEOG proposal belies the complexity of the eligibility and application process.<sup>31</sup> Parents whose children wished to attend eligible private schools would have to complete a standard financial aid form, itemizing assets, liabilities, income and other financial data. This form would be sent to central form processing facilities, which would compute the eligibility index and forward the report to the schools, the financial aid offices of which would calculate the amount of the grant and assemble a "financial aid package," which would include institutional resources, scholarship awards, and other financial assistance. Extensive programs already exist to distribute applications, process the forms, and calculate eligibility for parents of post-secondary students (or for students who are eligible and declare themselves "independent" of their parents). Since one of the major appeals of the plan is its proposed linkage to these existing administrative mechanisms, the ability of these systems to assimilate the extension of the BEOG program and the ability of parents of elementary and secondary school children to negotiate these systems have particular relevance in judging the merits of the extension proposal.

Therein lies a major rub, for there is available an increasing body of literature that suggests that information delivery systems are inadequate to administer properly either an expanded BEOG program or the California Initiative. Indeed, the evidence suggests that either plan would severely exacerbate existing educational disparities among classes by primarily assisting those with enhanced access to information, technical assistance, and professional influence. These information-rich would inevitably and disproportionately include wealthy, majority, and highly educated parents. Four measures of information systems are available: 1) inequities in access to information; 2) inequities in the nature of descriptors; 3) the other "free market" information models; and 4) potential conflicts with other social and political values.

### *Information Access Inequities and Marketplace Considerations*

Before examining the four indices by which information systems can be measured, it is useful to consider briefly the reasons why information is such a crucial issue in voucher proposals. Levin, a proponent of postsecondary vouchers, has proposed three major dimen-

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Education Act of 1965, Sec. 411 (a) (4) (A). 20 U.S.C. §§ 1070a et seq. (1976).

<sup>31</sup> For a summary of federal assistance programs, see FADIL & THRIFT, *FEDERAL STUDENT ASSISTANCE AND CATEGORICAL PROGRAMS*, (1978).

sions for assessing such plans: finance, regulations, and information.<sup>32</sup> Of the information dimensions in voucher systems, he has noted, "In order for such a system to work effectively, there must exist useful and accessible information on these choices for both the individual participants and for the institutions and enterprises that wish to offer postsecondary education and training programs."<sup>33</sup> Klees has cited the role that information systems play in voucher plans: "Imperfect information in a market system may cause serious inefficiencies and inequities. These problems will be of greater-than-normal concern in a market system for educational services."<sup>34</sup> Bridge has characterized information imperfections as the "Achilles' Heel of Entitlement Plans,"<sup>35</sup> and, although his focus is upon postsecondary plans, his concern would be heightened by K through 12 entitlement programs: "Information imperfections are a problem which will not be solved easily, and they may prove the fatal weakness of theoretically sound proposals to increase free market competition in education in order to achieve greater economic efficiency and social equity."<sup>36</sup> The essential role of information in parochial plans is acknowledged even by entitlement proponents. Coons and Sugarman, whose views on this dimension of vouchers open this article, have noted, "unless artfully designed, information systems can themselves vitiate the variety that choice is intended to promote."<sup>37</sup>

Even without reference to equitable considerations, economics literature has measured duplication, inefficiencies, and waste flowing from imperfect information and noted the inability of marketplaces to correct these imperfections.<sup>38</sup> While time and increased information can improve choice in a free market, in a deliberately stimulated system, consumers have a greater, not lesser, chance of receiving incorrect information.<sup>39</sup> In a social system as important and complex as schools, the margin for error is very small and unlikely to correct it-

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<sup>32</sup> Levin, *Post Secondary Entitlements: An Exploration, in Entitlement Studies*, (Kurland, ed. 1977); LEVIN, *EDUCATIONAL VOUCHERS AND SOCIAL POLICY* (1979). For a detailed analysis of public finance issues in schooling, see WINDHAM, *THE BENEFITS OF AMERICAN HIGHER EDUCATION* (1980).

<sup>33</sup> Levin, *Post Secondary Entitlements*, *supra* note 32.

<sup>34</sup> KLEES, *THE ROLE OF INFORMATION IN THE MARKET FOR EDUCATION SERVICES* at 41 (1974).

<sup>35</sup> Bridge, *Information Imperfections: The Achilles' Heel of Entitlement Plans* 86 SCH. REV. 504, 522 (1978).

<sup>36</sup> *Id.* at 522.

<sup>37</sup> COONS & SUGARMAN, *EDUCATION BY CHOICE* at 148 (1978).

<sup>38</sup> Stigler, *The Economics of Information*, 69 J. POL. ECON. 213 (1961); ALCHIAN, *INFORMATION COSTS, PRICING, AND RESOURCES UNEMPLOYMENT*, in *MICROECONOMIC FOUNDATIONS OF EMPLOYMENT AND INFLATION THEORY* (Phelps, ed. 1970).

<sup>39</sup> Ozga, *Imperfect Markets Through Lack of Knowledge*, 74 Q. J. ECON. 29 (1960).



self in a dynamic marketplace. As an equitable concern, therefore, the method of information dissemination is a crucial consideration, for unless all the populations have equal access to information, including an equal ability to decipher the data, it cannot be said that the choice operating in the marketplace is the "free choice" which forms the fundamental premise of the voucher programs. This is especially true in the educational services market, in which, unlike the grocery store, products cannot be easily compared.

Research results from several social service programs give an insight into the inadequacies of information delivery systems for the poor and disadvantaged. When these findings are combined with the data on the literacy and educational levels in minority and disadvantaged populations, it is clear that information access inadequacies concerning the education market will disproportionately and detrimentally affect those already undereducated.<sup>40</sup> Further, there is no reason to believe that the competitive dynamism introduced into the school system would generate a more equitable information distribution than would programs administered specially for disadvantaged populations.

### *Inequitable Access to Information*

It is axiomatic that wealthy persons have more resources to purchase information and hence, more access to additional resources than do poor persons. It has also long been acknowledged that minority populations, particularly bilingual populations, utilize different sources of information than do majority populations.<sup>41</sup> Therefore, information systems in voucher plans that do not incorporate equitable and comprehensive dissemination programs will be inequalitarian in their effect. Information delivery systems, even those that have outreach and advertising components, may miss the mark. This has been the case in food stamp programs, with simple eligibility criteria requiring no exercise of choice among services on the part of clients. Studies of underparticipation by extremely poor families in these programs have attributed the low rates to poorly designed information delivery systems.<sup>42</sup> Similar findings have been reported for other

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<sup>40</sup> OLIVAS, *THE DILEMMA OF ACCESS*, (1979); BROWN, HILL, ROSEN & OLIVAS, *THE CONDITION OF EDUCATION FOR HISPANIC AMERICANS*, (1980); MORRIS, *ELUSIVE EQUALITY: THE STATUS OF BLACK AMERICANS IN HIGHER EDUCATION*, (1979).

<sup>41</sup> BLOOMFIELD, *LANGUAGE* (1933); FISHMAN, *LANGUAGE LOYALTY IN THE UNITED STATES*, (1966).

<sup>42</sup> Love, *The Reasons Participants Drop Out of the Food Stamp Program: A Case Study and its Implications*, 52 AM. J. AGRICULTURAL ECON. 387 (1970), MacDonald, *FOOD STAMP PAR-*

social service entitlement programs, suggesting that the poorest potential clients have low access to basic information concerning their eligibility for programs or to assistance in securing application forms and in documenting their financial need. These programs have included welfare, housing subsidies, benefits for the elderly, and a wide range of social services that are legislatively designed for poor populations but administratively implemented so that extremely impoverished clients are never made aware of their entitlements.<sup>43</sup>

Yet, the poor do develop alternative information delivery systems, particularly in minority communities, where the ethnic press, bilingual advertising, minority radio programming, church-related channels, and folk-grapevines are employed to disseminate information.<sup>44</sup> The highly oral (and frequently non-English-language) nature of these networks provides clues as to how difficult, if not impossible, it will be for voucher plans to guarantee the achievement of comprehensive information dissemination for their complex programs. One study of a low income program for nursing mothers discovered that 95% of the women had heard of the program by word of mouth, although an extensive print media campaign had been undertaken.<sup>45</sup> A study of food stamp recipients found that the most frequent source of program information was not formal, affirmative dissemination, but informal oral communication with friends and relatives.<sup>46</sup> A survey of low income participants in social service programs revealed that persons employed in private households had a higher awareness of such programs than did other employed individuals, suggesting that frequent contact with their more "information-rich" employers increased their general awareness of eligibility for entitlements.<sup>47</sup> The recurrent theme throughout this literature is that the dissemination

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TICIPATION IN WISCONSIN (1975).

<sup>43</sup> Welch, Steinman, Comer, *Where have all the Clients Gone?* 31 PUB. WELFARE 48 (Spring 1973); Taylor-Gooby, *Rent Benefits and Tenants' Attitudes*, 5 J. SOC. POL. 33 (1976); PIVEN CLOWART, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (1971).

<sup>44</sup> Aguirre, *The Sociolinguistic Situation of Bilingual Chicano Adolescents in a California Border Town*, 10 AZTLAN 55 (1979); CHILDERS & POST, *THE INFORMATION-POOR AMERICAN* (1979); LEE, *MENTAL HEALTH SERVICES FOR THE ASIAN AMERICANS: PROBLEMS AND ALTERNATIVES*, in UNITED STATES COMMISSION ON CIVIL RIGHTS, *CIVIL RIGHTS ISSUES OF ASIAN AND PACIFIC AMERICANS: MYTHS AND REALITIES* 734 (1979); ABLON, *RELOCATED AMERICAN INDIANS IN THE SAN FRANCISCO BAY AREA: SOCIAL INTERACTION AND INDIAN IDENTITY*, 412, in *NATIVE AMERICANS TODAY: SOCIOLOGICAL PERSPECTIVES* (Bahr, Chadwick, & Day, eds., 1972).

<sup>45</sup> BENDICK, CAMPBELL, TOBY, BAWDEN, LEE & JONES, *TOWARDS EFFICIENCY AND EFFECTIVENESS IN THE WIC DELIVERY SYSTEM* (1976).

<sup>46</sup> WELCH, STEINMAN, COMER, *supra* note 43.

<sup>47</sup> Moles, *Predicting Use of Public Assistance: An Empirical Study*, 7 WELFARE REV. 13 (1969). See also MUDRICK, *THE INTERACTION OF PUBLIC ASSISTANCE AND STUDENT FINANCIAL AID* (1980).

of program information to disadvantaged populations is a crucial component for delivering services to these populations; a corollary theme is that poor persons use informal, oral, familiar information networks and are less likely to have access to information sources and assistance than are more advantaged populations.

That this would be true for relatively simple entitlement programs widely known for their subsistence benefits does not bode well for the complex educational voucher plans. While social service programs tend to stabilize their procedures and improve information dissemination over time,<sup>48</sup> as the target populations spread the word among themselves, voucher plans deliberately create a dynamic mix of choices so that parents may have the widest range possible from which to choose. Therefore, instead of increasing the efficiency of low income participation in the program, a complex voucher system would more likely decrease the participation by low income families, as oral and informal communication networks would be inadequate to convey the complicated data on school characteristics or parental prerogatives to organize and establish new schools.

Formal systems of communication would likely exacerbate the already existing information gap. Yin, in a study of information delivery systems in education, concluded: "The equality of access, however, generally benefits information-rich (or advantaged) populations to a greater degree than information-poor (or disadvantaged) populations; although both populations will gain in absolute terms, there is a differential gain that appears to increase the inequity between these populations."<sup>49</sup> If this gap is inevitable, or if it cannot be effectively lessened by formal communications provisions, then serious consideration must be given to supporting informal networks. If such official support were not included or were impossible to administer, then complex voucher or other parochial plans will be inequitable in design and in effect.

### *Inequitable Nature of Education Descriptors*

Theoretically, affirmative dissemination programs could be designed and undertaken with special attention to the information needs of minority and disadvantaged communities, although evidence

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<sup>48</sup> ABT Associates, *PARTICIPATION IN A DIRECT CASH ASSISTANCE PROGRAM* (1974); Anderson & D'Amico, *Use of AFDC by Eligible Families: A Predictive Model*, 7 WELFARE REV. 25 (1969); Ausmus, *Occupational Information Systems and the Department of Labor* 14 J. EMPLOYMENT COUNSELING 54 (1977).

<sup>49</sup> Yin, *The (In)equity of Information Delivery Systems in Education* (Feb. 23, 1979) (a paper presented at NIE Conference on Equity in Educational Information Dissemination) at p.2.

surveyed in the last section strongly suggests this task is too difficult and expensive to succeed. However, an even more serious problem may be the message to be communicated. The very nature of the information needs and available networks for disseminating information to the information-poor requires that the message be extraordinarily efficient and effective. But voucher proposals would require the communication of complex information: at minimum, information on costs (over and above the voucher amount); transportation; racial composition; teacher quality; curriculum; school history (e.g., college-bound graduate rates); entrance requirements; adequacy of facilities; location; school environment (e.g., open classrooms or traditional arrangements); and many more qualitative and quantitative criteria. Of course, these judgments are currently made by parents who enroll their children in private schools. Indeed, one of the major arguments of voucher proponents is that this kind of "shopping" is currently going on but that not enough parents are able to exercise "choice" in the school selection.

However, the need to disseminate widely the elements of "choice" and the information required to create true choices is not likely to be met by existing technology and information dissemination systems and this fact cannot be dismissed cavalierly as a minor problem. When one considers the complexity of voucher plans and the information required to participate effectively in them, attention must focus on the problem of reaching disadvantaged populations with information that is rich enough to enable them to make informed choices. This will entail an evaluation of the nature of the descriptors of the programs and an understanding of disadvantaged populations' skills in evaluating these descriptors.

Anyone who had completed an income tax return realizes the degree of reading and mathematical skills necessary for completing the forms, even if a standard deduction is used. Completing the necessary financial aid forms for existing BEOG plans is even more complicated than completing tax forms, and requires more calculations, including complex data requirements that compute the expected parental contribution. Further, there are multiple forms for federal, state, local, and institutional aid; the federal "form" is actually one of three possible forms: the Financial Aid Form (FAF) of the College Scholarship Service, the Family Financial Statement (FFS) of the American College Testing Program or the federal BEOG form.<sup>50</sup>

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<sup>50</sup> There are also state forms that can be used for federal applications, such as that of Pennsylvania Higher Education Assistance Agency. HANSEN, STUDENT AID AND THE URBAN POOR

These descriptors alone are difficult to negotiate, but they are relatively straightforward when compared with the qualitative and quantitative descriptors of the offerings of established and newly started private or "independent" schools. The problem of acquiring a sufficient understanding of the options on order to make a true choice among them is heightened for minority, bilingual and economically disadvantaged families.

Bendick and Cantu, for instance, have conservatively estimated that over 75% of the United States poverty population has less than eighth grade reading skills. They also analyzed application forms and program information for over 80 social welfare programs, and found that only 11% of these materials could be read and understood by the clients *with* eighth-grade reading skills.<sup>51</sup> If so few disadvantaged persons can read and understand materials for a simple categorical entitlement program administered exclusively for poverty populations, it is certain that requiring them to complete more complex forms, deal with the other descriptors necessary to create the marketplace, and to interact with intermediaries (e.g. the agencies calculating parental need) would virtually eliminate them from participation. Moreover, colleges and universities have comprehensive financial aid and development bureaucracies; most elementary and secondary schools do not. The absence of such offices (and the start-up-costs alone might effectively prohibit them) and inexperience in them if they are established would place an even greater premium on parental skills in gaining access to information or access to accounting assistance and other technical expertise. In short, the research literature, analogous administrative procedures, and likelihood of the wealthy having greater access to information and technical assistance than do the poor suggest that disadvantaged populations would be unlikely to be able to participate effectively in the market created by voucher plans.

Some of the plans do incorporate provisions for information dissemination, and other proposed voucher models have even included provisions for educational information vouchers.<sup>52</sup> The California Ini-

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(1980). For an analysis of rural disadvantage, see Gillingren, *Perception of Changes of Farm Emigrants Before and After Migration*, 34 RURAL SOC. 223 (1968).

<sup>51</sup> Bendick & Cantu, *The Literacy of Welfare Clients*, SOC. SCI. REV. 56 (March 1978). See also Gordon, *Bureaucratic Competence and Success in Dealing with Public Bureaucracies*, 23 SOC. PROB., 23 (1975), 197-208; Mavrogenes, Hanson & Winkley, *But Can the Client Understand It?*, 22 SOC. WORK, 110 (1977).

<sup>52</sup> Jencks, Educational Information: Part 22, (Dec. 2, 1971) (Testimony Before the Senate Select Committee on Equal Educational Opportunity, 92d Cong. 1st Sess.); Coleman, CHOICE IN AMERICAN EDUCATION, IN PARENTS, TEACHERS, AND CHILDREN (Coleman, ed. 1977).

tiative does have provisions assuring parents "adequate information through sources independent of any school or school authority,"<sup>53</sup> and states that parents "with special information needs shall receive grants redeemable for the services of educational counselors."<sup>54</sup> The provision, however, gives no details on the nature of the independent sources, the workings of the educational counselor grants or how funding this separate superstructure will be accomplished without impairing other initiative provisions for reducing expenditures, limiting administrative costs, and entitling new students to public funds. The BEOG proposal apparently envisions utilizing existing government and private networks for disseminating information to the parents of elementary and secondary students. It is difficult to understand how either plan would extend information without increasing costs, because existing information dissemination networks would be affected. They could conceivably collapse under the BEOG plan and at least need to be restructured to accommodate the dynamism of the California Initiative, which encourages parents to form their own schools at public expense. To understand better the strain that would be placed on existing systems, an examination of the present governmental programs for higher education information dissemination is helpful.

### *Problems of "Free Market" Information Models*

Recognizing the need for information dissemination systems, legislators have made such provisions a part of many social service or entitlement programs; many programs also have "truth in advertising" provisions in recognition of the need to provide supportive services and to disseminate truthful and helpful information. For instance, the screening and selection provisions of Job Corps programs require dissemination through existing agencies and community-based organizations; student assistance program legislation requires specific consumer items and financial aid officers "who shall be available on a full-time basis" to counsel students.<sup>55</sup>

In addition to these provisions within legislation for social services, there are federal programs specifically intended for educational counseling and information, among them: Talent Search and Educational Opportunity Centers.<sup>56</sup> Examining the oldest of these programs, Tal-

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<sup>53</sup> California Initiative (1980) art. I § 16.

<sup>54</sup> *Id.*

<sup>55</sup> 29 U.S.C.A. § 914 (Supp. 1980); 20 U.S.C.A. § 1088 b-1 (1978).

<sup>56</sup> FRANKLIN, BEYOND STUDENT AID, (1980); AMERICAN ASSOCIATION FOR HIGHER EDUCATION, OPPORTUNITY PROGRAMS FOR THE DISADVANTAGED IN HIGHER EDUCATION (1975); FADIL & THRIFT,

ent Search, in more detail will suggest the limitations inherent in government information dissemination programs and their inability to assume the burdens inherent in voucher plans.

Talent Search, first funded in 1966, is designed to seek out and "identify qualified youths of financial or cultural need" and to "publicize existing forms of student financial aid."<sup>57</sup> Professional counselors provide students and parents with technical assistance in completing complex financial aid forms and institutional applications. These counselors are supported by institutions and community based organizations which submit proposals for funding to the federal government.<sup>58</sup> The proposal process is highly competitive and despite an extensive network of qualified organizations, Talent Search does not guarantee systematic coverage to disadvantaged populations in a geographic region or service area. For example, in 1978, only 131 of 190 Talent Search proposals were funded,<sup>59</sup> and although the federal program staff undoubtedly attempted to fund proposals so as to provide the broadest and most equitable geographical coverage, they are constrained by financial considerations, reviewer recommendations and political considerations. A major constraint on creating a comprehensive information delivery system along the lines of Talent Search is that it is dependent on initiative from the outside. Even assuming full financial support for all such proposals, some areas might not be served because no entity in that region submitted an application.

But the assumption of full financial support for the development of an information delivery network to disadvantaged populations is highly questionable. Eighty percent of the clients served by Talent Search in 1976 were in minority populations, and two thirds of the clients' families had annual incomes of less than \$6,000,<sup>60</sup> and thus it would seem that Talent Search was well targeted. In 1978, the Talent Search projects served approximately 186,000 students with an appropriation of \$2.5 million, for a per client administrative cost of \$67.<sup>61</sup>

Although the per-client amounts seem high, it is estimated that *less than 10%* of the eligible population would be served by the Title

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*supra* note 33.

<sup>57</sup> 20 U.S.C.A. § 1226 b-c (1978).

<sup>58</sup> 3 RESEARCH TRIANGLE INSTITUTE, DESCRIPTIVE STUDY OF THE TALENT SEARCH PROGRAM (1975).

<sup>59</sup> BUREAU OF HIGHER AND CONTINUING EDUCATION; FACTBOOK 58 (1978) [hereinafter cited as 1978 FACTBOOK].

<sup>60</sup> *Id.* at 17-22.

<sup>61</sup> Talent Search:  $\$12,455,000 \div 186,266$  clients = \$66.87; Educational Opportunity Centers:  $\$5,246,000 \div 86,675$  clients = \$60.52. *Id.*

IV support programs, even if additional appropriations were made by Congress.<sup>63</sup> Further, if appropriations are a quantifiable index of legislative support, then Talent Search and other educational information services seemed to enjoy little support, even before the recent budget-cutting political season arrived. Talent Search appropriations were frozen at \$6 million from 1973 to 1976, and at \$12.5 million in 1978 and 1979.<sup>63</sup> These information programs, however, are intended to assist students in the awarding of over \$2.5 billion of need-based financial assistance.

Therefore, existing educational information delivery programs have not enjoyed adequate financial support to meet the needs of disadvantaged populations, and the categorical nature of the existing competitive proposal process is not designed to correct the market inequities. This model would seem to paint an even more pessimistic picture for accomodating additional clients under either the BEOG proposal or the California Initiative, even if there were an information voucher component. Furthermore, existing programs do not seem to be able to correct existing information inequities. This fact may be inferred from recent BEOG data showing a decline in low-income BEOG applicants and an apparent decline in low-income college enrollments.<sup>64</sup> Of course, it is not merely information access inequities that contribute to the decline in the numbers of disadvantaged students, for the problem is complex. Finally, increasing the load on the existing systems will have an impact. The passage of the Middle Income Students Assistance Act, which extended the eligibility of students in federal financial assistance programs to families annually making \$25,000 and above, is already threatening to overwhelm the resources of existing information delivery systems and institutional financial aid offices.<sup>65</sup>

If the evidence of information inequities at the federal level engenders pessimism, the experience at the local level is no more encouraging. The Alum Rock voucher program provided an excellent opportunity to observe the operation of delivery systems in a fairly controlled environment. The San Jose Community is predominantly minority and the voucher program was limited to the public schools, a system

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<sup>63</sup> FRANKLIN, *supra* note 56 at 2-3.

<sup>63</sup> 1978 FACTBOOK, *supra* note 59 at 17. Testimony by Olivas & Lessard, Before the Subcommittee on Labor, Health, Education, and Welfare of the House Committee on Appropriations 96th Cong., 2d Sess. (April 17, 1980).

<sup>64</sup> GLADIEUX & BYCE, AS MIDDLE-INCOME STUDENT AID EXPANDS, ARE LOW-INCOME STUDENTS LOSING OUT?" (1980). For evidence of the stratification of college students by income, see OLIVAS, *supra* note 40 at 34-38.

<sup>65</sup> GLADIEUX & BYCE, *supra* note 64.



neither as dynamic nor complex as that proposed by the California Initiative or the BEOG proposal. Despite extensive bilingual advertising, Mexican-American families were less familiar with the program than were blacks, who in turn were less aware than were white families. Parents with lower levels of education were less well informed than were the more highly educated. These discrepancies increased over the length of the program.<sup>66</sup> The findings corroborate other literature: "socially advantaged individuals have access to more sources of information; and as a result they end up having more information about their alternatives; and a dynamic, changing market system tends to raise the information imperfections which occur most often among socially disadvantaged groups."<sup>67</sup>

The research literature, administrative experiences with existing financial aid counseling programs, and a recent controlled voucher plan should be a warning that radical shifts in the system of public and private education cannot be accommodated by existing information networks. The present information systems are underfinanced and meet only a small part of the need of their presently limited target populations. Only the California Initiative plan proposes an information dissemination requirement, but both it and the BEOG proposal would strain the networks upon which they are premised. The effect of such strains would be magnified for disadvantaged populations. Additional compelling evidence of the inability of a dynamic "choice" system to incorporate a comprehensive information dissemination plan is the difficulty a voucher program would have in articulating categorical programs for disadvantaged students or students with special needs.

### Potential Conflict Considerations

Any major change in a way of doing business would be bound to disrupt any system, even if the change were well considered and planned. A large scale voucher plan or BEOG proposal, however, would deliberately introduce dynamism into the system and would quickly overload existing information networks. Moreover, the voucher initiative would disrupt many categorical programs enacted by Congress over time to target services toward disadvantaged students; in nearly all cases, Congress passed such legislation only after considering extensive evidence of discrimination or neglect towards disadvantaged children, including minority, bilingual, handicapped,

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<sup>66</sup> Bridge, *supra* note 35.

<sup>67</sup> *Id.* at 517.

female, and migrant students. A system based upon "choice" would, in many respects, be impossible to coordinate with one based upon established categorical need-based programs. The information requirements of these programs deserve attention, for it is not only unclear how these information needs would be met, but it is unclear whether newly-established schools envisioned under the California Initiative or newly-financed private schools would treat their responsibilities to enroll students with special needs.

Although the California Initiative includes language concerning these categorical factors, it is vague and uncertain: "The redeemable amount may also differ by such factors as grade level, curriculum, bilingualism, special needs and handicaps, variations in local cost, need to encourage racial desegregation, and any other factor deemed appropriate by the legislature so long as the right of every child to enroll in any school remains unaffected by his or her family's capacity to purchase education."<sup>68</sup> In BEOG or voucher programs, the rhetorical "rights" of disadvantaged children may nonetheless be denied by the administrative means available. Under the California Initiative, parents could choose single-race schools, for information on the racial composition would be difficult to obtain until the classes were assembled, and discrimination in housing patterns would make heterogeneous schools well nigh-impossible to organize in the private or quasi-public systems. For school systems not in compliance with court orders to desegregate, a dynamic "choice" plan would enable parents and administrators to thwart court-drafted desegregation programs; in such a situation, the chances of useful information reaching disadvantaged parents, a disproportionate number of whom would be minorities, would be very small. The same administrative problems would occur in diagnosis of language minority children for bilingual education classes, which require clusters of limited or non-English speaking children.<sup>69</sup> Another predominantly minority consideration that would be affected by information inequities would be migrant programs for children of agricultural farmworkers. This highly-mobile population follows the crops, often crossing many state lines. While these children remain an extraordinarily disadvantaged population, initiation of a computerized records system and the develop-

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<sup>68</sup> California Initiative (1980).

<sup>69</sup> Arias, *Issues in Tri-Ethnic Desegregation*, (April 1980) (a paper presented to the American Educational Research Association, Boston) April 1980; Noboa, "Hispanics and Desegregation," (June 3, 1980) (a paper presented to the Forum for Responsible Federal Educational Policy, Washington, DC); Montoya, *Bilingual-Bicultural Education: Making Educational Opportunities Available to National Origin Minority Students* 61 GEO. U.L.J. 991 (1973).

ment of a migrant education network have begun to focus attention on the need for extraordinary administrative procedures.<sup>70</sup> However, the mobile characteristics of farmworker families and low educational attainment of adult migrants will effectively preclude migrant parents from receiving or evaluating information on the voucher schools, even if all the states had coordinated voucher plans. Migration and reverse migration of Puerto Ricans from the island to the 50 states would cause similar problems for an information system.<sup>71</sup> Another inevitable problem is establishing and monitoring the method by which private schools, or the California Initiative hybrid independent schools, would meet and advertise their responsibility for enrolling handicapped children.<sup>72</sup> In all these programs, targeting regulations have ensured that disadvantaged students would be the recipients of the aid, and school districts who received the money had specific responsibilities to meet legal requirements and to provide services.

The list could continue, for most programmatic and administrative activities would be affected by the voucher proposals, even those that have no potential information inequities. For example, it is unclear how the lotteries and waiting lists envisioned for oversubscribed schools would operate, or how this queueing could be an efficient use of facilities. Accreditation and evaluation activities would surely lie fallow until the system became organized, giving no evidence that quality education was being provided. Although the Moynihan proposal has a provision prohibiting national origin discrimination, it omits gender as a consideration.<sup>73</sup> The California Initiative includes gender, but omits national origin, a dubious omission for a state with significant Asian and Mexican-American populations.<sup>74</sup> In sum, the voucher proposal and BEOG plan would create severe disruption of categorical programs and strain informational systems that rely upon

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<sup>70</sup> BROWN, HILL, ROSEN & OLIVAS, *supra* note 40 at 32-33; SLESINGER, *HEALTH NEEDS OF MIGRANT WORKERS IN WISCONSIN* (1979); WHO CARES? WHO COUNTS? A NATIONAL STUDY OF MIGRANT STUDENTS' EDUCATIONAL NEEDS (Hinkle, Tipton & Tutchings, eds. 1979).

<sup>71</sup> Hernandez, *La Migración Puertorriqueña Como Factor Demográfico: Solución y Problema*, 4 REVISTA INTERAMERICANA, 526 (1975); Hernandez, *Hispanic Migration and Demographic Patterns: Implications for Educational Planning and Policy*, in *HISPANIC MIGRATIONS FROM THE CARIBBEAN AND LATIN AMERICA* 2, 2-6 (1979).

<sup>72</sup> The Education for All Handicapped Children Act of 1975, 20 U.S.C. § 1401 et seq. (1979). See generally, Montgomery, *The Education of Parochial School Handicapped Children and the Establishment Clause*, 8 J.L. & EDUC. 457 (1979); PETERSON, ROSSMILLER & VOLZ, *THE LAW AND PUBLIC SCHOOL OPERATION* 328-29 (1978); KIRP & YUDOF, *supra*, note 15 at 717-19.

<sup>73</sup> Unpublished Amendment No. 1268 to S. 1839 § 403 (e), 96th Cong., 2d Sess., 126 Cong. Rec. S7842 (June 26, 1980).

<sup>74</sup> California Initiative, art. I § 1(g.).

centralized administration to coordinate the activities. Not only would many civil rights responsibilities be lessened, despite vague assurances to the contrary, but the dynamism in the system would make administering these responsibilities extremely difficult if not impossible. This is too great a risk to take only to ensure the wealthy have increased choice.

## CONCLUSIONS

It is evident that the California Initiative and the BEOG proposal would meet at least two goals held by "free market" proponents: public assistance to the private education sector, and a dynamic marketplace from which parents could choose a school to their liking. While this article has not examined the appropriateness or constitutionality of these goals, it has examined the administrative structures and information delivery systems these plans will require, and has described serious inadequacies in the existing systems and the paucity of attention paid by the proposals to these problems. The appeal of both plans is, in large part, their apparent simplicity and employment of existing resources. But the simplicity is deceptive and the consequences of introducing dynamism into information systems that cannot handle their present load and that fail to reach the disadvantaged and information-poor, would be disastrous.

Another appeal of the voucher plans is to place financial resources in the hands of the poor and disadvantaged in order to enable them to compete with the middle-class for educational services, and thus break the cycle of educational deprivation. While the goal is laudable, its attainment is cruelly and ironically chimerical in the face of the information access inequities that the voucher plans would perpetuate. Under either voucher plan, information is a crucial element for participating in the programs and for giving parents "choice." Yet, access to technical assistance and counseling for BEOG eligibility is available to only a few hundred thousand. Further, the existing financial aid network is only operative in the postsecondary sector. For parents to receive information in a voucher system, a new information network would have to be constructed and regulated. Under this system, those parents most likely to participate by receiving information and by possessing the skills or resources to secure skills would be middle-class parents. To suggest otherwise is to ignore the evidence and the experience of earlier voucher experiments.

Can the goals be met in ways less detrimental to those envisioned as the beneficiaries? Can the information access inequities be lessened? The developing debate has not provided clear answers. Despite

the dangers, there is merit to the debate that has been triggered by voucher proposals. For instance, in support of several options to diversify the current range of choices available to parents, Levin has noted, "If the voucher proposals stimulate both the development of these public choice approaches as well as the citizen awareness and political effort to implement them, the debate on vouchers will have performed an important public service."<sup>75</sup> As Levin suggests, public school systems can provide more options by creating more schools, mini-schools, or other curricular and programmatic options. The debate may cause more legislators to question the false economy in establishing underfunded information networks on in supporting bills that promise to cut expenditures while overloading existing delivery systems.<sup>76</sup> Many of the proposals that would improve choice could incorporate information systems targeted at disadvantaged populations, provided the systems were more specific and comprehensive than those presently in use. However, if Coons' and Sugarman's admonition is correct—and evidence suggests it is—then the current legislative proposals to direct government money to private schools will inevitably be ruinous.

### *Appendix A*

#### **INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS**

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**EDUCATIONAL FUNDING. INITIATIVE CONSTITUTIONAL AMENDMENT** Eliminates use of property tax to support publicly funded education after 1981-82 school year. Limits public expenditures for schools through 1986-87 based on 1979-80 costs. Creates three types of publicly funded common schools: public, independent public, and family choice. Gives parents right to enroll children in any type, with cost paid by redeemable certificates. Autho-

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<sup>75</sup> California Initiative, Art. I § (1980). See, Montoya, *supra* note 70.

<sup>76</sup> LEVIN, *supra* note 15 at 25. It may also lead legislators to question the false economy of "consolidation" legislation that collapses categorical programs into general support budgets. See S. 2270 The Education Simplification Demonstration Act, for an example of the consolidation genre.

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rizes lottery selection where applications exceed school enrollment limit. Sets average cost per pupil in independent and family choice schools at approximately 90% of public school costs. Permits legislative repeal or modification by  $\frac{2}{3}$  vote, ten years after program fully implemented. Financial impact: no net state costs or savings. Effect on individual school districts will vary depending on number of new schools of each type established and number of students who enroll in each type of school. Could result in significant reductions in funds of local public schools districts.

## AN INITIATIVE FOR FAMILY CHOICE IN EDUCATION

*To the Honorable Secretary of State of California*

We, the undersigned, registered, qualified voters of California, residents of \_\_\_\_\_ County (or City and County), hereby propose amendments to the Constitution of California, relating to state funding of education and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed constitutional amendments—State Funding of Education-Initiative Constitutional Amendment—read as follows:

1. The following section shall be added to Article IX of the California Constitution

### 1. Purpose

The People of California have adopted this section to improve public education and to increase the authority of parents and teachers. It is their further purpose:

- a. To empower every family to choose among different kinds of schools;
- b. To eliminate the use of property taxes for schools;
- c. To place a constitutional limit on school expenditures;
- d. To eliminate the administrative costs of excessive regulation;
- e. To decentralize the public administration of education;
- f. To protect freedom of religion but aid no religion;
- g. To protect children against discrimination on the basis of race, creed, gender, or family income.

### 2. Family Rights

Every family shall have the right:

- a. To enroll its children in public schools, independent public schools, or schools not administered by government but which meet the standards specified in this section;
- b. To choose among such schools in a manner unaffected by family income;
- c. To petition its school district of residence to establish independent public schools governed by combinations of parents, teachers, trustees, and others.

### 3. Elimination of Property Tax for Schools

Except to the extent that ad valorem taxes or special assessments are necessary to pay the interest and redemption charges upon debts of any school district existing on June 3, 1980, including reserve or sinking funds required in connection with such indebtedness, no taxes, or assessment upon property shall be used for the support of elementary or secondary education after school year 1981-82.

### 4. Limits upon Public Expenditure

For school years 1980-81 through 1986-87 the total public cost of elementary and secondary education in all common schools shall not exceed the total public cost of elementary and secondary education in 1979-80 adjusted and compounded for changes in the consumer price index and total school age population. The Controller shall authorize no payment in violation of this sub-section and where necessary shall prorate uniformly the value of subventions and of educational certificates. Public cost here and in sub-section 14 shall mean every cost to state and local government of conducting elementary and secondary education in the relevant year as

determined by the Department of Finance according to law; it shall not include the costs of funding employee retirement benefits which are unfunded on June 3, 1980.

#### **5. Limit Upon Central Administration**

Appropriations for administration of the State Department of Education shall not exceed one half of one percent of the total public cost of education as defined in subsection 4.

#### **6. Classification of Common Schools**

Parents and guardians are entitled to choose among three classes of common schools for education in grades kindergarten through twelve. These shall be known as public schools, independent public schools, and family choice schools; together they shall constitute the common schools of California. Public schools are those publicly owned, funded and administered and are not certified to redeem education certificates issued by the state. Independent public schools are those organized by school districts, community colleges, or public universities and which are certified to redeem educational certificates. Family choice schools are those privately organized and certified to redeem educational certificates.

#### **7. Admission to Independent Public and Family Choice Schools**

Parents or guardians of school age children may enroll them in any independent public school or any family choice school. This right is subject to the authority of every such school to set its enrollment limit at each grade level and to limit applications to children of either gender. The school may exceed its enrollment limit at each grade level by five percent; it may be directed by law to do so where the total number of places in the common schools of an area is insufficient to serve the pupil population. Where applications to any school exceed its enrollment limit, a public agency designated by the Legislature shall select by lot among all its timely applicants. However, pupils attending a school at the time it becomes certified shall have priority as shall their siblings. Children and siblings of former students and children of full-time employees of such schools shall enjoy similar priority. With reasonable notice a child may transfer during the school year from any school to any independent public or family choice school with available places. Subsequent enrollment rights of pupils validly dismissed from a school shall be regulated by statute. Appropriate free education is guaranteed every child who is subject to compulsory education. Common schools shall transport their pupils in accord with reasonable conditions and limits upon cost to be fixed by law.

#### **8. Admission to Public Schools**

In assigning pupils to public schools, and in considering requests for transfer to any public school located within or outside the applicant's district of residence, boards of education, both district and county, shall give substantial weight to family choice. The Legislature shall with appropriate legislation facilitate transfers to public schools chosen by the parent or guardian.

#### **9. Pupil Rights and Discipline**

A pupil subject to compulsory education who attends an independent public or family choice school may continue in that school unless she or he derives no substantial educational benefit or is responsible for grave or habitual misconduct related to school which seriously impairs the education of others. No pupil enrollment in a common school shall suffer discrimination on the basis of race, religion, or gender. The Legislature shall enact uniform standards of procedural due process for common schools and provide for independent review of dismissals.

#### **10. Independent Public Schools**

All school districts, community colleges and public universities are authorized to establish independent public schools. Each school shall be organized as a separate public non profit corporation. It shall employ personnel with such qualifications as its responsible officers deem appropriate. Governing boards of such schools may include, but are not limited to, faculty, principal, pupils, parents and guardians of pupils, independent trustees, and any combination of such individuals. The form of governance for each school shall be determined by the organizing authority. Except as stated in this section, independent public schools shall be operated according to the laws affecting family choice schools.

#### **11. Parental Petition for Independent Public Schools**

Parents may petition their school district for the establishment of an independent public school or schools. The Legislature shall facilitate this right, and petitioning parents shall have standing to challenge unfavorable decisions. Parental petitions shall propose the grades to be

included, the form of the governing body of the corporation and the educational goals of the school. School districts shall grant such petitions and lease available facilities to the corporation at cost whenever:

- a. The signatories affirm their intention to apply to the proposed school and waive alternate choices for the initial year;
- b. The signatories represent pupils sufficient in number to make adequate enrollment probable, the number one hundred per school or thirty per grade being deemed sufficient unless otherwise provided by law; and
- c. Such school can operate without additional cost to the public or substantial hardship to other pupils.

## **12. Family Choice Schools**

Each family choice school shall organize under California law as either public benefit or mutual benefit corporation and may be neither a religious corporation nor a corporation sole.

## **13. Certification of Schools**

Independent public schools and family choice schools shall be certified upon proper application to an agency designated by law. A school whose application satisfies the curriculum requirements and standards for teaching personnel fixed by law for private schools on July 1, 1979, shall be entitled to immediate certification, the Legislature may not augment such requirements and standards. Certification shall continue so long as such school complies with this section. A certified school may neither advocate unlawful behavior nor engage in unlawful hiring practices. The deliberate provision of false or misleading information to public agencies or to individuals shall be forbidden. Every certified school shall be subject to reasonable requirements of law including disclosure regarding its curriculum and teaching methods, the qualifications of its teachers, and its use of resources. The Legislature may require standardized testing and publication of results where it deems such results to indicate quality of instruction, it may establish a minimum standard of competency in language and mathematics for the high school diploma for all common schools.

No school shall be ineligible to redeem certificates because it teaches moral or social values, philosophy, or religion, but religion may not be taught in public schools or independent public schools; a curriculum may be required by any school, but no pupil shall be compelled to profess political, religious, philosophical or ideological belief or actively participate in ceremony symbolic of belief. The Legislature shall encourage diversity among schools. Health and safety standards applicable to independent public and family choice schools shall not be more restrictive than the standards imposed upon facilities of private schools on July 1, 1979.

No school shall suffer decertification or other penalty except upon proof of substantial violation of law after notice and opportunity to defend. Agencies responsible to initiate and conduct decertification proceedings shall be designated by the Legislature.

## **14. Educational Certificates**

Every child of school age is entitled to a certificate redeemable only for educational purposes in independent public and family choice schools. Any provision in this Constitution notwithstanding the Legislature may facilitate redemption of such certificates through establishment of individual school drawing accounts or otherwise. Certificates shall be adequate for a thorough education as defined by the Legislature. They shall be equal for every child of similar grade level and circumstance and shall reflect the reasonable cost of the transportation guaranteed by sub-section 7. The redeemable amount may also differ by such factors as grade level curriculum, bilingualism, special needs and handicaps, variations in local cost, need to encourage racial desegregation, and any other factor deemed appropriate by the Legislature so long as the right of every child to enroll in any school remains unaffected by his or her family's capacity to purchase education. Schools shall accept no fees or consideration other than state certificates nor impose any other financial burden except in a manner accommodating family capacity to discharge the burden. Where during a school year a pupil transfers or ceases to attend a common school the Legislature shall provide for an appropriate division of the certificate.

## **15. Average Cost Per Pupil**

The average public cost per pupil enrolled in independent public and family choice schools shall approximate ninety percent of that cost in public schools



**16. Information to Parents**

The Legislature shall assure provision of adequate information through sources independent of any school authority. Non-literate parents and others with special information needs shall receive a grant redeemable for the services of independent education counsellors.

**17. Employee Rights**

The Legislature shall provide on reasonable conditions, for continuation and funding of retirement and other benefits for employees who transfer from public schools to independent public schools and may do so for employees of public schools who transfer to family choice schools. Employees of independent public and family choice schools have the same right to bargain collectively as those employed by public schools, but the bargaining unit shall not be larger than the employing school corporation.

**18. Educational Facilities**

The Legislature is authorized to establish programs of loans, guaranteed loans, or similar aids for common schools designed to promote the acquisition, creation, expansion or maintenance of educational facilities serving public educational objectives; family choice schools may participate to the extent they serve such objectives. No capital aid may be extended where facilities are available which are adequate for the educational use intended. Excess space in common schools shall be available to other common schools at actual cost.

**19. Federal Aid**

The Legislature shall ensure that Federal aid, within the limits of Federal law, advances the objectives of this article.

**20. Transitional Provisions**

The Legislature shall promptly implement this section, ensuring eligibility for educational certificates of one fourth of all pupils in school year 1982-83, and a similar additional number yearly thereafter.

**21. Termination by the Legislature**

Ten years after all children have become eligible for educational certificates and thereafter the provisions of this amendment may be repealed or modified by statute receiving the affirmative vote of two-thirds of the elected members of both houses of the Legislature.

**22. Severability of Invalid Provisions and Applications**

Should any provision of this amendment be held invalid under the federal Constitution, the balance of its provisions shall continue as the law of California. If particular applications to specific schools be held invalid, it shall remain the law for all valid applications to such schools in the event of partial invalidity the legislature shall adopt a system of family choice which conforms to the purposes of this amendment to the maximum degree consistent with the Constitution of the United States.

**II. Article IX, Section 5, is hereby repealed.**

**III. Article IX, Section 6, is amended as follows:**

The provisions of the fourth paragraph of Section 6 of Article IX beginning "Except that there shall be" and ending "\$2,400)" are hereby repealed.

**IV. Article IX, Section 8, is amended as follows;**

The words "common schools" in this section shall be replaced by the words "public schools or independent public schools".

**Citizens for  
Education By Choice**

**431 Jackson Street, San Francisco CA 94111 (415)-986-5547**

**Jack Coons & Steve Sugarman, Chairmen**

**WE BELIEVE OUR PUBLIC SCHOOLS WILL BE SAVED  
BY SIGNING THE INITIATIVE FOR FAMILY CHOICE IN  
EDUCATION**

**We believe:**

- The Initiative for Family Choice in Education will save our public school system by making public education work.
- The Initiative returns public education to the public and gives families control over what their children will learn and where they will learn it.
- Education will finally be responsive to what families want.
- Parents who are dissatisfied with a school's services will have the means to "take their business elsewhere."
- Competition will produce higher quality and variety.
- The Initiative will decentralize schools and stimulate efficient management.
- The Initiative will hold public school costs down. More money will be going into classroom instruction and less will be spent on bureaucratic red tape.
- The Initiative will restore confidence in our schools; parents will, for the first time, know how much of the school budget is spent on educating their children and will be able to choose schools they trust to provide a quality education.

