"WHAT'S NEXT FOR SCHOOL CHOICE?"

HEARING

BEFORE THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, JULY 23, 2002

Serial No. 107-73

Printed for the use of the Committee on Education and the Workforce

82-141 pdf

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
FAX: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMITTEE ON EDUCATION AND THE WORKFORCE

JOHN A. BOEHNER, Ohio, *Chairman*

THOMAS E. PETRI, Wisconsin
MARGE ROUKEMA, New Jersey
CASS BALLENGER, North Carolina
PETER HOEKSTRA, Michigan
HOWARD P. "BUCK" McKEON, California
MICHAEL N. CASTLE, Delaware
SAM JOHNSON, Texas
JAMES C. GREENWOOD, Pennsylvania
LINDSEY O. GRAHAM, South Carolina
MARK E. SOUDER, Indiana
CHARLIE W. NORWOOD, JR., Georgia
BOB SCHAFFER, Colorado
FRED UPTON, Michigan
VAN HILLEARY, Tennessee
VERNON J. EHLERS, Michigan
THOMAS G. TANCREDO, Colorado
JIM DeMINT, South Carolina
JOHNNY ISAKSON, Georgia
BOB GOODLATTE, Virginia
JUDY BIGGERT, Illinois
TODD RUSSELL PLATTS, Pennsylvania
PATRICK J. TIBERI, Ohio
RIC KELLER, Florida
TOM OSBORNE, Nebraska
JOHN ABNEY CULBERSON, Texas
JOE WILSON, South Carolina

GEORGE MILLER, California
DALE E. KILDEE, Michigan
MAJOR R. OWENS, New York
DONALD M. PAYNE, New Jersey
PATSY MINK, Hawaii
ROBERT E. ANDREWS, New Jersey
TIM ROEMER, Indiana
ROBERT C. "BOBBY" SCOTT, Virginia
LYNN C. WOOLSEY, California
LYNN N. RIVERS, Michigan
RUBEN HINOJOSA, Texas
CAROLYN McCARTHY, New York
JOHN F. TIERNEY, Massachusetts
RON KIND, Wisconsin
LORETTA SANCHEZ, California
HAROLD E. FORD, JR., Tennessee
DENNIS KUCINICH, Ohio
DAVID WU, Oregon
RUSH D. HOLT, New Jersey
HILDA L. SOLIS, California
SUSAN DAVIS, California
BETTY McCOLLUM, Minnesota

Paula Nowakowski, Chief of Staff
John Lawrence, Minority Staff Director

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 1

OPENING STATEMENT OF RANKING MINORITY MEMBER, GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 3

STATEMENT OF RICHARD K. ARMEY, MAJORITY LEADER, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 5

STATEMENT OF TAMIKO WILLIAMS, PARENT, WASHINGTON, D.C. 12

STATEMENT OF LINDA MOODY, PRESIDENT, DISTRICT OF COLUMBIA CONGRESS OF PARENTS AND TEACHERS, WASHINGTON, D.C. 15

STATEMENT OF ELLIOT MINCBERG, VICE PRESIDENT AND LEGAL DIRECTOR, PEOPLE FOR THE AMERICAN WAY, WASHINGTON, D.C. 17

STATEMENT OF DOUGLAS W. KMIEC, DEAN AND ST. THOMAS MORE PROFESSOR, SCHOOL OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA, WASHINGTON, D.C. 19

STATEMENT OF ROBERTA KITCHEN, PARENT, CLEVELAND, OHIO 21

APPENDIX A -- OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 45

APPENDIX B -- STATEMENT OF RICHARD K. ARMEY, MAJORITY LEADER, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 49

APPENDIX C -- STATEMENT OF TAMIKO WILLIAMS, PARENT, WASHINGTON, D.C. 57

APPENDIX D -- STATEMENT OF LINDA MOODY, PRESIDENT, DISTRICT OF COLUMBIA CONGRESS OF PARENTS AND TEACHERS, WASHINGTON, D.C. 67

APPENDIX E -- STATEMENT OF ELLIOT MINCBERG, VICE PRESIDENT AND LEGAL DIRECTOR, PEOPLE FOR THE AMERICAN WAY, WASHINGTON, D.C. 81

APPENDIX F -- STATEMENT OF DOUGLAS W. KMIEC, DEAN AND ST. THOMAS MORE PROFESSOR, SCHOOL OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA, WASHINGTON, D.C. 91

APPENDIX G -- STATEMENT OF ROBERTA KITCHEN, PARENT, CLEVELAND, OHIO 107

TABLE OF INDEXES 112

HEARING ON "WHAT'S NEXT FOR SCHOOL CHOICE?"

TUESDAY, JULY 23, 2002

HOUSE OF REPRESENTATIVES,

COMMITTEE ON EDUCATION AND THE WORKFORCE,

WASHINGTON, D.C.

The committee met, pursuant to call, at 9:45 a.m., in Room 2175, Rayburn House Office Building, Hon. John A. Boehner [chairman of the committee] presiding.

Present: Representatives Boehner, Petri, Ballenger, McKeon, Schaffer, Tancredo, DeMint, Isakson, Biggert, Tiberi, Osborne, Wilson, Miller, Kildee, Owens, Payne, Roemer, Scott, Woolsey, Rivers, Hinojosa, McCarthy, Tierney, Kind, Ford, Kucinich, Wu, Holt, Solis, and Davis.

Staff Present: Alexa Callin, Communications Staff Assistant; Blake Hegeman, Legislative Assistant; Sally Lovejoy, Director of Education and Human Resources Policy; Patrick Lyden, Professional Staff Member; Doug Mesecar, Professional Staff Member; Maria Miller, Coalitions Director for Education Policy; Krisann Pearce, Deputy Director of Education and Human Resources Policy; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Jo-Marie St. Martin, General Counsel; Holli Traud, Legislative Assistant; Heather Valentine, Press Secretary; John Lawrence, Minority Staff Director; Charles Barone, Minority Deputy Staff Director; Mark Zuckerman, Minority General Counsel; Maggie McDow, Minority Legislative Associate/Education; Alex Nock, Minority Legislative Associate/Education; Joe Novotny, Minority Staff Assistant/Education; and Suzanne Palmer, Minority Legislative Associate/Education.

OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Chairman Boehner. A quorum being present, the Committee on Education and the Workforce will come to order. We are meeting today to hear testimony on the future of school choice.

Under committee rule 12(b), the opening statements are limited to the chairman and ranking member of the committee; and therefore, if other members have statements, they may be included in the hearing record. And with that, I ask unanimous consent for the hearing record to remain open for 14 days to allow members' statements and other extraneous material referenced during the

hearing today to be submitted for the official hearing record. Without objection, so ordered.

Good morning. Thank you all for being here. We are here today because all of us believe that every American child should have the chance to learn and pursue the American dream.

Unfortunately, as things currently stand, not every child in America today will get that chance. America is not yet a land of equal educational opportunity. Children of parents in poor communities do not have the same educational options as their counterparts in wealthier neighborhoods. This reality disproportionately impacts minority Americans, and it is a direct cause of the academic achievement gap that continues to exist in the United States between disadvantaged students and their peers.

Our first priority is to strengthen all of our schools with new resources, accountability, and local control. The bipartisan No Child Left Behind Act signed into law by President Bush in January takes this approach. The new law says that when schools are struggling, we will focus more attention on them and push them to excel. Under the No Child Left Behind Act, our nation's poorer schools this year will receive an historic increase in federal aid, and underachieving schools will qualify for extra help.

We can't turn our backs on underachieving schools, and we won't. But we can't turn our backs on children trapped in endlessly underachieving schools, either. When schools do not teach and do not change, even after repeated efforts to turn them around, there must be a safety valve for the students. And that is what today's hearing is about.

For low income parents, education choice can mean the difference between keeping a child trapped in a chronically underachieving school that refuses to change, or sending a child to a better achieving school that offers hope. And giving parents new options I believe is the critical next step in education reform, especially in light of the recent Supreme Court decision upholding the constitutionality of the Cleveland school choice program.

The court's decision is a victory not only for low-income parents and students but for American education as well. It lays the groundwork for future progress on private school choice, and moves us decisively forward in the drive for equal educational opportunity.

Education choice not only gives parents of all income levels the chance to choose the best education possible for their children, but it also provides a powerful incentive for all schools to strive for high levels of academic achievement.

The decision should encourage lawmakers around the country to create new school choice programs that offer renewed hope for every parent who wants the best education for their child.

Expanding parental choice also helps to energize the public education system and spur struggling schools to succeed. Critics wrongly claim that giving parents more choice will result in resources being drained away from public schools, and the evidence we have seen in places like Florida, where parental choice and measures for low income families have been successfully implemented as a means of bolstering school accountability, Cleveland, Milwaukee and others

suggest that these fears are unfounded. The Cleveland choice program has proven effective in enhancing academic achievement.

Parental choice doesn't drain resources away from public schools, but the absence of parental choice drains hope away from disadvantaged students. And this is the issue Congress I believe is compelled to address.

Last year, at the president's urging, Congress took significant bipartisan action to expand choices for low-income parents. The decision by the Supreme Court builds on the new options that parents have under the No Child Left Behind bill. The new law allows federal Title I education dollars to go to private, faith-based educational organizations to provide tutoring, after-school learning, and other supplemental education services to low income students in underachieving public schools. This provision confirms the portability of Title I funds and lays the groundwork for further expansion of parental choice and education.

Republicans and Democrats in Congress must build on this solid foundation by taking further action to expand parental choice in education. Choice is an essential element of accountability and makes our schools stronger, not weaker. If we truly hope to improve all of America's schools, equal educational opportunity for all students is essential.

And with that, I would like to yield to my friend and colleague, Mr. Miller.

OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. – SEE APPENDIX A

OPENING STATEMENT OF RANKING MINORITY MEMBER, GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Mr. Miller. Thank you, Mr. Chairman, and I look forward to the hearing. I think that this hearing comes at an interesting time for us as we have struggled over the last year to bring about what are considered some of the most far-reaching reforms in the federal role in public schools, elementary, secondary education in many, many, many years with the Leave No Child Behind Act. And, clearly, those reforms that are only now starting to be implemented and contemplated by state and local school districts were based upon the fact that also we would provide the sufficient resources, and we laid out a blueprint for those resources in the legislation. And in the second year of that legislation, the federal government has failed to keep pace with the expenditures that we believed were necessary to bring about the changes in student performance and teacher qualifications and the overall performance of the schools.

Obviously, the concern here is that an expanded voucher system, choice system starts to diminish those resources that we thought we could gather together, that we could cobble together at

the federal, state, and local level to bring about those reforms, because unlike past efforts in the United States Congress, these reforms or the failure to enact them bring about real consequence. And the failure to meet the standards set forth in the legislation, set forth by the Governors in the individual states bring about consequences; and those consequences, first and foremost, require additional resources to flow to those schools to try to improve the corps of teachers, if that is necessary in those schools, to improve the performance of the students in those schools and, if that doesn't work obviously down the road and in the timetable the blueprints set out, we can go to the reconstituting of those schools and administrative personnel of those schools and end up with a state takeover. Obviously, your or my belief is that none of that will become necessary, because the reforms and the resources will work so that in fact the student performance will meet the standards and will meet the goals for annual yearly progress.

Now comes along the effort, I think, to drill a major hole in that stream of funding that we have tried to cobble together through the use of vouchers and to drain off those needed resources. As we know, this is a very difficult task, even with the new federal expenditures. And hopefully the appropriations bill will look more like what the Senate has done than what the House is contemplating doing with respect to education.

But we also know the states are now suffering because of the economy in terms of the resources they have available to the states. But to keep a critical mass of funding within the public system so we can bring about these reforms over the timetables stated with respect to the standards of performance is going to be a very tricky effort. To now start diverting those resources, and they are all the same resources, whether it is the diversion through a local voucher system or whether it is a diversion through a tax cut system or tax credit system, those in theory are educational dollars that would be going to fix the public system.

There is no doubt that the system needs to be fixed. We know we have at a minimum some 8,000 schools that are failing to perform as we expect them to do.

So I look forward with interest at this hearing. I note that we rejected on a bipartisan basis voucher systems. We didn't reject it on constitutional or legal means; we rejected it based upon the impact of our concerns that it would have on our efforts to bring about the necessary public reforms, to bring about public resources, to bring about those reforms that members of this committee on a bipartisan basis and members of the entire Congress on a bipartisan basis and the president of the United States said are necessary if we are going to continue this federal role in education.

And I see our first witness has arrived, so I will stop there and look forward to the majority leader's testimony.

Chairman Boehner. Let me thank my colleague and it is my pleasure to introduce our first witness, who really needs not much of an introduction to this committee. He is the majority leader of the House of Representatives. And, I will add, he is on leave from this committee.

Not everyone may know that Dick has been a tireless education reformer. Even before we were in the majority, he and I worked together for years to expand educational choice options for

parents and to improve education for all children.

And so it is a pleasure to welcome you, Mr. Armey, back to the committee, and welcome your testimony.

STATEMENT OF RICHARD K. ARMEY, MAJORITY LEADER, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Mr. Armey. Thank you, Mr. Chairman.

Let me say that my interest in educational choice scholarships for students in K through 12 is born out of a commitment that America must have the best public schools of any nation in the world. I think, if you look back over the history of the United States for the first 200 years of this country, we were the envy of the world in the way we educated our young people, and for reasons that I am not sure I will ever be able to fathom how that has started to slip away from us.

I have been interested in school choice since my old days as a college professor, born again, as I said, out of my belief that educating our children is probably the most important thing we can do as a culture, and obviously our public schools is where that must happen.

I have always felt that there were two appeals to scholarships for public school children. The first is to make the public schools better. I believe that we have a demonstrated observation that public schools get better when public schools are forced to answer to the parents who are able to move their children from a school that they believe fails their children.

My second interest is just purely a matter of the heart. I have seen school scholarships work in the lives of children in ways that I consider to be magical and encouraging. Let us just take the first instance. In Albany, Virginia Gilder, a philanthropist gave a large number of scholarships. They saw the impact in the Albany schools. In the one school that was targeted as an under performing, they lost most of their student body and ended up rehiring their entire administration for that school and brought it back. Again, we have seen this work in other cities as well.

The allegation that the desire to provide scholarships for poor children is somehow or another born out of a desire to do harm to the public schools I think is misguided and not very well-informed. Let me talk about the point of view that I have come to realize lately.

For several years now, I have been involved with the D.C. scholarship fund, actually raising money for scholarships for five or six or for 15 or 20 young people. We work with people in the community to find the children who need the opportunity to go from one school to a better school, work with the child's parent on a voluntary basis; that is to say, the parent says I want to do something better for my children, can you help me? Then we try to make the help available. And I have had the opportunity to visit and play with many of these children, and I will just tell you about one in particular, a little child, 9 years old. This was several years ago now.

When I first saw him he was overweight, unhappy, shy, and scared. He was underachieving in school. His mama, bless her heart, wanted to do better. He had little opportunity to ever see his father, and the times that he did see his father were not happy experiences in the child's life. His mother, bless her heart, had difficulties of her own, and would lapse in and out of responsible parenting for the child. But she loved her baby, and she wanted to do the best she could. So we got him a scholarship; and as it turns out, for most of the school year he got himself up every morning, got on the bus and went to school. And I asked him, why did you do that? And he said, Congressman, he said, when I go to school, big people take care of me.

A year later he had gotten his weight down, he was active in sports, he was active in his association with these other children and was happy, smiling, and he making straight A's, and he eventually went on to one of our best schools in D.C. Why, because somebody took him from an environment of neglect and put him into an environment of love. And it, yes, was a parochial school.

I learned a valuable lesson from the nuns. You can discipline a child if you first love a child. Without the love it is not discipline, it is punishment. And a child knows the difference. And our Catholic schools in D.C., quite frankly, are a godsend to thousands of little boys and girls.

So I am particularly thankful for the recent Supreme Court that cleared up the nonsense. I am always amused that a professor at Baylor University, SMU, TCU, BYU, Notre Dame, might be teaching his students who are there on Pell grants that it is a violation of church and state if you give the same opportunity to a second grader. But that kind of nonsense had life. Fortunately, we put a stake through the heart of that monster, and we can now, if we choose, follow up on your good work in your earlier education bill, to leave no child behind for public school choice, to allow a parent to take a scholarship and find any school they want.

Now, with respect to my own D.C. scholarship fund, people say, why does a fellow from Texas bother? I don't have children in my district who are going to fail school. I have a suburban district; there is lots of money. People move in there because of the schools, and they are all free and able, on their own financial resources, to take their child from a public school to a private school of their choice because they can afford it. D.C. is a city that has what is documented by most people to be among the worst performing school districts in America, and it is a city that has a population of people who have no choice if they have nothing other than their own devices. And for that reason I felt, and have for many years, wanted a bill written that would provide a number of scholarships for children in D.C.

A few years ago when Ted Forestmann and John Walton offered a thousand scholarships, one out of every six children in D.C. who qualified applied. They had so many children they had to turn them away. It broke Ted Forestmann's heart. And I remember being there in his presence when he heard the story: After one thousand, thousand dollar a piece scholarships were given out, he heard the story of one particularly broken-hearted little girl. And I watched him reach in his pocket and get the scholarship for her, because he cared, because the child wanted that opportunity.

We want to do the same thing. We are not taking money from the D.C. schools; we are bringing new money to D.C. It is as if somebody stood on a street corner in D.C. with $8,000

available or next year and said to the D.C. Parents, if you choose, if you would like to have up to $5,000 to take your child from a school that fails him to a school of your choice, the money is available to you for that purpose.

For the life of me, I do not understand who could object to that. I have people that condemn me to death because I won't provide free needles to dope addicts on the streets of D.C. that resent my wanting to give $5,000 to a mama who wants to put her child in a better school. I can't make sense out of that. I am committed to this.

We now have a president that will not veto this. A couple of years ago the delegate from D.C. criticized me for carrying this bill to the president knowing that he would veto it, and challenged me, to see if I was really serious about that, to get this bill to a president who will sign it. This is my opportunity. I have the Supreme Court decision that gets the sophistry out of my way, and I have a president that will sign it, and I am determined to make this happen.

It is not about me, it is not about my district, it is not about the delegate from D.C. It is about up to 8,000 little boys and girls, beautiful children, who deserve to have a better chance in their life than their mamas are able to give them now. And I want to do it. I have no reason other than to just tell you those kids own me, and I will do what I can for them.

And I would ask that my formal statement be put in the record.

STATEMENT OF RICHARD K. ARMEY, MAJORITY LEADER, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. – SEE APPENDIX B

Chairman Boehner. Well, thank you, Mr. Armey, for taking the time to come over today.

Let me ask, how do you respond to criticism that your D.C. scholarship bill is an imposition on D.C. public schools and a violation of the local control of education?

Mr. Armey. If we are bringing in $8 million for a few years and up to $10 million in the last couple years of the program, new money, it doesn't take a dime away from the existing budget of the school making it available to the parents to make a decision. No parent gets the money unless the parent comes up and says, hey, I want this for my child. No parent is persuaded to do it. And the child is then taken from whatever school is there. I don't know how that is an imposition on the D.C. school district or a violation of their civil rights.

We have roughly 435 members of Congress that come to this town from across the country. We come into this town and we put our children into private schools in this town. Nobody suggests that we are somehow or another neglecting or imposing an imposition on the local school district.

So, my point is people that make that argument, I don't get your point. You will have to stone me again because I didn't get the drift.

Chairman Boehner. Well, do you believe that your bill will damage D.C. public schools?

Mr. Armey. No, I believe the particularly the experience that we saw in Albany testifies that, as it has been tried in the past where it has worked effectively, public schools get better, and I believe it with all my heart. School choice makes public schools better, because public schools are more acutely aware that they must answer to the parents. And when the schools answer to the parents, they are answering to the one person who loves the child the most. So I have no doubt the schools will be improved.

Chairman Boehner. Critics of school choice options claim that the accountability measures that we have in public schools don't exist in many private or parochial schools. Where do we get the accountability?

Mr. Armey. Well, how accountable am I to a parent when I have a law that says you will send your child to the school of my choice, and I will do with your child in the education of that child as I like; and, unless you can afford it, you had just better shut up and put up with it. Compared to bringing this child to my school because you believe I will do a good job, and if I don't do the good job you accept, you will take your child to another school. I believe the second principal is going to be more accountable than the first principal.

Chairman Boehner. We have spent a lot of time working on this issue over the last 10 or 12 years, but I need to give you the opportunity to explain to people why you think parental choice is such an integral part of overall education reform.

Mr. Armey. Well, it already exists in America today where you find educational excellence.

Where I grew up, we moved into that community because we respected the quality of the schools. I am a product of public schools. All five of my children went to public schools. My wife and I never made a decision with respect to the purchase of a home that wasn't pursuant to our information about the quality of the public schools.

You take a look at any community in America today, when they are trying to attract somebody to move their business there and they talk about the quality of their public schools. So the fact of the matter is, school choice is practiced as a routine, normal part of our family decision-making process which most of us don't recognize it for what it is. But where schools are excellent, you have parents who have the ability to move children from schools that fail. When you have a city like D.C., with an enormously large population of people who are just trapped, you find schools that break down on you. It is not by accident that the schools in the suburbs tend to be better than the schools in the inner city, because the schools in the suburbs are populated by students of people who move there for that excellence and support that excellence and will move away if the excellence fails their children.

So, the fact of the matter is most of America school districts compete for children of highly mobile parents who will leave the community if the schools don't perform for their children.

Chairman Boehner. Again, Mr. Armey, I want to thank you for coming this morning. And for the benefit of the members, under prior agreement with Mr. Armey and his schedule, the questions will be limited to the chairman and the ranking member. The members should note that we do expect to have a general vote at approximately 10:30.

With that, I would recognize my friend and colleague from California, Mr. Miller.

Mr. Miller. Thank you, Mr. Chairman. And, Mr. Leader, welcome to the committee.

We had, and I guess it was the President's Commission on IDEA, up before the committee, I think it was last week, on special education. He had a panel out reviewing it and taking testimony around the country. And while it was not clear in the report, I think I am accurately portraying. Their statement, or the gentleman who was reporting on the commission's statement, was that they believe that the federal mandates under IDEA would have to go with a voucher program, an individualized education plan and the various accountabilities for schools to provide a free and appropriate education. Do you see that that way; see some consternation in the communities on both sides about how that plays out?

Mr. Armey. I don't want to set myself out as a comprehensive expert on IDEA and all that. As I know, for example, when you see charter schools grow up, they often grow up for the purposes of special case needs on the part of children, and you could have the evolution of schools that will be particularly designed for that.

My good friend, the former chairman of this committee, Bill Goodling, used to be concerned about IDEA mandates in that the mandates oftentimes provide an incentive to label children unnecessarily as troubled children.

Mr. Miller. But do you see those mandates following your voucher idea for the District of Columbia?

Mr. Armey. I really can't answer that. I don't know enough about it. I do think that what has happened with voucher or scholarship plans is it tends to be on behalf of the children whose parents care the most and get their applications in earliest. Whether or not there is any sorting out of the children in terms of special needs, I do not know. I don't think there are any processes to do that. I don't mean to be evasive on your question, Mr. Miller, but I am not sure I fully grasp your question.

Mr. Miller. Well, you know, I guess if we have to consider legislation we will have to consider it on a more specific point because you are using public resources for this purpose, which is different than when Mr. Forestmann did his or other people have done their scholarship programs. Those are private resources, and they are obviously free to award those.

Mr. Armey. But I might mention Pell grants for public schools.

Mr. Miller. Pardon?

Mr. Armey. Pell grants and GI bills are public resources. You take a look at D.C.'s schools. By their own testimony children do worse the longer they stay in the school district. A Pell grant for their college education is no good for them if they have had a K through 12 failed experience. I don't understand why we can do so much for the privilege of higher education and do so little for the necessity of K through 12.

Mr. Miller. Well, that has been the argument we have been having in this Congress for some time now.

Mr. Armey. I would be happy to take the money that is now spent on Pell grants.

Mr. Miller. Your recommendations would do far less for the disadvantaged in this society than most of us think should be done. So, I mean, that is answered four square in your appropriation submission. But that is an argument between you and me.

Mr. Armey. Well, I would be happy to take the money that is spent on Pell grants for students to go to nonpublic institutions of higher education, and give that money to children to go to public schools or to exercise school choice in K through 12. I do not understand why we can be so generous for higher education and be so arbitrary and stingy in the lives of baby children that are just trying to get their feet under them for the first time in their lives. Bless their little hearts, why don't they deserve as much consideration as a college student? It just baffles me.

Mr. Miller. Well, I think first of all, if you want to rob the Pell grants to have your voucher program that is your choice. But I mean that exactly makes the point. This is not a system that is rich in educational resources. And when you take a $5,000 voucher, $8 million, whatever it is, for 1,400 kids a year, those are educational resources that could be used in the public school system to try to cobble together, to fix a system that is serving 75- or 80,000 kids. And that in theory was the goal of this Congress and this president when we passed the Leave No Child Behind Act. If you are now going to open the trapdoor and you are going to start siphoning those funds off, I assume those are educational dollars. You didn't take them out of the military.

Mr. Armey. It absolutely does not come out of the current budget of any educational institution in America today. It doesn't come out of the Department of Education's funds; it doesn't come out of the D.C. school system.

Mr. Miller. But that is on your theory that they already are sufficiently funded. I don't believe that they are sufficiently funded. If I thought they were sufficiently funded and this was leftover money, sort of like spare change. You know? Well, it isn't leftover money, because those programs are not sufficiently funded. And that is part of the problem you are having. That is part of the problem you are having in putting together a system to conserve the vast majority of American children and get them to an educational attainment that we can be proud of.

Mr. Armey. The D.C. School District spends several times more money per child on the children than at least a hundred other school districts, all of which do better than D.C. The fact of the matter is education dollars spent unwisely, wastefully, ineffectively are the worst spent education dollars

in America.

Mr. Miller. Well, you can't support that, Mr. Armey, but you can go ahead and say it.

Mr. Armey. I can win it on the floor.

Mr. Miller. Oh, yeah, you can win it on the floor.

Mr. Armey. And I can get it to the president. And this president will call me from Air Force One and say he is signing it.

Mr. Miller. Well, if that is your only test that is a wonderful vision of government.

Mr. Armey. I believe that is the test of government; it goes through the House, and then it goes through the Senate.

Mr. Miller. So you can say whatever you want, whether it is accurate or not, because you have the votes on the floor.

Mr. Armey. No. I can say whatever I want because I have seen it work in the lives of children, and I care enough to care of the kids rather than somebody else.

Chairman Boehner. Well, you may have heard that the bells have gone off. Mr. Armey, thank you for your willingness to come over and testify.

Mr. McKeon. Mr. Chairman, may I just make one point? Mr. Armey said that this would go to 8,000 children in the D.C. district, and would actually then take them out of the public schools. So the money for those 8,000 that is already there would be able to help the children that are in the D.C. schools. So it seems like it helps, that it is a win-win all the way around.

Chairman Boehner. All right. I want to thank Mr. Armey. We are going to take a recess. We will be ready for the second panel when we are finished voting on the House floor. The committee will stand in recess.

[Recess.]

Chairman Boehner. The committee will resume the hearing on parental and choice education, and it is my privilege to introduce our second panel of witnesses.

Our first witness is Ms. Tamiko Williams. Ms. Williams is a parent and a recipient of a privately funded scholarship from the Washington Scholarship Fund, which enabled her daughter to attend The Owl School, an independent school northwest of Washington. However, due to an increase in tuition, Ms. Williams will have to remove her daughter and place her back in public school. I am glad that you are here.

The second witness is Ms. Linda Moody. Ms. Moody is President of the District of Columbia Congress of Parents and Teachers, commonly known as the D.C. PTA. In addition to her own two children, she has cared for 26 foster children, including with special needs, all of which attended public school.

Our next witness is Mr. Elliot Mincberg. He is the Vice President and Education Policy Director at the People for the American Way Foundation; previously, as a partner in the Washington, D.C. firm of Hogan & Hartson, where he specialized in education and litigation, and has been here on several other occasions.

Next, Mr. Douglas Kmiec is the Dean and St. Thomas More Professor of Law at The Catholic University of America, here in Washington. Previously, he taught constitutional law for nearly two decades at the University of Notre Dame and served Presidents Ronald Reagan and George Bush as constitutional legal counsel from 1985 through 1989. He frequently contributes to the Los Angeles Times, Wall Street Journal, and has co-authored three books on the Constitution.

And, lastly, Ms. Roberta Kitchen is a single mother of five foster children, has sent her children to four different schools, private and public, having selected institutions that best fit the children's educational needs. Her youngest child is now attending private school with a tuition scholarship from the Cleveland Scholarship Program.

And before the witnesses begin their testimony, let me remind the members we will ask questions after all of the witnesses have testified. I think all the witnesses understand the clock. You have 3 or 4 minutes of green, you have a minute of amber, and when it turns red we are hoping that you are finishing your statement.

And, with that, Ms. Williams, you may begin. And don't forget to push the little button at the bottom of the microphone, and pull the microphone a little closer to you.

STATEMENT OF TAMIKO WILLIAMS, PARENT, WASHINGTON, D.C.

Ms. Williams. Thank you. Hello, chairman, ladies and gentlemen of the committee. My name is Tamiko Satay Williams. I am a long-time resident of the District of Columbia, 39 years. I am a product of the D.C. public schools. Excuse me, I am very nervous.

Chairman Boehner. No reason to be nervous. It is just us chickens.

Ms. Williams. You guys have the money.

Chairman Boehner. Well.

Ms. Williams. Okay. Excuse me. As you consider your responsibility in helping guide the next steps our country takes towards education, as has become known as school choice, I thank you for including the viewpoints of a parent, a single parent as myself. I commend you for inviting me.

I am not exactly a poster child for how school options work. My story is about how school options have failed my daughter and I. My reason for seeking scholarship assistance for my child, it is the obvious but least recognized reason. In the District of Columbia, in many inner-city areas around the country, our schools are basically still segregated, but you can call it demographics. You can rezone and bus but let us be honest it is still segregation. The bottom line is that you have school choice unless you are poor. That is why so few of us are willing to stand up for this important discussion.

I am not unhappy with the outer boundary school I begged and cried for my child; I am just determined to increase her chances of exploring the world outside of our neighborhood. Even though I am not unhappy with our public schools, it doesn't change the fact that it is still segregated schools, that my daughter and my daughter's perception of the world and her future is shaped by this experience.

I want to help my daughter realize her horizons are bigger than those in our neighborhood. I want her to have a brighter future, and she will have a brighter future with me as her mom.

This is the reason for wanting choice: To be free to expand my daughter's horizon, because she deserves it. Not only is this the American way, it is the only way I see.

My elected representative recently told you from the floor of Congress that she doesn't believe D.C. residents are calling for school choice, and that D.C. charter schools and private scholarship programs make it an example of school choice. Well, I don't think so, and so do hundreds of families that I spent time with during research testing at Washington Scholarship Fund and thousands of families who are still applying for scholarships.

The current choice option failed me, and those same options will fail other parents without the financial resources to even use the private scholarship. Small private scholarships, charter schools, and intra-district choices, those are all nice options. But who are we kidding? It is still not the freedom of choice; it is just an illusion of choice because poor parents are still told they cannot go based upon their economics, their economic situation.

I recently read that 47 percent of Congressional Representatives and 50 percent of Senators with school-aged kids use private schools. Did you know that the Mayor of the District of Columbia went to private schools? He also sent his kids there, too. The Police Chief Charles Ramsey sends his son to a private school. Some of the most successful people in business today in the D.C. area went to private schools; some of their children are sent to private schools. So I want my child to be sent to a private school, also.

After participating in the lottery three times, three years straight, my daughter finally received the partial scholarship for last year. My daughter and I were so excited that we brought balloons and excitement, and we were just really happy that this happened for us. We were so appreciative of the Washington Scholarship Fund for doing this and their staff members to take time out of their weekend to come in and test so many families that I was overwhelmed.

I didn't know exactly what school I wanted my child to go to because I wasn't familiar with private schools, so I did a lot of research. I finally ended up having to have to send her to The Owl School, which is a very nice school. It was not the school of my choice. It has a great academic program. They teach you French, Latin, computer skills. It even has an after-school program, and it has a long study abroad program, which they go over to France and different countries over there, which is great, but I couldn't afford that. Needless to say, this school offers the type of environment that my daughter deserves, the type of environment that would allow her to meet students from different backgrounds and cultures, and help her see the possibilities that exists beyond my neighborhood.

Soon after the first three days or so in the school, I found out that the resources that I have was not enough. We were receiving a minimum of $2,000 from Washington Scholarship Fund, and I was very appreciative of that. But, in fact, still I was still faced with a $700-a-month school expense. For someone whose biweekly check of, you don't need to know what that is, but it wasn't enough. By making tremendous sacrifices personally and financially, I struggled through last year and got my daughter through school. Jeraine enjoyed the best year of her life in that private school. I was unable to give her a glimpse - I was able to give her a glimpse of the world she rarely sees and the world that she deserves.

Near the end of the school year, I found out that The Owl tuition was going up from $8,000 to $11,450. Of course, I applied for financial aid, which gave me $2,000. That made it $4,000. But, again, the school went up $2,000.

Our plan now is for Jeraine to return to the D.C. public schools. We recently moved, and I am near Hine Junior High School, which is located in Georgetown off of Wisconsin Avenue. This is one of the best public schools that I could find for my daughter with diversity there.

My daughter is a very bright young lady. Her name is Jeraine Satay McElhaney, and I love her a lot and she deserves the best. But if I had financial assistance for the coming year and if I could, I would send my daughter back to The Owl School or to another private school that she could get the help she needs. The Washington Scholarship Fund staff has heard this from me many times and many other things. Sorry about that. But they have been really cool about it. I have been really bitching a lot, and I like them.

Let us see. This private scholarship is not enough. I know that Washington scholarship funds are among the highest in the cities for K through 12 assistance, but again it still isn't enough. I was fortunate to get that assistance from them. I was able to make it work barely for 1 year.

Let's see. It is amazing how many financial assistance options exist for the college level to the schools, which, to me, I found out it was outrageous. I would want to give my child a head start while she is in the sixth or fifth grade than to wait until she does not make it to the 12th grade.

Let's see. As for the future of the school choice, if you plan on helping the neediest of the children out there, they need help now, not when they are on their way to college.

Let's see. That is enough of that.

STATEMENT OF TAMIKO WILLIAMS, PARENT, WASHINGTON, D.C. – SEE APPENDIX C

Chairman Boehner. Ms. Williams, thank you. We can include your entire statement in the hearing record. But we do appreciate your willingness to come in and testify.

Ms. Moody, you may begin.

STATEMENT OF LINDA MOODY, PRESIDENT, DISTRICT OF COLUMBIA CONGRESS OF PARENTS AND TEACHERS, WASHINGTON, D.C.

Ms. Moody. Good morning, Chairman Boehner, and other committee members. I am Linda Moody. I am married and have been married for 35 years to the same man. I have been a volunteer for 35 years. I am a mother of two children, ages 34 and 31. I was the foster mom of 26 children, but as of this morning 27. And I would like to thank the committee for the opportunity to speak against vouchers for the District of Columbia, specifically the program proposed in Mr. Armey's bill, H.R. 5033.

I also want to add that I am the grandmother of two D.C. public school children. My daughter attended private school, a Catholic school, for one year, and I took her out because I discovered that the disciplinary problems that I was having in D.C. public schools was in the Catholic school as well, and I felt that I could get the service free instead of paying for it, because wherever she went to school I was going to be there for her, and she was going to succeed, which she did.

Voucher proponents say that low-income children should have the opportunity to attend the same high quality schools that are available to children in affluent neighborhoods. As the president of the D.C. PTA and the representative of its 6,000 members, I agree. However, we want to make that opportunity available to all children, not just a few the way a voucher program would. We could accomplish that goal by investing in public education and making sure that all schools are high quality.

Based on my work in the community, I can also tell you that public sentiment on vouchers in the district has not changed since 89 percent of us voted against them on a ballot referendum. To impose a voucher program on a school district that has so emphatically expressed its opposition completely contradicts the principle of local control of education.

Proponents nevertheless claim that vouchers are desperately needed to help children escape failing public schools. As a member of National PTA, I believe a quality public education should be available to all children, and families with children in schools needing improvement deserve solutions. However, the solution to failing schools should be programs that fix the problems facing public schools, not that encourage the abandonment of those schools. Vouchers do not improve

public schools. Vouchers do not expand parents' educational options, either.

Mr. Armey's proposal will provide no more than 1,600 vouchers worth $5,000 each year. There are over 77,000 children enrolled in D.C. public schools. This program guarantees that most of them will be left behind. Why not implement reforms that benefit all children? And I want to add here that I am also a resident of a poor neighborhood.

This committee should also reject the Army proposal, because, like all voucher programs, it lacks accountability. H.R. 5033 purports to provide accountability by requiring that the program be evaluated according to comparative test scores, among other criteria. However, the bill does not require participating private schools to adopt academic standards such as those required of public schools, hire only highly qualified teachers or administer assessments identical to those required of students attending public schools in the district.

Voucher proponents claim that parents provide all the accountability that is needed. If schools fail to perform, parents can remove their children and reenroll them elsewhere.

There are several problems with this alleged solution. First, the threat to withdraw students and take vouchers elsewhere has not prevented fraud and mismanagement in existing voucher programs.

Second, the decision to remove a child from a school in their neighborhood is hard enough. Parents should not be required to disrupt their children's lives a second time if schools receiving public funds fail to perform.

I heard Ms. Williams mention that she wanted to move her child so that she could better explore the world outside of her neighborhood schools. My solution to that was to keep my child in a public school, support the educational program of the schools that my children attended, take the dollars that my husband was earning, and invest it in extracurricular activities so that they would have an opportunity to participate in an interracial environment in outside activities, giving them exposure to both of the worlds, the low-income poor neighborhood, and the wealthy income and wealthy neighborhoods. And that worked out fantastically well for my children.

Third, this solution offers the taxpayers no recourse for the misuse of public funds. Voucher proponents nevertheless support this diversion of public funds to schools that are not publicly accountable, claiming that vouchers improve student achievement, not only for those who receive them, but also for those left behind through the alleged benefits of competition.

The balance of the research, however, does not support these claims.

In conclusion, adherence to the principle of local control of education requires this committee to reject vouchers for the District of Columbia. Vouchers would not improve public schools in D.C., where 90 percent of our children are enrolled. Vouchers do not expand parents' educational options. Vouchers undermine accountability. And vouchers have not been proven to improve student achievement. Parents have a lot to do with that.

The solution this committee can offer parents dissatisfied with their public schools is the support to improve those schools. And you heard Ms. Williams say her child is in a better school.

For example, if children are entering kindergarten unprepared, support early childhood education programs that are aligned with school readiness standards. If students need extra assistance to meet high academic standards, provide expanded learning opportunities. If parents need help improving their children's schools, support programs that promote and facilitate parent involvement.

We support investments in these and other research-tested, proven solutions.

Thank you for your commitment to our children, and for giving me the opportunity to address you. I would be happy to respond to any questions that the committee may have.

STATEMENT OF LINDA MOODY, PRESIDENT, DISTRICT OF COLUMBIA CONGRESS OF PARENTS AND TEACHERS, WASHINGTON, D.C.—SEE APPENDIX D

Chairman Boehner. Thank you, Ms. Moody.
Mr. Mincberg.

STATEMENT OF ELLIOT MINCBERG, VICE PRESIDENT AND LEGAL DIRECTOR, PEOPLE FOR THE AMERICAN WAY, WASHINGTON, D.C.

Mr. Mincberg. Thank you, Mr. Chairman. It is a privilege to be here again on behalf of People for the American Way, a citizen's organization with 500,000 members dedicated to protecting constitutional and civil rights, improving public education, and promoting civic participation.

Through the People for the American Way Foundation, we have worked with the NAACP on the Partners for Public Education Program that has worked to help improve education with thousands of residents of D.C., Detroit, Philadelphia, and Baltimore, many of the cities. I wish the committee could hear from these parents today, parents that will tell you that vouchers are the last things they want for their kids and for their public schools.

Speaking on behalf of them, I am here to tell the committee: Public school choice, through things like the No Child Left Behind Act, yes. Vouchers, absolutely no. Let me give you several reasons.

First, referring specifically to Representative Armey's bill, it is simply wrong to impose vouchers on the District of Columbia. And here I will quote someone you won't expect me to quote, President Bush, who recently went to Cleveland after the Supreme Court approved the voucher program, and said this: "Washington shouldn't be telling Cleveland how to run its school system. It is up to you all to figure out how to run your school system. That is a local decision."

No one in this Congress, after the Supreme Court approved it, would dream of commanding that Cleveland end its voucher program. By the same token, no one in this Congress should dream

of forcing D.C. to have a voucher program when 89 percent of its residents, all of its elected officials, have opposed that program.

Second, not only in D.C. but also across the nation vouchers have lost in the court of public opinion. Twelve times there have been referenda between 1970 and 2000 on the subject of vouchers. Each time vouchers have lost by an average of 68 percent of the vote.

Just last election in 2000, California and Michigan saw vouchers overwhelmingly defeated. In fact, even those at whom vouchers were targeted rejected vouchers even more convincingly. African American voters in Michigan rejected vouchers by 77 percent. Detroit voters rejected vouchers by 82 percent. Hispanic voters in California rejected vouchers by 77 percent.

This Congress got that message last year and defeated voucher proposals. It should do the same this year.

Third, vouchers drain critical resources and effort from the public schools. Let me talk about Cleveland. Three times, three times the Ohio Supreme Court, no bastion of liberalism, has found that the state funding of education in Cleveland and throughout the state is so inadequate that it violates the state constitution. Yet none of that has been fixed in the City of Cleveland. Instead, $43 million has been drained out of disadvantaged people impacted for the voucher program even though four-fifths of the students in the voucher program never even attended the public schools of Cleveland.

To give you one example, during the first year of the voucher program, the situation with public schools in Cleveland was so bad they had to eliminate all-day kindergarten. There were only two ways to get all-day kindergarten that year, if you were lucky enough to get into a magnet school or if you went into the voucher program. That wasn't free choice or fair choice. It is not a surprise people like Ms. Kitchen are dissatisfied with the Cleveland public schools.

But the answer is to fix the public schools and to give kids options within the public school system. The $45 million that Representative Armey's proposal would cost has to come from somewhere, and that $45 million could be much better spent on the D.C. public schools and other public school programs than draining it for purposes of voucher programs.

Fourth, vouchers offer choice for schools, not for parents. Private schools are by definition selective and, in fact, Representative Armey's proposal allows them to be quite selective. For example, there are only 11 private schools in D.C. that offer tuition of less than $5,000, so there would only be 11 schools that parents who couldn't afford more would be able even to apply to attend. But private schools can reject students under this plan because of their grades, because of disciplinary records. They can reject special education kids and reject kids based on religion and based on gender if they are a religious school that supports that.

Indeed, under the Armey bill, unlike Pell Grants, the aid is not considered aid to the students; so all of the civil rights protections that apply at the college level don't even apply under this proposal. Clearly, what this will do is provide choice for the schools but not afford meaningful

choice for many, many parents.

Fifth, there is the serious problem of lack of accountability. Let me read you just one example from Cleveland.

One school that was in the voucher program operated for 2 years despite the fact that its 110-year-old building had no fire alarm or sprinkler system was under a fire watch requiring staff to check for fires every 30 minutes. Lead-based paint, which can cause brain damage in kids, was found eight times greater than the level regarded as safe; and the school had to repay $70,000 in tax dollars for kids that in fact weren't even at the school at all. Those are just a few examples.

But finally, reforms in public schools do, in fact, work. Take D.C. There is an alleged finding in Representative Armey's bill that says that 72 percent of the kids in fourth grade are under fourth grade reading standards. That might have been true in 1998, but in 2001 the statistics show that over 76 percent of the kids are at or above grade level in fourth grade in the D.C. public schools. Reforms have worked successfully in the D.C. public schools and elsewhere.

Let us fully fund the No Child Left Behind Act so, where necessary, there can be choices for kids with respect to charter schools where more than 10 percent of D.C. kids go, with respect to better performing public schools. But vouchers are a bad option for this Congress, for D.C. and for America.

Thank you, Mr. Chairman and I presume my full written statement will be entered in the record.

STATEMENT OF ELLIOT MINCBERG, VICE PRESIDENT AND LEGAL DIRECTOR, PEOPLE FOR THE AMERICAN WAY, WASHINGTON, D.C. – SEE APPENDIX E

Chairman Boehner. Thank you, Mr. Mincberg.

Mr. Kmiec.

STATEMENT OF DOUGLAS W. KMIEC, DEAN AND ST. THOMAS MORE PROFESSOR, SCHOOL OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA, WASHINGTON, D.C.

Mr. Kmiec. Thank you, Mr. Chairman, members of the committee. It is a privilege to address you this morning on this important topic. I also ask that my full statement be entered into the record.

In response to my colleague, Mr. Mincberg, I think it is important to understand that proponents of school choice and parental choice are not anti public schools, they are pro education, they are pro student and that the drive for additional choices is actually a drive that confesses that past efforts to throw money at problems haven't worked and that one sure recipe for improving the

life of a student and their educational achievement is to create a public system of allocating public funds fairly and evenhandedly on the basis of a principle of nondiscrimination.

I have been asked primarily this morning to address the implications of the Supreme Court's recent opinion in Zelman, and so I will address most of my remarks to that. But I would be happy to further engage this colloquy to Mr. Mincberg, as well in your questioning, if that is the committee's desire.

I think we have in this country for the last 60 years suffered a double-barreled injury. Ms. Williams put her finger on it. School choice has always existed in this country for those who have the resources to buy a good home in a safe neighborhood or to pay private school tuition.

The aspect of that injury is compounded by the fact that school choice has been denied with regard to the allocation of public funds on the basis of a pretext, the pretext that it is necessary to have that denial to comply with the Constitution of the United States. The significant development in the Zelman case decided a few weeks ago by the Supreme Court now, after a tortuous 60-year history, makes it plain that that was a pretext based upon a misconstruction.

Beginning in the 1940s, the very important precept within the constitution of religious freedom became an excuse for religious exclusion. Just as it is no more acceptable to exclude religious believers from public universities, it should have never been acceptable to exclude religious parents and their children from the general funding for education. Yet the guarantee of no establishment became a wall of separation, a metaphor that was misconstrued time again and that was used to denigrate religious schools as pervasively sectarian institutions as if they were an evil to be avoided.

Oh, yes, in that period of time there were some modest supports given. There were a few morsels of public assistance gratefully received, some aspects of transportation, some computers, some basic assistance in terms of textbooks, but it was not until the 1980s and 1990s that the jurisprudence started to return to its original base and its original understanding. That understanding was and must always be that parents direct the education of their children, that they have a constitutional right to do so, and that when they choose to designate their fair share of the education fund to a private school, be it a private nonreligious school or a private religious one, there is no possible establishment of religion nor endorsement of religion that can be perceived there from.

The legislative design for a constitutionally acceptable voucher program is now clear from the decision in Zelman. So long as legislators draft a program that is available to all parents, public and private, that is not biased or skewed in favor of religious believers and so long as those who participate exercise their judgment as a matter, in the words of the Supreme Court, true, private choice, there is no federal constitutional violation.

It no longer matters as a constitutional question, nor should it have ever mattered, whether the assistance is tuition or computers, whether the overwhelming number of parents chooses a religious option rather than a public option, both of which may be acceptable in a given case.

I have five children. They have been in public schools. They have been in private schools. Different children respond to different incentives in different places.

No longer does it matter as a constitutional question whether the amounts are substantial, but there is danger on the horizon. This question that took so long to settle at the federal level is now being unsettled at the state level. Provisions that were written into state constitutions as an outgrowth of late 19th century bigotry against Jews, Catholics and other immigrants to this country are now purported to be used to block the sound constitutional result that our Supreme Court has achieved.

This body has a special obligation and responsibility with regard to civil rights. You know that, and I need not remind you of that. The most precious civil right is the right of religious freedom. The legislation you have before you with regard to the D.C. schools is an act of constitutional leadership. I urge you to go beyond that. I urge you as well to allocate public moneys to other states on the condition that they not discriminate on the basis of religion. It is entirely appropriate, entirely consistent with principles of federalism, and I do suggest it vindicates your role as constitutional leaders in our republic.

Thank you very much.

STATEMENT OF DOUGLAS W. KMIEC, DEAN AND ST. THOMAS MORE PROFESSOR, SCHOOL OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA, WASHINGTON, D.C. – SEE APPENDIX F

Chairman Boehner. Thank you very much.

Ms. Kitchen.

STATEMENT OF ROBERTA KITCHEN, PARENT, CLEVELAND, OHIO

Ms. Kitchen. To the chairman and committee, good morning and thank you for inviting me. My name is Roberta Kitchen, and I am a parent from the Cleveland School District, Cleveland, Ohio.

A little over 18 years ago I made a choice. I chose to come in and take three children, to rescue them from a life of drugs and prostitution and all of the vices that are so prevalent in our community because of what their mother was involved in. I made that choice because I wanted to give them a chance to break the cycle of the welfare roll, of depending on a check, drugs, standing on a corner. I wanted to see three children survive. So I made that choice to be a parent, and I took that very seriously, and I still do.

Seven years later, two more children were born to this young woman; and I took them, too. And I made the same commitment to those two that I had made to the earlier three. I wanted to provide for them a chance to become the best that they could be, to be able to compete and stand

next to anyone and be just as successful as anyone else.

I knew that one of the most important things for them was that they get educated. So I set out and sent them to preschools and enrichment centers, getting them ready for their educational journey. Then it was time for my first three to go into the public school; and I sent to the public school three very, very energetic, excited young people waiting to drain all that they could from their teachers. And I tell you not long after they were in that school system, what returned to me were three little apathetic, lethargic children who didn't want to read and they loved to read. They didn't want to talk. They didn't want to go to school. I suppose one of the most disconcerting things was that they weren't really learning anything.

It became apparent to me that, in order for me to accomplish what I had chosen to do in their lives, I needed to remove them. But I am a single parent who became a mother of five almost overnight, and my job didn't compensate me as my children increased. So I could not afford the schools that I would have chosen for my children that would have helped them so much become what they needed to be, to be the best they could be. I couldn't afford that.

I can't tell you the number of years I was totally frustrated, despairing, because my children were failing. Bright children were failing in a system that indeed was failing. I had a sixth-grade daughter who could not read.

I have heard Ms. Moody speak about support. I want you to know that every time that there was a PTA, every time that there was a workshop, I was there. Every time there was anything that involved the parent, because I took my job very seriously, I was there. But you know what? I could not help a failing system. I don't know what can. But I can help my children, and that is what I chose to do.

I had a sixth-grade daughter, who could not read, and I went to the school in my neighborhood that she attended, and I asked that teacher to hold her back because I did not want her to go to junior high school and senior high school and fail. I was told by the teacher that, “Ms. Kitchen, I can't do that because we have a quota here, and I have already failed the number that I can fail. Compared to the others, your daughter is making leaps and bounds.”

My daughter was failing. My daughter could not read, and there is nothing that anyone can accomplish if they cannot read.

I began then to go from school to school. I literally became a beggar. That is how important it was for my children to have a chance. I went from school to school asking if they would allow us to come. But I didn't have the money that they required. So I volunteered to do anything. I will make copies of papers for you. I will do whatever you need me to do. Please accept my children. I must remove them out of this situation.

The straw that broke the camel's back was when my daughter in this sixth grade that was infested with drugs and the gang leader was in her sixth grade class told her that he would rape her. I want you to know that every day I took my lunch at 3 o'clock so that I could come home and park

outside my daughter's school so that I could get her so she would not be raped.

Now I don't know what the school situations are here, but I don't think you would have wanted to have to be afraid that maybe traffic would have stopped you from getting there in time for him to carry forward on his threat. These and horrendous things were going on in the Cleveland public schools. There are people who today say to me that I should wait, I should give this school a chance; and I believe that there have been improvements. But I don't have time to wait for the school system to get itself together.

There were schools out there that accepted us, and it happened to be a Christian school. They took my three children, and they gave me a program where I could pay. I never paid on time because I didn't make enough. I am in debt up to my neck. But I made a commitment over 18 years ago that I would give these children the best opportunities that I could so that they would have a chance.

When the voucher program came out, my three children were already in other schools; and I was struggling. Two daughters received those vouchers. That helped me as far as my cash flow, if you will, to be able now to pay more money and more on time to the three schools that did not receive the vouchers.

I send my children to a Lutheran school. I am not Lutheran, and I did not send them to become Lutherans. But I sent them to this school because I went and found out that academically they were good schools, and I sent them because they taught things like right and wrong. They were able to say things to my children that I said to them at home. They taught character.

It was important that my children be put in a setting where they could learn what was right and how to live and how to touch and move in and out of this society. I don't want my children only to receive the benefits of becoming the best that they can be.

I appeal to you to consider other children in the City of Cleveland. If we must move forward as a nation, we have got to do that together; and we can't do it if we cannot read. Our children need a chance. We don't have a chance if we cannot read and write and not able to stand up and say what we want to do.

I want my children one day to sit in these places where you sit. You had an opportunity. Somehow you survived. I don't know if any of you went to public schools, but you had an opportunity. I want my children to have that opportunity.

I am not sure if I addressed what I should have here, but the most important thing to me is that children have a chance. They need a chance and whatever I need to do. I understand that my picture and interviews and things that I have said are all over this country. I take no pride in that. But I do take pride in, hopefully, that following that picture there is something being said that I am standing for the children. That is why I am here.

STATEMENT OF ROBERTA KITCHEN, PARENT, CLEVELAND, OHIO – SEE APPENDIX G

Chairman Boehner. Ms. Kitchen, we appreciate you coming and all the witnesses who have taken time to talk to us about this important issue.

Chairman Boehner. As I said in my opening statement, we spent all of last year, all of the members of this committee, working diligently and working together in a bipartisan way to pass the No Child Left Behind bill. It was signed into law in January, and our goal clearly is to make sure all public schools improve.

It was important as we went through that process to make sure that there was a safety valve for schools that wouldn't change, couldn't change. There had to be some safety valve so, at the end of the day, every child would have a chance at a good education.

Now we had this long debate during last year about saving the system and saving every child; and I think where I would like to start with Mr. Mincberg. How can you explain to Ms. Kitchen why she shouldn't be afforded the opportunity to save her children when the schools, in fact, are failing her children?

Mr. Mincberg. Parents, Mr. Chairman, should do what he or she needs to do for their children. But what this Congress did last year, as you just said, was to provide a safety valve that says that if Ms. Kitchen had her kids in a failing public school today, a school that, I think it is 3 years, has not been able to demonstrate progress, she can get her schools out of that school today and doesn't have to go begging, borrowing and finding a school that maybe doesn't meet her religious convictions, but in fact can go to a better-performing public school and provide that safety valve.

What I would say, Mr. Chairman is, number one, this Congress should fully fund the No Child Left Behind Act. Mr. Miller and others have pointed out that the budget this year would not do that, and that is a serious problem.

Number two, give that safety valve an opportunity to work rather than going with experiments that, frankly, have not been proven to be successful.

Chairman Boehner. Mr. Mincberg, I appreciate that. We get into a classic debate about whether we are saving the system or whether we are going to save the children; and while we are all for improving the system, in the meantime and thereafter, where you have got serious problems in some areas, tell me what specifically is wrong with helping a young lady like Ms. Kitchen who is deeply interested in taking care of her kids.

Mr. Mincberg. There is nothing wrong with helping, but the question is how to help. With the No Child Left Behind Act you provide an option to transfer immediately if you have a failing school for 3 years to a better-performing public school with all of the accountability, with all the civil rights protections that that has. We have no objection to that, and we think it is a very good idea.

But vouchers in our view don't help, because the vast majority of parents will find out it is the schools, not them, that will do the choosing. They will find out that the private schools will not

be accountable the way this Congress has mandated the public schools have to be accountable.

Chairman Boehner. Mr. Kmiec, how do you feel about the answer that Mr. Mincberg provided?

Mr. Kmiec. I know each of my five children by name. I know each of us here know their children by name. Each of them knows their history, their prospects. Which one of us at this table is going to say, well, it is okay for the first three to go through a failing system, and we will bump around to the next public school system and hope for something better because, after 3 years of wasting their life and their educational potential, we can try and get an escape.

Mr. Chairman, I think the answer has to be that you design the best public system you can focused on the child; and I think Ms. Kitchen has given you ample evidence for the proposition that that is a system that is built around the maximization of choice.

We have had years and years of trying to build in testing requirements for public schools to no avail. We have expanded budgets. We have increased per capita spending. And yet we know that in the District of Columbia and throughout this United States, especially in urban and disadvantaged areas, the public school systems, yes, as Mr. Mincberg has confirmed, are failing. There is, therefore, no reason not to maximize a system of true private choice that has now been declared, as I said originally, perfectly constitutional under our constitutional system.

Chairman Boehner. Since you said something that I think Mr. Mincberg probably took exception with, I will give him an opportunity to respond.

Mr. Mincberg. One specific thing, as I understand the law, you don't have to have your child in a school for 3 years, the school has to have been failing for 3 years. If you enroll your child in kindergarten in a failing school and that school has not had a good performance record, you can take your child out of that school immediately. So it is not a question of waiting a long period of time. It is a question of doing the best thing to make sure that no child is left behind; and, unfortunately, vouchers leave many behind.

Chairman Boehner. My time has expired.

The chair recognizes the gentle lady from California, Ms. Woolsey.

Ms. Woolsey. Thank you, Mr. Chairman.

I want to congratulate all of you parents what lucky kids you have in your lives because you care so much about them. Not all children are that fortunate, and we know that.

We also know that we passed leave no child behind legislation. It came out of this committee in a bipartisan way, Mr. Chairman, and, guess what, we didn't fund it. So indeed what we are faced with is trying to make American schools the best in the world, but we are not funding it.

So what I would like to suggest is the answer is not to cherry pick a few children whose parents care enough about them to get on their knees and beg like you did, Ms. Kitchen, virtually symbolically, to get your kids taken care of; put them in schools that you can't afford like you did, I think, Ms. Williams, a school that your kid didn't get to go to France with the rest of the children. What we want is a school system that cares about our children, cares about the facilities, cares about the educators and says that education is valued in this nation. Now, until we do that, we can pick a handful of children, put them in private schools and pay for it and leave everybody else behind.

So my question to you would be, particularly to you, Mr. Kmiec, what happens to the child that has a special need? What happens to the child that has a reading disorder?

I mean I happen to know a friend of mine's grandchild in Washington State whose great granddaughter has a learning disability. She goes to a Catholic school, and guess where they send her to meet her reading needs? They send her to the public school.

What is going to happen to these kids or only the good kids going to these private schools?

Mr. Kmiec. It is a good question, and I appreciate the opportunity to answer it.

I served on a local public school board in southern California, so I have some experience with how well public schools address the needs of special education children, and it varies from public school to public school. Some are addressing them quite well; others are merely ensnared in bureaucratic paperwork pretending to address their special needs. I don't think it is at all true that private schools that have participated in voucher programs are leaving people behind. In fact, these private schools, by and large, are the ones that have stayed to stabilize neighborhoods, to hold out their services at a time when others have moved their households and their businesses to suburban areas and basically shut the door.

Ms. Woolsey. Let us hear what Ms. Moody has to say about that question.

Ms. Moody. What I want to say is that there is a deep-rooted problem to educating children; and it goes beyond congressional action to submit vouchers, to grant vouchers. I heard Ms. Kitchen say that her child was in the sixth grade and could not read. We have a way of knowing before a child reaches sixth grade that he cannot read. I know in 6 weeks after school starts or 9 weeks the status of that child's success. When I get that information and if I am monitoring that information all along I know before they send me the report card. So I have the option to request or talk to the teacher to see how I can help to improve that child's education.

Now we have parents who are not capable of participating in their child's education because of some of their personal circumstances. That is where Ms. Kitchen came in, which was outstanding, and that is where I come in with all the children I help. I had a sixth-grade child who came to me who could not read. The first thing I did is I sat down with her with a reading program and taught her how to read. Then I talked to the English teacher to explain to her what I was doing at home with this child, and the English teacher took a better interest in that child and became the

child's tutor.

When we start talking about what we want to do for children and for parents, we need to understand what the deep-rooted problem is that is causing our children not to succeed. In many instances, it is because of nonallocation of the appropriate funding to staff and to fund a school based upon the needs of that particular community.

You can give money to the whole school district or to a few parents to educate their children, but there are going to be some parents that cannot reach out like Ms. Kitchen did and say I need my child in another environment. In the District of Colombia we have offered choice for over 20 years. We still offer choice to our children. They can apply to go from school to school, elementary, middle school, junior high, and senior high school, whatever school they want.

Mr. Armey mentioned earlier that he supports making public schools better and the way to make those schools better is not to issue vouchers to 1,600 children. We have 90 percent of our children who go to public schools; and, as a part of that process, most of them come from low-income communities. I live in a low-income community. Many of our parents transport their children across town, two or three, to the schools.

My thing is, stay in the neighborhood school and fight for every child's right on education to be better, and you will see those changes occur. When the test scores were presented to the D.C. Public schools this particular year, there were major increases in those test scores. We anticipate that there will be additional test scores, and we need the Congress to stop comparing the District of Columbia, quote, and unquote, to what is happening statistically unless they are using current data. Because everything changes on a regular basis, and we will be able to prove to you that we have made drastic strides in the education of children in D.C. public schools.

I can go on and on and talk to you about my personal feelings concerning what needs to happen because I have been in the system for 35 years; and I have been on that public board of education, also. So I know it from the inside and the outside.

Mr. Isakson. [Presiding.] Thank you, Ms. Moody.

I would ask the panelists on their questions to be as specific but relatively brief as we can so we can get to multiple questions for the gentle lady from California and others.

The chair recognizes the gentleman from Colorado, Mr. Tancredo.

Mr. Tancredo. It is also in a way disheartening to listen to the discussion on the issue of school choice and to listen to people, supporters of the public school system characterizing this particular debate in a way that would lead us to believe that if, in fact, every parent that presently had a child in the public school, if they were given the key to the door to unlock it and get out, everyone would do it. I mean, that is the impression that is given by your testimony, because you have such fear of allowing that key to be handed out.

I would suggest, and have often, that just as Mrs. Moody who has experienced success in the public school system, that there are, I am sure, thousands and thousands of people who have that same impression of their public schools, even in D.C. and would be happy and would stay there. And, of course, there is nothing to suggest, nothing inherent in the concept of school choice or vouchers, nothing that suggests that they should leave or have to leave. They would continue to have their children in that public school.

To hear people talk about this in a way that suggests that if we give them the choice, if we just give people the key, they will all run for the door, if that is true, it tells us something about the nature of the system, if it is true. If it is true, we have to actually see that.

Now I don't think it is, either. I think that, in fact, there will be plenty of people who will be happy to stay. But for those who are not happy to stay, why is it so hard, I wonder, for us to comprehend their needs, their desires and try to address them.

The idea that I have heard expressed over and over again from the panel, from those opposing school choice is that we are cherry-picking, that we are only giving a few people this opportunity and leaving the rest behind. Does that mean that you would support a universal voucher for every single child in the public school system? Is that how I should interpret your comments? If we did that, if we made it available to every student, that would be fine. But we are only doing it for 1,600, and that is the problem. That is what I heard you say over and over again.

I wonder, Ms. Williams, what do you say to the other members of the panel that suggest that you are doing something very negative and your desires are very harmful to the public school system, that you, in a desire to get your child into a private school, that you are actually destroying the public school system? What do you say to somebody like that?

Ms. Williams. I don't care. You wanted me to keep it short. He wanted me to keep it short.

Mr. Tancredo. It is a candid answer. I mean, you do have a concern about your child and you know you can't perhaps overcome the problems that confront the public schools; and I can certainly understand and appreciate your desire to do everything you can for your child.

But I would ask, I guess, any other member of the panel there to address the issue for the time we have left. Just in terms of that one point of I would like to know, those of you who oppose this concept, why is it so hard to allow someone else to have that choice even if you personally choose not to elect to send your child to a private school? Why is it so hard to allow Ms. Williams that particular opportunity?

Mr. Mincberg. The question is not whether she should have that opportunity. But the question is whether the public should pay for that opportunity or whether the public funds should be spent instead of public school choice.

Mr. Tancredo. I am reclaiming my time. Why do you care whether or not it is a publicly funded if it is a dollar coming from a taxpayer that goes to Ms. Williams to achieve that educational goal

or a dollar that comes from a taxpayer that goes to Ms. Moody for that same purpose.

Mr. Mincberg. The evidence shows, Congressman, when the money goes into voucher programs there are not significant educational programs.

Mr. Tancredo. That is absolutely not true. There are statistics that will show just the opposite that education improves and parent participation improves.

Mr. Mincberg. I would be happy to give you the statistics.

Mr. Tancredo. How about Harvard University?

Mr. Mincberg. The money is drained from public school systems that need it badly, and the choice ends up being made by the private schools and not by the parents.

Ms. Moody. May I respond, also?

Mr. Isakson. The gentleman's time has expired.

The chair recognizes the gentleman from Virginia, Mr. Scott.

Mr. Scott. Thank you, Mr. Chairman and I want to thank the witnesses for their testimony.

Many studies have shown that those who get vouchers would have gone to private school anyway, and therefore all the money you spend covering them is money that is coming out of the system that doesn't do anybody presently in public school any good at all.

Does anybody know how many people in Washington, D.C., who go to private schools, would qualify for a grant? Anybody know?

Let me ask another question. Mrs. Kitchen, if this bill passes, what are the odds that your child might actually get a voucher?

Ms. Kitchen. What bill are you speaking of?

Mr. Scott. Regarding the D.C. voucher bill, Mrs. Williams, if the bill passes, what are the chances of your child actually getting a voucher?

Ms. Williams. I would say pretty high for me, because I know myself. I know I would go and I would get it. I am not the type that is going to sit.

Mr. Scott. As I understand it, there are 1,600 out of the 77,000 people in the school system, that is about 2 percent, will get vouchers. Fifty-to-one odds against you getting a voucher, is that not right?

Ms. Williams. Yes. I made a deal with God. If he gives it to me, I will be nicer to people. I think we have an understanding.

Mr. Scott. Ms. Moody, this will take care of about 2 percent of the students, one out 50. What is going to happen to the other 49?

Ms. Moody. That is our major concern in that we don't know what will happen to the other 49, other than they will remain in D.C. public schools.

Mr. Scott. If this bill passes, what will happen to the political support for getting more money into public schools or will the political support be for more vouchers for more people?

Ms. Moody. They will take money from the D.C. public school budget. Right now, it is an allocation per pupil cost; and what will happen they will decrease the budget because we don't have the students in the school anymore that need the money to go to the D.C. public schools.

Mr. Scott. That is assuming people actually leave public school to go to private school because of the voucher, not just the money going to those already there.

Ms. Moody. That is correct, but I assume that most of them will be people who are already there.

Mr. Scott. Mr. Mincberg, there is a provision in here that says the grant shall not be considered state aid to the institution, that scholarship under this action not be considered assistance to a student and shall not be considered assistance to an eligible institution. What does that do to a student's rights under the Individuals With Disabilities Education Act?

Mr. Mincberg. It eliminates them, Congressman, and eliminates in fact a student's right under a whole panoply of laws like title VI, title IX, et cetera, which do apply, I should point out, at the college level. If you have a Pell Grant, which is the analogy that the people are using for this legislation, and you use it in an institution, that institution has to comply with federal civil rights, IDEA and other related laws. This bill would exempt all the voucher schools from all of those requirements.

Mr. Scott. Just by inserting this language, not school aid, is there any purpose to that language other than to exempt the schools from civil rights laws?

Mr. Mincberg. None that I can see, Congressman. We might want to try to argue whether that provision alone does it, but certainly this bill is attempting to exempt them from all such laws.

Mr. Scott. Civil rights enforcement, obviously, there are certain anti-discrimination laws. If you are exempted from title VI does that mean the government can't on its own enforce civil rights law?

Mr. Mincberg. That would be part of the problem. There is a provision in the bill that purports to prohibit, for example, racial discrimination, which title VI covers, but there is no enforcement mechanism in the bill. Under title VI there is an enforcement mechanism, both private litigation

and action by the government to make sure that people's civil rights are protected.

Mr. Scott. This language would exempt the institution from that enforcement provision.

Mr. Mincberg. That is my understanding of its intent.

Mr. Scott. Thank you, Mr. Chairman. My time is just about up.

I just would like to point out it is curious that 89 percent of those in D.C. voted no on the voucher program when they had an opportunity to express themselves. It seems to me we would impose this system on a city that has no voting representation in Congress when we would not impose it on people who do have voting representation in Congress.

I yield back.

Mr. Tancredo. [Presiding.] Mr. Tiberi.

Mr. Tiberi. Thank you, Mr. Chairman.

Ms. Williams and Ms. Kitchen, thank you for your testimony today. You made your children proud.

Ms. Moody, Mr. Mincberg, I know I am not going to convince you on your position today, but, Mr. Mincberg, I will take issue with your testimony.

I am a proud product of the second largest public school system in the state of Ohio, the Columbus public schools. We have great schools in Columbus. I was in the legislature when the Cleveland scholarship program was passed, and I had an open mind when that was introduced. I am the first person in my family to graduate from high school. My parents believed that education is the great equalizer in America. I was fortunate.

In the middle 1990s, we had bus loads of parents from Cleveland come to the legislature, a two-and-a-half hour drive to the state house. They didn't have a lobbyist or a political action committee. These were parents from the Cleveland public schools who came with hope in their eyes and a heavy heart to try to convince the legislature to give their children an opportunity. It was unbelievable.

Let us talk about the politics of this. You talk about ballot issues in state after state. You talk about the legislature in the state of Ohio. You talk about the Supreme Court. The reality is what you didn't talk about on the ballot issues, the Supreme Court or anywhere else, is how much money is spent against these initiatives and how much money is spent for these initiatives.

These parents who came down didn't have any organized effort on their behalf. They were just poor parents who were coming down for hope.

The Supreme Court in several five-four decisions ruled the way you said they ruled. But those five justices, there is a whole story behind those five justices and the four justices, so let us put that in context as well.

You said there was a mandate. There is no mandate. There is no mandate in Cleveland. It was a choice that parents were given in Cleveland. They could opt to choose if, one condition, they met the financial guidelines. I wouldn't have qualified. You wouldn't have qualified. But if you were a poor mom or a poor dad you qualified to apply. That was the only mandate, a drain.

Let me tell you about the drain in Cleveland that is rarely talked about. Cleveland is one of the state of Ohio's school systems that spends the most money per child and have one of the lowest test scores. A public school system where the former Democrat African American mayor urged us in the legislature to allow him to take over the Cleveland public schools because they were bankrupt and in disarray. Not a very popular thing for him to do, but he came down with many ministers and many parents urging that.

In Cleveland, if a parent was lucky enough to get a scholarship after we passed that bill by one vote and take their child out of that school, they took the state portion of the funding of their child with them. They left that classroom. What remained in that classroom wasn't that child but was the local funding. So, actually, in that classroom, more money stayed; and that is a fact. Less money went with the child; and that is a fact.

Public school choice, the panacea, in Ohio, Mr. Mincberg, we have had public school choice for many years. And guess what happens in Columbus? Guess what happens in Cleveland? The suburban school systems don't offer the opportunity for the kids in Columbus and Cleveland to go to their schools. So, in essence, you don't have public school choice. Doesn't exist. It is on the books. It is the law. But, in reality, there is no public school choice.

Let me tell you what happened, final comment, Mr. Chairman, in Columbus this last week. My home school system that I am a proud graduate of, they have 140 elementary schools in Columbus; and under this safety valve of No Child Left Behind, 70 of those elementary schools last week were announced to have failed where parents are now going to have the opportunity to choose to go to another elementary school. Well, guess what, they announced that there is not enough room at the 70 other elementary schools in Columbus, and there is probably no opportunity at the suburban schools.

So the theory is great, Mr. Mincberg, but the reality is something entirely different.

Mr. Tancredo. Gentleman's time has expired.

Gentleman from New Jersey, Mr. Holt.

Mr. Holt. Thank you, Mr. Chairman.

I think we would all agree that the best long-term solution would be when we had a school system in every city and every town that was so good that parents wouldn't feel the need to shop

around. But we are talking, as I hear the witnesses say, about the short-term needs, the immediate needs of the students. We want to look after the students who are in failing schools right now.

And I don't doubt that there are failing schools out there. I don't doubt that there are dangerous schools out there. But, really, what are the choices?

I guess I would like to look at some of the numbers. Maybe, Ms. Moody, you have some of these figures. I don't know. How many students in the D.C. public schools?

Ms. Moody. Approximately 77,000, which includes our charter schools.

Mr. Holt. How many of those are in charter schools?

Ms. Moody. About 14,000.

Mr. Holt. How many private schools?

Ms. Moody. 496.

Mr. Holt. How many private schools?

Ms. Moody. I think it is about 496, is what I quoted in my testimony.

Mr. Holt. How many slots might possibly exist in the next few years in these private schools?

Ms. Moody. I cannot answer that question.

Mr. Holt. Does any of the panelists have any suggestion of how many slots might possibly exist in the D.C. public schools if this went forward for students to transfer from, putting aside the question of Mr. Scott of how many students already in the private schools might get vouchers.

Mr. Mincberg. One piece of information I have is that there are there are only 11 of those schools that have tuitions of $5,000 or under. So that alone would suggest a pretty small number.

Mr. Holt. Mr. Kmiec, let me ask, if this went forward, when would you consider the program a success? Would it be when 5 percent of the students have moved out of public schools into private schools or 50 percent or 100 percent? When is it considered a success?

Mr. Kmiec. I think it is a success, Congressman, the moment you give parents the opportunity to make the fundamental decisions about the direction of their own children's lives.

Mr. Holt. So if two or three students move out of a failing school into a private school and the other 77_76,997 students are left behind in those failing schools, it would be a success.

Mr. Kmiec. That is the challenge left to this body and to every local education body. No one is going to be satisfied with a program that only has a narrow range of opportunity, yet no one is

satisfied with the existing status quo.

Mr. Holt. Is it choice that we are after or success for our students that we are after?

Mr. Kmiec. The two are interrelated.

Mr. Holt. If there is choice available, maybe 3,300 or 3,000 students are able to take advantage of that choice that the other 74,000 are not, not enough slots, not enough money, the parents are disengaged, then it would be a success because there is choice.

Mr. Kmiec. Well, what we know happened in Ohio is that an opportunity was given for the public school system to maximize choice for the suburban public schools to participate, and they did not. So it wasn't a question of leaving children behind, Congressman. It was a question of slamming the door in their face.

Mr. Holt. What you want then is for all 77,000 leave the public schools in D.C.? Is that what you are suggesting?

Mr. Kmiec. No. I think the sovereignty over a child is in a parent. It has been acknowledged under our legal system that that is where it belongs. It has been acknowledged by sociologists that that is where it will most successfully educate. When that is exercised as completely as it can by a legislature that facilitates it, that is the day we will have achieved or begun to have achieved success, in my judgment.

Mr. Holt. I know every parent wants for his or her child for them to have a productive job, maybe summer job, maybe a good job out of college. So we should use taxpayer dollars to make that happen, is that what you are suggesting?

Mr. Mincberg. You are already doing that, to some degree. I think every parent wants a life well lived for themselves and their children. Part of a life well lived is a life of responsibility and a decent education in a safe place. All that choice advocates ask for is don't be afraid of the parents. Stop being afraid of families and family instruction.

Mr. Holt. I can understand that. I want to make sure that we are not deceiving the parents of 77,000 students about what choice they would really have under this program. Thank you.

Mr. Tancredo. Gentleman from Colorado, Mr. Schaffer?

Mr. Schaffer. Thank you, Mr. Chairman.

I have a bunch of questions I want to get answered, but I was sidetracked by the gentleman's comments, and I just offer some of my own insight on this particular question.

I started charter schools six years ago, not single-handedly but with a bunch of parents in Fort Collins, Colorado. We had similar debates in the community that if you allow just a handful of kids, about 700 at this point, to have school choice, what about the other thousands of kids who

won't be able to go to that school when the seats are all full and why should we set up a system that would only benefit those that would be lucky enough to get in the door?

That argument is nuts and, frankly, shortsighted because what happens in Fort Collins is what happens anywhere school choice exists, and that is what we hope to achieve by way of school reform which when it actually happens and the entire system improves. A market approach to education, even if it is just a small step in the right direction, benefits education in general, which is what we are all about and what we are hoping to achieve I think in the end, even though all don't agree on the particular methodologies and the goal of everyone on the panel and on the committee here as well.

You know, our test scores at that charter school started climbing through the roof on mathematics. And so we had about 1,000 families on our waiting list that wanted to get in. And so every elementary school principal in Fort Collins realized that they had about $200,000 worth of bodies in their classrooms whose parents wanted them to go somewhere else, and so the principals actually got competitive about it. They started marketing their schools and trying to come up with areas of expertise where they specialize. One school, the school in my neighborhood that I took my kids out of and put in the charter school, they produced a brochure, started handing it out in the neighborhood trying to talk about what they were going to start doing better than anyone else.

Some of the principals came over to the school. They said, you know, what are you teaching your kids in math? We want to know how you get the test scores up. And we said, well, we have a different curriculum than you use in the regular schools, and we will show you everything you want to know about it. You can come to a seminar we are holding on it.

And so some of the principals showed up. And we use a Singapore math program because Singapore, the country, has the highest math scores in the world. And so we want to do what they do, and researched it. It wasn't quite that easy, but researched it and trained our teachers on it. And so we use Singapore math. And now about a third of the schools in my community are using Singapore math, because of the score, they had choice, was the only one that had the guts and the courage to try something different. It wouldn't happen otherwise. Our kids started reading better, too.

And so, sure enough, those principals that had $200,000 worth of children on the waiting list at our school came over and asked, how do you teach them to read over at your place? And so we helped them and taught them, and so some other schools in our district are starting to use the reading program that we use at our school.

So the notion that only the kids who go to Liberty Common Charter School are the ones who benefited is just unfounded. The reality is that every school in my school district has improved dramatically because of the introduction of one school of choice.

So a scholarship program that provides additional money on top of what your schools are already receiving, Ms. Moody, and going to receive, the increases in the future, this is new money we are talking about, offers a new opportunity for a variety of children in the D.C. area so that they

can select the kind of schools that make the most sense of them.

Ms. Williams, I read your testimony. I am sorry I didn't hear it personally, but I read through it while I was sitting here. You chose to go to a different school because the school that the government told you that you must send your kids to was basically still segregated and that is something you don't want, and so you pulled your kids out and left. Am I characterizing that correctly?

Ms. Williams. Correct.

Mr. Schaffer. Mr. Mincberg, in his testimony, said: Voucher schools in Cleveland are bad because there are some of them, one of them was in a voucher program, operated 2 years, despite the fact it was in a 110-year-old building, had no fire alarm, sprinkler system, and was under a fire watch. Lead-based paint, which can cause brain damage in children, was found in a school at a level eight times greater than generally allowed.

Let me ask you, Ms. Williams, which is worse, lead-based paint on the walls or segregated school? .

Ms. Williams. Come on.

Mr. Schaffer. Let me refer to your testimony again, a school that is still basically segregated. Which is worse, in your opinion?

Ms. Williams. Segregation.

Mr. Schaffer. I am sorry?

Ms. Williams. The desegregated school.

Mr. Schaffer. The segregated school?

Mr. Tancredo. The gentleman's time has expired.

Mr. Schaffer. Let me.

Mr. Tancredo. The gentleman's time has expired.

Mr. Schaffer. Well, I didn’t get anywhere.

Mr. Tancredo. Mr. Kildee.

Mr. Kildee. Thank you, Mr. Chairman.

This committee historically has not been rigid or unbending on this issue. Nonpublic schools do qualify for the school lunch program. I can recall after Ronald Reagan put a tuition cap

on that program, we removed it. When the Felton decision was changed, we went back and took the kids out of the trailers and let them go back into the school buildings with public school teachers in nonpublic school buildings. We do provide equipment, books, and computers under Title VI. It was my amendment that made permanent the status of the Office of Nonpublic Schools within the Department of Education. So we have not been rigid or unbending.

My question, I guess, would be, Mr. Mincberg, do you have concerns with what the committee has done historically through the years?

And, Mr. Kmiec, do you feel this has not gone far enough?

So, Mr. Mincberg first, and then Mr. Kmiec.

Mr. Mincberg. We have not objected to the steps that you have taken so far, Congressman, which I think demonstrates that we are not against private schools, as many people charge. I think our concern, however, is that when we are dealing with public schools, they are the ones that are, after all, supported by the public. They are the ones that need the taxpayers' support. And we don't want to take money that is supposed to be going for those kids and drain it off, particularly in a situation, and this is what concerns me about the so-called extra $45 million that has been talked about with Mr. Armey's bill, particularly in a situation where the president's budget doesn't fully fund the No Child Left Behind Act, where it cuts it from what it was supposed to be, where several hundred million dollars is cut from Safe and Drug-Free Schools programs and technology programs. Under those circumstances, before we start talking about voucher programs, which, in our view, don't do the job, we ought to be more fully funding the programs that this Congress has adopted, but which, unfortunately, are not being fully funded thanks to the proposals in the president's budget.

Mr. Kildee. Mr. Kmiec.

Mr. Kmiec. Congressman, I think the previous steps you allude to were all salutary. I think they are all taken under the constitutional jurisprudence as it then existed; that you properly studied that and allocated those things that complied with the court's direction as to what would and would not constitute a violation of the Constitution and in an overarching sense, and provided as much assistance as you could.

The reason they were salutary is because it provided the necessary insight that when we are talking about education, it is not a presumption for one school or school system over another. In your judgment and our interest as parents and as educators is to have a presumption in favor of children and their education. There is only one general education fund, and all taxpayers, religious, nonreligious, unbelieving, believing, are all interested in a fair, nondiscriminatory allocation of that fund. You did it with respect to books, you did it with respect to school lunches, you did it with respect to computers and other equipment.

I think it is time, now that the jurisprudence has opened up, to do it with respect to the system as a whole, because, after all, as Justice O'Connor pointed out in her concurring opinion in the Supreme Court, parents don't think in terms of when a program was enacted or whether vouchers are a separate enactment from the public school system. They only want to know, what

are my choices for my child? And I think our responsibility now is to maximize those choices and to take that next step.

Mr. Kildee. I come from Michigan, and Michigan and California had a referendum on the question of aid to the nonpublic schools and these referendums where turned down by great margins. How should Congress respond to that expression of public opinion?

Mr. Kmiec. I think these referenda, unfortunately, in the past have been manipulated by the perception that this was somehow going to violate our principle of religious freedom; that somehow we were going to breach the principle of no establishment. I lived in Michigan for a while and taught at Notre Dame, and I think I was there during the period of that referendum. Many people anticipated that this was somehow stretching the boundaries of our constitutional system and somehow was inherently wrongful, and they didn't want to give up that valued protection of religious freedom.

But I think the court has now wisely told us that you don't do that when parents are making the choice. The only time there is a risk is when this government or state governments directly send finances to a particular religious school, because then you worry that there is an improper endorsement of one faith over another.

So I think one of those problems with those referenda is that they were unfortunately tinged to a greater degree than we would like to believe by that constitutional misunderstanding.

I think part of the problem also is that when you are lucky enough to have a good job and to live in a good public school district, you like what you have. And a lot of people get talked into that the only way you can protect what you have is by not sharing it with others. Now, I think one of the things we all know as Americans is that we are in this together, and all of our children count. And I think by the steps you were taking in the past and the steps we are talking about today in terms of amalgamating the general education fund and then fairly distributing it is the step that shows we are all in it together. And I think we will overcome that referenda intransigence.

Mr. Tancredo. The gentleman from New Jersey Mr. Payne.

Mr. Payne. Thank you very much.

You know, this all in it together stuff sounds pretty good. However, one thing we do find is that most of the proponents, Mr. Armey, many of the strongest pushers for vouchers find that this is not an issue in their district. They don't go back to their little town and say, I got a great idea; we have got vouchers, and we want that to come out of the public school. None. Zero. Not even our current chairperson of the committee.

Mr. Tancredo. If the gentleman will excuse me, but I have, let us see, once put it on the ballot in Colorado and introduced it when I was the chairman of the education committee in Colorado, and I certainly push it as aggressively as I possibly can in Colorado; not successfully so far.

Mr. Payne. Well, you are unique, because most of the persons supporting vouchers don't advocate them locally.

I am a product of the public schools. The lady asked did any of us go. Major Owens and I laughed at each other, because we wondered, well, where else did we go to school? We all went to public schools. I was actually a single parent; my kids went to public schools. I have triplet grandchildren; they go to public schools.

We live in the same block I lived for 40 years, so the neighborhood has certainly changed. I didn't move out, but we weren't satisfied with the schools, so I made a lot of noise. Since I had to go to the PTA meetings, I became the president of the PTA, like you, Ms. Moody.

In New Jersey we have charter schools that started. Guess what? It is against the law in New Jersey to have more than 18 kids in a charter school class. Interesting.

What do we want? Why don't we have the same thing that they have in the schools in Mr. Armey's district?

Secondly, I have never seen so much money. You talk about referendums being fought. Every single morning in the District of Columbia, if you look at the Today Show or Channel 7, you see this grandparent that really wants to see their child do better, African American, so forth.

I would really like to find out how much money, I mean, hundreds of millions of dollars that is being spent for the proponents of this voucher thing. So it goes beyond, and, as a matter of fact, many of the people who are very sympathetic with vouchers, when I look at civil rights issues and look at aid to homeless families or full funding of Head Start or more funds for HIV and AIDS, all of the people who are pushing this voucher are all kind of no on those things. We don't like to spend money. We don't feel that a person needs this handout.

And so there is some kind of disconnect and I am trying to get to really what the bottom of this is. I know there is frustration, and there needs to certainly be improvement of the public school system. However, if this voucher thing continues, I see an end to the public school system, what has made America great.

And when I went to school, there were private schools and there were parochial schools. I passed them. My good buddy used to walk up to Good Counsel. He went in; I went up to Elliott Street Elementary public school, and I never felt that because he went to that parochial school or to, even a couple went to private schools, I didn't think there was anything wrong with that. If they had the interest and ability to go, that was fine. And then we used to walk back home together after school. So I didn't feel I was being shut out or left out, or he or she had some opportunity that I didn't have. You know, I just never thought about it much in that way.

And so my concern is as we continue to take money out of public schools, it is going to really have them fail worse than what they are failing now. And I don't know what the answer is. One, there is not enough room. You talk about private schools; they are 10- to $12,000. Even if we increased it to 6,000, we can't even get a Pell grant over $3,900 for college. We tried to get it

increased this year. The Pell grant is going to be less this year than it was last year because they are not funding education.

I don't blame a person who is worried about their child, so in no way, Ms. Williams or Ms. Kitchen, do I say that you are wrong; you are 1,000 percent right. And that is not your responsibility to worry about anybody but your child, and that is the way I felt about mine, too.

However, I think those of us who are in public policy do have a responsibility. We didn't like our roads in this country, and so, you know, you see those red, white, and blue signs on highways. We just fully funded highways. Everywhere you go, you see them built because we were failing in that area, I guess someone felt. Why don't we do the same thing with education? Our defense, they felt it was a little bit weak. We are fully funding defense. If we want to make education a priority, we should have the same opportunity in Milwaukee and in Washington in the public school system as we have on public highways, as we have on everything else. It is just a disconnect. We take this and put it on the side and make it like a special thing when we go and do everything else that we feel is urgent in this nation.

So I guess my time has expired. Thank you.

Mr. Tancredo. The gentleman's time has expired.

We are going to go for one more round here, if you want. And I think Mr. Schaffer has some follow-up.

Mr. Schaffer. Thank you. I do. I didn't finish because I was responding to Mr. Holt before.

But I wanted to ask Ms. Kitchen, you mentioned in your testimony and also in your verbal testimony, which I did hear, in your written testimony at the same time, one of Tiffany's teachers had her arm broken by a student who then threatened rape. You talked about drug dealers, prostitution that your five children were exposed to in the government-owned school. And in the Cleveland schools, again, according to Mr. Mincberg, there was one of the voucher schools that was in a 110-year-old building. What is worse, in your opinion, the 110-year-old building or having the rapists in the school?

Ms. Kitchen. You know, as I sit and listen to all of this stuff going back and forth, what is important are lives. Children's lives are important. There are failing and dilapidated school buildings all through the Cleveland public system; it is not the building, it is the child.

You know, we can go on and on but this issue has changed to something called voucher when the problem is the school system was not delivering the product that we sent our children there to receive, which was a decent education. We don't really care what you call it. Call it voucher, stipend, help, whatever. If something doesn't work, parents, anyone, needs the opportunity to remove that that belongs to them from that thing that does not work and place them where it does. If 77,000 children are left, the problem isn't that they are left; it is because of what they are left to. The system is broken. Fix it, and no children will be left.

What is most important, to answer your question, are the lives of these children.

Mr. Schaffer. Amen. But the overall debate here is over who should be in the position of authority to make these important decisions, to make decisions about the lives of these kids. And there are some who believe that you must be maybe a board member of a government-owned school or some kind of education professional to make that decision; others who believe parents are equipped and capable of making those decisions.

That is why I ask these kind of graphic questions; because they are presented as testimony that the voucher is a bad thing because some of the schools that receives the voucher children are in 110-year-old buildings and have lead paint on the wall. Your testimony, the both of you, were that, I wanted to get my kids out of the other setting, which was not conducive to learning.

And the point being is that there are lots of bad places you could send your kids and some of them are private, some of them are public. The question is, who should decide? And when the government decides, they force kids at somebody else's expense often to go to schools that their parents don't want them in. And I think the basis of Mr. Armey's bill is that for those parents who want to send their kids to someplace that has inspired their confidence and earned their trust, they should have the same freedom that others do.

Ms. Williams mentioned in her testimony, and again, I am sorry I missed it, that Police Chief Charles Ramsey sends his kid, your police chief, sends his son to a private school. Why did you mention that? Why is that important to you?

Ms. Williams. Because I think I am better than the mayor, and I want my child to go to a private school also.

Mr. Schaffer. This was the police chief.

Ms. Williams. Chief, whomever; I just want my child to have a better education. I don't see what is wrong with it. This is ridiculous. I didn't come here for this. This is silly, all this statistics and going back and forth and all this crap. If you have the money, you want to give it to the people, give it to them and let them make their choice. But all of this statistics and bickering and back and forth with one another, this personal thing you guys got going on, I am about sick of it. Really. And to be truthful, I don't mean to cut you off, but I have to go. I wanted to sit here and I wanted to see exactly what was being said, because this is new to me.

You know, I am thinking you guys have got something going on, you know. You are going to get your minds together and make a decision, either you give it up or you don't. But I have to go to work. I appreciate your time and listening and everything, but I have to go.

Mr. Schaffer. That is probably the best testimony I have heard all day. I appreciate that. I am serious about that.

Ms. Williams. I see you guys. Thanks. It was fun.

Mr. Schaffer. That concludes my questioning.

Mr. Tancredo. Thank you, Ms. Williams.

Mr. Scott.

Mr. Scott. Thank you, Mr. Chairman.

Mr. Chairman, one of the statistics that has been bandied around that apparently aggravates somebody is the 2 percent, 1 out of 50, which is the chances that Ms. Williams' child might actually get one of those vouchers. She said she would get one, but people will win the lottery. Let us change Social Security to the lottery. People who win the lottery would be much better off than fooling around with Social Security. Get the lottery. That is not a very viable situation because everybody who doesn't hit the lottery will be a lot worse off.

So here we have people shooting for a 1-out-of-50 shot. If they hit, they might be, just conceding the point from the gentleman from Colorado, might be better off, might not, but it is a 1-out-of-50 shot.

Let me ask Mr. Mincberg, we talked about the civil rights protections. The general, that got exempted, the general civil rights protection in here that says you can't discriminate on race, color, race, national origin, or sex, there is one little element that is conspicuously omitted. Would religious discrimination be possible?

Mr. Mincberg. Yes, Congressman. As I said in my testimony, as I understand it, schools could discriminate as they please on the basis of religion.

Mr. Scott. And deny admission to someone solely based on religion and still participate?

Mr. Mincberg. That is the way the bill reads.

Mr. Scott. Ms. Moody, do you deal with the school board? Do you lobby the school board and try to get them to enact certain initiatives? Do you deal with them on any frequent basis?

Ms. Moody. Yes. I work with the school board, and I have been on the board of education. And, as a PTA person, yes, I work with the board of education.

Mr. Scott. Well, let me ask you. If we pass this and gave a $5,000 benefit to the poor, how long would it take before other parents would demand the same benefit for them? And who would be stronger, the low-income parents or everybody else?

Ms. Moody. Everybody else would be, not the low-income parent, because they are not going to be the ones to come out and beg for their children.

Mr. Scott. And so if the faucet gets turned on for those that are already in private school, would it be your assessment that this program would be expanded to include everybody in private school?

Ms. Moody. You are asking me my personal opinion, and I believe that is the future intent.

Mr. Scott. Thank you.

I don't know who this would be aimed at. We have a finding in here that the costs are lower at private schools. Does anybody know whether that is a cost of the education or the tuition they charge?

Ms. Moody. I cannot answer the question specific, but I want to piggyback on what Ms. Williams said. She had that the tuition at her school was $11,000. She received two $2,000 grants, which was $4,000. If she gets this $5,000, she still has a $2,000 bill to pay.

Mr. Scott. Well, the cost of the education or the tuition is sometimes two different things. Some people can charge a low tuition because they are being bankrolled by endowments, foundations, church, and everything else. The finding on page 4, line 3 says the costs are lower at private schools, and my question is, does anybody know whether that means the cost of the education or the tuition they charge?

Mr. Kmiec. I think it means the administrative costs, Congressman, because I think there have been a number of studies that have demonstrated that the per capita administrative cost between private and public schools is much more favorable to the private side.

Mr. Mincberg. If I can interject, Congressman, my understanding of that statistic in terms of its alleged cost of public schools is that it takes total costs and then averages them by student. So, therefore, what is built into that are costs such as special education, which is extremely costly, and which, of course, private schools don't pay for.

So my understanding, in addition to the reason that you cited, is that the alleged finding in the bill is really not an accurate one.

Mr. Scott. We talked about this be thing being perfectly constitutional. There is a difference between not being illegal and whether it is good policy. Mr. Kmiec, you are familiar with the Cleveland case. The concurring opinion that suggested that the establishment clause does not apply to the states, do you agree with Thomas's concurring opinion?

Mr. Mincberg. No, Congressman.

Mr. Scott. This is to Mr. Kmiec.

Mr. Mincberg. Oh, I am sorry.

Mr. Scott. Do you agree?

Mr. Kmiec. I think Justice Thomas was engaging in a bit of historical commentary there. Justice Harland before him had indicated that the establishment clause was originally intended to apply, of course, against the federal government and not the states. The 14th amendment changed that. There was a debate at the time of the 14th amendment as to whether or not the meaning was the same at the federal and state level. As a matter of constitutional law, the meaning is the same. Justice Thomas, I think, was raising the historical question that it might not always have been thought to be so.

Mr. Tancredo. The gentleman's time has expired.

I thank the witnesses and the members for their valuable time and participation. If there is no further business, the committee stands adjourned.

[Whereupon, at 12:44 p.m., the committee was adjourned.]

APPENDIX A -- OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

STATEMENT BY CHAIRMAN JOHN A. BOEHNER

HOUSE EDUCATION AND THE WORKFORCE COMMITTEE
HEARING ON

"WHAT'S NEXT FOR SCHOOL CHOICE"

JULY 23, 2002

Good morning, and thank you all for being here. We're here today because all of us believe every American child should have the chance to learn and pursue the American Dream.

Unfortunately, as things currently stand, not every child in America today will get that chance. America is not yet a land of equal educational opportunity. Children of parents in poor communities do not have the same educational options as their counterparts in wealthier districts. This reality disproportionately impacts minority Americans, and it is a direct cause of the academic achievement gap that continues to exist in the United States between disadvantaged students and their peers.

Our first priority is to strengthen all of our schools with new resources, accountability, and local control. The bipartisan *No Child Left Behind* Act signed into law by President Bush in January takes this approach. The new law says that when schools are struggling we'll focus more attention on them, and push them to excel. Under *No Child Left Behind*, our nation's poorest schools this year will receive an historic increase in federal aid, and underachieving schools will qualify for extra help.

We can't turn our backs on underachieving schools, and we won't. But we can't turn our backs on children trapped in endlessly underachieving schools, either. When schools do not teach and do not change – even after repeated efforts to turn them around – there must be a "safety valve" for the students. That's what today's hearing is about.

For low-income parents, education choice can mean the difference between keeping a child trapped in a chronically underachieving school that refuses to change, or sending a child to a better-achieving school that offers hope. Giving parents new options is a critical next step in education reform, especially in light of the recent Supreme Court ruling upholding the constitutionality of the Cleveland school choice program.

The Court's decision is a victory not only for low-income parents and students, but for American education as well. It lays the groundwork for future progress on private school choice and moves us decisively forward in the drive for equal educational opportunity. Education choice not only gives parents of all income levels the chance to choose the best education possible for their children, but also provides a powerful incentive for all schools to strive for high levels of academic achievement.

The decision should encourage lawmakers around the country to create new school choice programs that offer renewed hope for every parent who wants the best education for their child. In fact, my good friend Dick Armey has led the way and recently introduced a school choice bill for parents in Washington, D.C.

Expanding parental choice also helps to energize the public education system and spur struggling schools to succeed. Critics wrongly claim giving parents more choice will result in resources being "drained away" from public schools. The evidence we've seen in places like Florida, where parental choice measures for low-income families have been successfully implemented as a means of bolstering school accountability, and Cleveland suggests these fears are unfounded. The Cleveland choice program has proven effective in enhancing academic achievement.

Parental choice doesn't drain resources away from public schools. But the *absence* of parental choice drains hope away from disadvantaged students. This is the issue Congress is compelled to address.

Last year, at the President's urging, Congress took significant bipartisan action to expand choices for low-income parents. The decision by the Supreme Court builds on the new options that parents have under *No Child Left Behind*. The new law allows federal Title I education dollars to go to private, faith-based educational organizations to provide tutoring, after-school learning and other supplemental educational services to low-income students in underachieving public schools. This provision confirms the portability of Title I funds and lays the groundwork for further expansion of parental choice in education.

Republicans and Democrats in Congress must build on this solid foundation by taking further action to expand parental choice in education. Parental choice is an essential element of accountability. It makes our schools stronger, not weaker. If we truly hope to improve all of America's schools, equal educational opportunity for all students is essential.

With that, I yield to my friend Mr. Miller for any opening statement he may have.

APPENDIX B -- STATEMENT OF RICHARD K. ARMEY, MAJORITY LEADER, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Office of the House Majority Leader

For immediate release—
July 23, 2002

Contact: Terry Holt/Richard Diamond
(202) 225-6007

Congressman Dick Armey
Testimony before the House Education and the Workforce Committee

July 23, 2002

Mr. Chairman:

I would like to thank the Committee and you, Chairman Boehner, for providing the opportunity to testify before you on the merits of school choice.

School choice works. School choice gives freedom, opportunity and hope to thousands of children trapped in failing schools all across America. Best of all, school choice is a time-tested and Supreme Court validated alternative to the limited education options many families now face.

School choice can mean a lot of things to a lot of people. But at its heart, school choice is about giving parents control over the future of their children. It's about putting the needs of children in front of the one-size-fits-all mandates of an education bureaucracy. It's is about giving overlooked, low-income families the same options that more fortunate families already have.

The time has come to offer more options to parents to bring about a better future for their children.

The idea of parental choice is nothing new. It's been an option for well-off families at the elementary and secondary levels for more than a hundred years. They've had the choice to send their children to private or religious academies instead of public schools practically since the founding of our nation.

At the college level, Pell Grants expanded the concept of choice to needy students in 1972. Similarly, the Montgomery G.I. Bill gave tuition assistance to eligible military personnel allowing them to attend the public or private college of their choice. The amount of federal support for students in higher education has been quite generous. Last year, the federal government spent $10.3 billion on Pell Grants, helping 4.4 million needy students, and $2.2 billion on the Montgomery G.I. Bill, helping 400,000 military personnel with their education.

If it's a good idea to give needy students a choice in higher education, why not help children from low-income families in grade school? How much more important is it that we help

them when they need it most, in the formative years their education? Although so much of a child's future is determined by grades K-12, no federal program exists to provide these students with the option of choosing a better alternative.

State-sponsored school choice programs in Cleveland and Milwaukee enjoy great success. Similarly, several private-sponsored programs in places like Albany, New York and Dayton, Ohio have proven to be effective. Yet the federal government has failed to extend the same opportunity to low-income parents.

Recently, however, the tide in the school choice movement has changed. For the first time, President Bush's historic *No Child Left Behind Act* introduced *public* school choice into federal law. Beginning with the current school year, students enrolled in any of the 8,652 schools listed as failing under Title I will have the option to transfer to another public school within the same district. The district would have to provide or pay for the student's transportation to the new school with federal funds.

Public school choice reflects an important shift in federal education policy that will benefit thousands of at-risk children each year. However, this is only a first step. Public school choice offers a very limited option to families trapped in inner cities and other areas with neglected schools. For school choice to provide maximum benefit to families, it *must* be extended to include both public *and* private schools.

The Benefits of School Choice

In his book, *The Education Gap: Vouchers and Urban Schools*, Harvard Professor Paul Peterson demonstrates the dramatic improvement school choice makes in the lives of students. Professor Peterson surveyed three privately-funded school choice programs in New York City, Dayton and here in Washington to evaluate their relative success or failure.

What did he find? In all three programs, parents who took advantage of school choice programs were much more satisfied with the education their child received. More importantly, the study found that African-Americans—who disproportionately reside in areas with chronically failing schools—showed remarkable test score gains over the course of three years when enrolled in a private school choice alternative.

I began my testimony today with the simple statement that school choice works. I have seen it work firsthand. I have personally seen how it can touch the lives of youngsters and help turn an at-risk child into a vibrant, outgoing student with knowledge in his head and hope in his heart. I have seen the impact that a better education can have, and seen the difference that dedicated teachers and a loving environment can make.

The Opponents of School Choice

Despite these positive results, some that still refuse to believe that parents, not bureaucrats, should have the final say about their child's education. Opponents look at the

smiles on the faces of children whose lives have been improved through school choice and still stubbornly refuse to give other needy students a fair shot at a quality education.

Generally speaking, this opposition takes the form of three basic arguments: (1) that school choice is unconstitutional, (2) that school choice hurts public schools, and (3) that parents don't want school choice.

First, I'm happy to say that we can finally dispense with the argument over constitutionality. On June 27, the Supreme Court ruled in *Zelman* v. *Simmons-Harris* that the Cleveland school choice program was indeed Constitutional. Because the scholarships were given to *families* who decided where to spend the money, the program offered true private choice that was not in violation of the first amendment's establishment clause.

Second, opponents often argue that school choice hurts public schools. Nothing could be further from the truth. School choice reduces classroom sizes, gives schools greater flexibility in allocating their staff and resources, and helps states identify which schools are truly in need of emergency attention.

For instance, per pupil spending in public schools in Milwaukee has *increased* by $1,500 over the first ten years of their school choice program. When philanthropist Virginia Gilder offered private scholarships to every student at the worst public school in Albany, New York, one-fifth of the student body accepted. The result? The Albany school superintendent hired a new principal for the school, two new assistant principals, replaced eight teachers, and overhauled its curriculum. This competition strengthened Albany's public schools, benefiting all children in the district, especially those in public schools.

Finally, opponents offer up the myth that parent's don't want school choice. The truth is that parents love their children and want what's best for them. As a result, they flock to this kind of opportunity. When the Washington Scholarship Fund offered 1,000 scholarships to low-income children here in the District of Columbia just a few years ago, it found itself overwhelmed by the positive response. *One out of every six eligible children in the District applied.*

Several polls have also captured the enthusiasm of parents who want a choice. A poll commissioned last year by Phi Delta Kappa, a professional teacher's association opposed to school choice, found that 52 percent of public school parents supported initiatives to allow them to choose the schools their children attend. The Joint Center for Political and Economic Studies in Washington found that 57 percent of African-Americans favored school choice. Among African-Americans with children, that number soars to 74 percent.

What Next?

The tired arguments against school choice grow less and less relevant every year. Now, in light of the recent court approval, the time has come for the federal government to step up to the plate and take the lead in ushering the school choice movement into the 21st century. We

need to create a program that gives equal opportunity and access to a quality education for every child in America.

Congress has a unique opportunity to do what is right—right here in our own backyard. Despite countless so-called "reforms," the situation in D.C. public schools is approaching catastrophe. We should step in and help the students trapped in these schools.

Year in and year out, the District is listed among the worst public schools systems in the nation. According to the most recent National Assessment of Education Progress (NAEP) data, D.C. ranked dead last in 4th grade reading and math, and 8th grade reading, math, science and writing.

By its own assessment, the D.C. public school system is failing the job of educating its own students. Statistics from the D.C. school website indicate that student performance declines the longer a child is in a District public school. The percent of students scoring at or above the basic level on the Stanford-9 reading test steadily declines from 84 percent in 6th grade to a low of 53 percent in 10th and 11th. The results are even worse on the Stanford-9 math test where proficiency drops from a high of 89 percent in 1st grade to an abysmal 28 percent in 10th and 11th grade.

These figures aren't just unacceptable, they are downright embarrassing. Something has to be done to reverse this continuing trend of academic failure.

That's why I have introduced H.R. 5033, *the District of Columbia Student Opportunity Scholarship Act of 2002*. H.R. 5033 is virtually identical to legislation we sent to the White House in 1998. Unfortunately, then-President Clinton decided to side against the low-income families of D.C. and vetoed the measure. It would have given parents the option to participate in a voluntary school choice program.

It is important to emphasize that this bill is not a Washington mandate. It's voluntary at every step of the way. Parents have the opportunity to use, or not use, these funds if they believe it will give their children a chance at a better future.

H.R. 5033 would create a private, independent nonprofit District of Columbia Scholarship Corporation to administer a new federal school choice scholarship program for D.C. The Corporation would be in charge of awarding two different kinds of scholarships. In order to qualify, students would have to be District residents in school grades K-12 and have a family income no greater than 185 percent of the poverty level.

The first type of scholarship would provide tuition assistance for students unsatisfied with their current school. These tuition scholarships could be used to cover the costs of attending a public or private school in D.C. and adjacent counties in Maryland and Virginia. The second type would be a special Enhanced Achievement Scholarship offered to students satisfied with their current school. The Enhanced Achievement Scholarships would help parents pay for supplemental tutoring assistance in addition to their in-classroom learning.

The size of each scholarship award would vary depending on the income of the family and the new costs incurred by the student. Students whose family incomes are below the poverty line may receive a scholarship of up to $5000 or the cost of tuition, whichever is less. Students whose family incomes are above the poverty line but below 185 percent of the poverty level may receive up to $3750. Students receiving Enhanced Achievement Scholarships are eligible for awards up to $800. These figures would be indexed to inflation.

Scholarships would be awarded on a priority basis to ensure that students with the greatest need have the best chance to receive a scholarship. Scholarships would go first to applicants who had received them in the previous year, then to all other qualifying D.C. public school applicants in grades K-12, then to applicants who are the victims of documented acts of school violence, and finally to all other applicants in the D.C. school system. If funds are insufficient for all the eligible applicants on any of the priority tiers, scholarships would then be awarded randomly by lottery to those applicants.

H.R. 5033 would authorize $45 million for the scholarships over the next five years. At that funding level, *at least* 8,300 tuition scholarships would be awarded to needy children or as many as 52,000 Enhanced Achievement Scholarship, depending on the applications received.

Think about that for a minute. My bill could give 8,000 children—one out of every nine of the District's 77,000 public school students—a chance to attend an institution where they'd learn in a safe, wholesome environment. Or it could give two-thirds of those children access to tutoring without even having to change their school. In my mind, that's a big deal.

Given the success of school choice programs in Cleveland, Milwaukee, and elsewhere, we know there's an alternative for those stuck in a failing District school system. It is our duty to offer a real option so that these children can enjoy worthwhile education and a better future. I know it, these parents know it, and anyone with an open mind ought to know it.

But don't take my word for it, Mr. Chairman. Take the word of 131 of our colleagues here in the House and 41 of our colleagues in the Senate who have school-age children at home. They choose to use their own money to exercise school choice and send at least one of their children to a private school instead of their local public school.

It's high time we gave the exact same option to the low-income parents with children stuck in a public school system that has failed them.

Thank you for your time, Mr. Chairman, and I would be happy to briefly answer any of your questions.

APPENDIX C -- STATEMENT OF TAMIKO WILLIAMS, PARENT, WASHINGTON, D.C.

Congressional Testimony submitted by
Tamiko Williams, District of Columbia resident & Washington Scholarship Fund recipient,
to the Committee on Education & the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

"What's Next for School Choice?" Hearing

10 a.m. on July 23, 2002

in Room 2175 Rayburn HOB

Chairman Boehner (pronounced *bay-ner*), ladies and gentlemen of the Committee, my name is Tamiko Williams … I am a long-time resident of the District of Columbia — 39 years — and a product of the D.C. Public School System. As you consider your responsibility in helping guide the next steps our country takes for education, and what has become known as "school choice — I thank you for including the viewpoints of a parent … a single parent caught in the middle of trying to provide the best education possible for her daughter … a parent committed to helping her daughter see the possibilities that lie beyond the streets of our D.C. neighborhood.

I commend you for inviting me — I'm not exactly a "poster child" for how school choice options work. My story is about how the school choice options available have failed my daughter and me.

My reason for seeking scholarship assistance for my daughter is the most obvious, but least recognized reason.

In the District of Columbia, as in many inner-city areas around the country, our schools are basically still segregated — you can call it demographics … you can re-zone and use busing … but let's be honest, it's segregation — economic segregation.

The bottom line is that you have "school choice" … unless you are poor. That's why so few people are willing to stand up and get involved in this important discussion — they already have "school choice." **I don't.**

I'm not unhappy with the public school my daughter is assigned to … but I also know lots of parents who are. I'm just determined to increase my daughter's chances of exploring the world outside of our neighborhood.

Even though I'm not unhappy with our public school, it doesn't change the fact that it is still a segregated school … that my daughter's perception of her world, and her future is shaped by that experience. I want to help my daughter realize that her horizons can be bigger than what these neighborhoods show her. I want her to see that her future is bright.

That is my reason for wanting a choice — to be free to expand my daughter's horizons. *Doesn't she deserve that? Isn't that what America is about?*

My elected Representative recently told you from the floor of Congress that she doesn't believe D.C. residents are calling for more "school choice" … and that D.C.'s charter schools and private scholarship programs make it an example of "school choice."

Well, I want REAL "school choice" … and so do the hundreds of families I spent time with during the research testing for the Washington Scholarship Fund … and the thousands of families still applying for scholarships.

The current choice options failed me — and those same options will fail other parents without the financial resources to even use a private scholarship … ***IF*** they are lucky enough to receive one.

Small private scholarships … charter schools … intra-district choice — those are all nice options … but who are we kidding. It's still not a ***freedom of choice*** … it is just an ***illusion of choice*** because poor parents are still "told" where they can go based on the economics of their situation.

… I recently read that even 47 percent of Congressional Representatives and 50 percent of Senators with school-aged children have used a private school choice option. Did you know that the Mayor of the District of Columbia is a product of private schools? … that our Police Chief, Charles Ramsey, sends his son to a private school … that some of the most successful business people in our area went to private schools, and many of those with school-aged children send them to private school …

So what about me … and parents like me … with school-aged children?

After participating in three lotteries, my daughter, Jeraine, finally received a privately funded scholarship assistance for the 2001-2002 school year …

My daughter and I were so excited that we brought balloons to thank the staff at the Washington Scholarship Fund when we picked up our scholarship information packet. We knew exactly which school we wanted to attend — The Owl School.

Located in Northwest DC, this school has a solid, traditional academic program … a very diverse student population (which was very important to me) … instruction in French, Latin, computer technology, drama, dance, music, art, and so much more. The Owl School even offers a month-long study abroad program for students entering grades 4 and up.

Needless to say, this school offered the type of environment that my daughter deserves … the type of environment that would allow her to meet students from different backgrounds and cultures … and help her see the possibilities that exist beyond our neighborhood, and in herself.

Soon after those first days and excitement, the reality set in of how little help we were actually getting …

We were receiving the maximum amount of $2,000 from the Washington Scholarship Fund … and I was appreciative, but the fact is I was still faced with about $700 a month school expenses. For someone whose bi-weekly paycheck is $835, that is a heavy burden.

By making some tremendous personal and financial sacrifices this past year … Jeraine enjoyed one of the best school years she has ever had at the school of our dreams … I was able to give her a glimpse of the world she rarely gets to see — the world she deserves.

Near the end of the school year we found out that The Owl School tuition is going up from $8,000 per year to $11,450 per year.

My daughter was heartbroken — and because of that, so am I.

Our plan for now is for Jeraine to return to the D.C. Public School System next year. We recently moved and she will be attending Hine Junior High School. It's a good school, one of the best, I'm told. Jeraine is a bright young lady, and I know she will do just fine.

But if I had more financial assistance for the coming year — or if I had access to the almost $10,000 the government spends on Jeraine's education — we would definitely be back at The Owl School. It is where we want to be, and I believe it offers my daughter a much better opportunity for success.

The Washington Scholarship Fund staff has heard this from me many of times … and in closing, I would like to share it with you:

Their private scholarships are not enough. I know the WSF scholarships are among the highest in the city for K-12 assistance, but it's not enough.

I was fortunate. With $2,000 in assistance, I was able to just make it work — barely … at least for one year. Many of the other families I know and have talked to could never choose a private school with that kind of assistance — it would need to be more than twice that much.

It just took one tuition increase … and now I'm one of the families I kept telling the Washington Scholarship Fund they still weren't helping.

It's amazing how many financial assistance options exist for the collegiate level to go to the school of your choice … Congress and the District have generously provided programs like the D.C. College Access Act — but since we're just trying to survive Junior High and High School, I guess we're not as important.

As for the future of "school choice" … if you plan on helping the neediest of children out there, they need help NOW … in grade school — not WHEN or IF they get to college.

I'm no policy expert … just a parent determined to fight for the best educational opportunities for my daughter … but if you're going to leave NO child behind, it's obvious that you should start with the children with the least financial resources … and those still in grade school.

Don't wait to see if they survive high school and then offer to help them pursue their dreams — come up with a way to help them pursue their dreams today, and the freedom to pursue those dreams where ever they choose.

Committee on Education and the Workforce
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Tamiko S. Williams		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the committee).	Yes	No ✓
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999: None		
3. Will you be representing an entity other than a government entity?	Yes	No ✓
4. Other than yourself, please list what entity or entities you will be representing: Washington Scholarship Fund		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: None		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1999, including the source and amount of each grant or contract: None		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No ✓

Signature: Tamiko Williams Date: 07-18-02

Please attach this sheet to your written testimony.

PERSONAL INFORMATION: Please provide the committee with a copy of your resume (or a curriculum vitae). If none is available, please answer the following questions:

a. Please list any employment, occupation, or work related experiences, and education or training which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:

b. Please provide any other information you wish to convey to the committee, which might aid the members of the committee to understand better the context of your testimony:

When looking for a school I could afford I was limited to Catholic middle schools, or prodominantly African America Private schools. This is not what I wanted for my child, we need diversity. So when making your decision if we are to receive a voucher, please make it possible for us to us the voucher in a school of choice, not the school we have to choose.

Please attach to your written testimony.

APPENDIX D -- STATEMENT OF LINDA MOODY, PRESIDENT, DISTRICT OF COLUMBIA CONGRESS OF PARENTS AND TEACHERS, WASHINGTON, D.C.

National PTA®
*every*child. *one*voice.

Statement of

THE NATIONAL PTA

Submitted to the

Committee on Education and the Workforce
Subcommittee on Education Reform

U. S. House of Representatives

Regarding

THE FUTURE OF SCHOOL CHOICE

Oral Testimony
Presented by

Linda Moody, President
District of Columbia
Congress of Parents and Teachers

July 23, 2002

National Headquarters
330 N. Wabash Ave.
Suite 2100
Chicago, IL 60611-3690
(312) 670-6782
(312) 670-6783 fax
(800) 307-4PTA

Washington DC Office
1090 Vermont Ave. NW
Suite 1200
Washington, DC 20005-4905
(202) 289-6790
(202) 289-6791 fax
(888) 4-ALL-KDS

e-mail: info@pta.org
www.pta.org

Good Morning. My name is Linda Moody, I am the president of the District of Columbia Congress of Parents and Teachers, and I have devoted my adult life to caring for the needs of children in DC. In addition to my own two children, I have also cared for 26 foster children, including several with special needs, all of whom attended public school. Each child had different needs, but the schools they attended worked with me to provide the services appropriate to each child. The last of my foster children left me last summer, and I am happy to say they are all doing well. Several were eventually reunited with their parents or other family members, while some remain in foster care. My adult foster children are working or in college, while several of them have married and begun families of their own. I currently have two grandchildren enrolled in DC public schools, and provide respite care for one foster child. I keep foster children in emergencies or when the regular foster parents need a break.

I would like to thank the Committee for the opportunity to speak against vouchers for the District of Columbia, specifically the program proposed in Mr. Armey's bill, HR 5033.

Voucher proponents assert that low-income children should have the opportunity to attend the same high quality schools that are available to children who live in affluent neighborhoods. As the president of the DC PTA and the representative of its six thousand members, I agree. However we want to make that opportunity available to ALL children, not just a few, the way a voucher program would. We can accomplish that goal by investing in public education, and making sure that **all** schools are high quality.

Over the years, the DC PTA has repeatedly worked in coalition with clergy, educators, and community activists to keep a voucher proposal from being adopted as part of the District of Columbia appropriations bill. Members of the DC PTA are not the only ones in the District who oppose vouchers. When asked their opinion of publicly funded private school vouchers, citizens of the District voted 89% to 11% against them. Some may say times have changed since that ballot referendum occurred, and that public sentiment has shifted. Based on my work in the community, I can tell you that it has not. Residents of the District **still** oppose vouchers. To impose a voucher program on a school district that has so emphatically expressed its opposition completely contradicts the principle of local control of education.

Voters across the country share the aversion to vouchers felt by DC residents. Vouchers have been consistently defeated on state ballot referenda. Most recently, voters in both California and Michigan rejected vouchers by 2:1 margins. Public opinion polls also show little support for vouchers. A poll conducted last year by Zogby International found that only 12 percent of adults (and only 5 percent of African-Americans) think vouchers are the way to improve public schools. A Gallup poll conducted in 2001 found that 75% of respondents favor improving existing public schools over providing parents with vouchers to attend private or religious schools, up from 70% in 1999. Exit polling conducted by *The Washington Post* in November 2000 found that 78% of voters favored fixing troubled public schools, compared to only 16 percent who backed vouchers.

Proponents nevertheless claim that vouchers are desperately needed to help children escape failing public schools. Parents in the District already enjoy broad public school choice. These include school within a school, magnet schools, magnet schools within schools, academies specializing in academics, the arts, math and science, nursing, culinary arts, and criminal justice, as well as more public charter schools per capita than any other district in the country. Furthermore, Mr. Armey's bill does not even target students attending allegedly "failing" public schools. Instead, it is open to all DC residents who meet certain income eligibility criteria, which would include many students already attending private schools.

As a member of National PTA, I believe a quality public education should be available to all children, and families with children in schools needing improvement deserve solutions. However, the solution to failing schools should not be programs that encourage the abandonment of our public schools. Public policy should promote programs that **fix** the problems facing public schools. Vouchers do nothing to improve public schools.

Vouchers do not expand parents' educational options either. HR 5033 would offer vouchers of as much as $5000 where family income is below poverty. According to a summary of HR 5300 on Mr. Armey's website, no more than 1600 vouchers worth $5000 each could be granted each year. There are over 77,000 children enrolled in DC public schools. This program guarantees that most of them will be left behind. Why not implement reforms that benefit ALL children?

Furthermore, there are few places in the District of Columbia or the neighboring suburbs where a $5000 tuition voucher would cover the cost of tuition.

Cost aside, private school administrators would enjoy the real choice and the real benefits of this voucher program, as they get to select which applicants they will accept. Under the Armey proposal, participating private schools could refuse to accept students based on their academic performance, gender, and religion, as well as physical, emotional, behavioral, or learning disabilities. Society would be taking a giant step backward to allow public money to finance schools that discriminate against students on the basis of gender, religion, or disability. The term "choice" sounds appealing, but in fact vouchers are a cruel hoax on many parents whose children will not be able to attend the schools they choose.

This Committee should also reject the Armey proposal because, like all voucher programs, it lacks accountability. The cornerstone of President Bush's education program is **accountability.** Vouchers completely undermine accountability by diverting public funds to private schools, where the taxpayers may exercise no oversight.

According to a poll conducted for Phi Delta Kappa in 1998[1], 75 percent of adults agree that private schools that accept government tuition payments should be accountable to the state in the way public schools are accountable. Yet a report by the U.S. Department of Education that same year found that private schools would not be willing to participate in

voucher programs if they were required to meet the accountability standards the public wants.[2]

Public schools have always been required to make meetings, records such as test scores, dropout rates and other information open and available to the public. They must also comply with all civil rights, health and safety requirements. Now public schools must also meet new federal accountability requirements by adopting standards and implementing assessments to determine whether students are making adequate yearly progress, and by employing only highly qualified teachers. Private schools are not held to any of these requirements.

HR 5033 purports to provide accountability by requiring that the program be evaluated according to comparative test scores, among other criteria. However the bill does not require participating private schools to:

- Adopt academic standards such as those required of public schools under the No Child Left Behind law,
- Hire only "highly qualified" teachers, as defined by No Child Left Behind, or
- Administer assessments identical to those required of students attending public schools in the District of Columbia.

Furthermore, the bill explicitly permits participating private schools to discriminate in admissions and in employment, based on religion, and to use voucher funds for sectarian

educational purposes. Armey vouchers could thus force taxpayers to indirectly finance instruction that teaches children religious beliefs not supported by the taxpayer.

Voucher proponents claim that parents provide all the accountability that is needed – if schools fail to perform, parents can remove their children from the school and re-enroll them elsewhere. There are several problems with this alleged solution however.

First, the threat to withdraw students and take vouchers elsewhere has not prevented mismanagement and fraud. For example, schools participating in the McKay voucher program in Florida, which provides vouchers for students with disabilities, have failed to provide books and services, and have been accused of permitting verbal and physical abuse of the students. In Cleveland, over a quarter of a million dollars in taxpayer funds went to a voucher school that had no fire alarm or sprinkler system, flaking lead paint on the walls, and unlicensed teachers, including one who had been convicted of first-degree murder.[3] In Milwaukee, two voucher schools inflated their enrollment figures to overcharge taxpayers $390,000[4], while other schools charged the city the full value of the voucher while charging lower tuition to non-voucher students.[5]

Second, the decision to remove a child from a school in their neighborhood where they already have friends and know the teachers is hard enough. Parents should not be required to disrupt their children's lives a second time (or more) if schools receiving public funds fail to perform to the parents' satisfaction.

Third, this solution offers the taxpayers no recourse for the misuse of public funds.

Voucher proponents nevertheless support this diversion of public funds to schools that are not publicly accountable, because they assert vouchers improve student achievement for those who receive them, and they claim those left behind also benefit, due to the alleged benefits of competition. The balance of the research, however, does not support these claims.

The U.S. General Accounting Office found that "the contracted evaluations of voucher students' academic achievement in Cleveland and Milwaukee found little or no difference in voucher and public schools students' performance."[6] An analysis of voucher research, conducted by the non-partisan Rand institute, also found that for most students, "attendance at voucher schools has not provided consistent evidence of either benefit or harm in academic achievement."[7] Similarly, an evaluation of the first five years of the Milwaukee voucher program found no achievement differences between voucher students and comparable Milwaukee Public School students.[8]

Furthermore, vouchers have not been proven to have a positive competitive impact on public school systems. A study by released by the Manhattan Institute purports to show that Florida's A+ program, which includes the threat of vouchers, spurred remarkable improvement at schools that had been graded "F" between 1999 and 2000. The study however, did not compare the extra teachers and other resources provided those schools, compared to schools receiving higher grades. Teachers report that resources made the

difference, not the threat of vouchers.[9] Similarly, the Cleveland Public School system has experienced "a number of dramatic changes since the mid-1990s, but there is little evidence to link these changes to choice-induced competition," according to a recently released research report.[10]

Fair competition requires a level playing field, and public and private schools operate under different sets of regulations. Public schools must comply with policies related to standards, access, curriculum, teacher certification, and nondiscrimination. As summarized above, private schools participating in the Armey voucher program would not be subject to these same requirements.

In conclusion:

- Adherence to the principle of local control of education requires this Committee to reject vouchers for the District of Columbia.
- Vouchers would not improve public schools in the District of Columbia, where 90 percent of our children are enrolled.
- Vouchers do not expand parents' educational options.
- Vouchers undermine accountability.
- Vouchers have not been proven to improve student achievement.

The solution this Committee can offer parents dissatisfied with their public schools is the support to improve **all** schools so parents won't want to abandon their neighborhood public schools. For example:

- If children are entering kindergarten unprepared, support early childhood education programs that are aligned with school-readiness standards. The District provides noncompulsory, full-day, early childhood education programs for children in pre-K and Kindergarten that have been hailed as models.
- If students need extra assistance to meet high academic standards, provide expanded learning opportunities. In DC, students having difficulty in school may receive individualized assistance provided by a pupil services team at their school. Many public schools in DC also provide on-site before- and after-school programs, some at no charge, but demand exceeds the supply. Until budget cuts forced its cancellation, DCPS offered a summer school program that provided expanded learning opportunities to students at risk of educational failure, as well as academic enrichment activities.
- If parents need help improving their children's schools, support programs that promote and facilitate parent involvement. The DCPS Office of Parent Affairs offers parents workshops on how to promote their children's academic achievement, and otherwise promotes parent and community involvement.

We support investments in these and other research-tested, proven solutions.

Thank you for your commitment to our children, and for giving me the opportunity to address you. I would be happy to respond to any questions the Committee has.

ENDNOTES

[1] Lowell C. Rose and Alec M. Gallup, "The 30th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Toward the Public Schools," *Phi Delta Kappan* (September 1998).
[2] U.S Dept. of Education, Planning and Evaluation Service, Barriers, *Benefits, and Costs of Using Private Schools to Alleviate Overcrowding in Public Schools*, 1998
[3] "Murderer on Staff of State-Funded Private School," *The Plain Dealer*, July 1, 1999.
[4] "Reality Check on School Vouchers," *Dayton Daily News*, March 18, 1996
[5] PFAW report 14% solution.
[6] School Vouchers: Publicly Funded Programs in Cleveland and Milwaukee, GAO-01-914, August 2001.
[7] Rhetoric Versus Reality: What We Know and What We Need to Know About Vouchers and Charters Schools, Rand, 2001.
[8] John Wittee et al, *Fifth Year Report, Milwaukee Parental Choice Program,* University of Wisconsin-Madison, 1995 and *Achievement Effects of the Milwaukee Voucher Program,* University of Wisconsin-Madison, 1997.
[9] Gregory Camilli and Katrina Bulkley, *Critique of "An Evaluation of the Florida A-Plus Accountability and School Choice Program"* Education Policy Analysis Archives, March 4, 2001; http://epaa.asu.edu/epaa/v9n7/
[10] Frederick M. Hess and Patrick McGuinn, *Muffled by the Din: The Competitive Noneffects of the Cleveland Voucher Program*, Teachers College Record Volume 104, Number 4, June 2002, p 755.

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Linda Moody		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the committee).	Yes	No X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999: None		
3. Will you be representing an entity other than a government entity?	Yes X	No
4. Other than yourself, please list what entity or entities you will be representing: National PTA District of Columbia Congress of Parents and Teachers		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: National PTA Board of Directors DC PTA President		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1999, including the source and amount of each grant or contract: None		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: Linda H Moody Date: 7/23/02

Please attach this sheet to your written testimony.

APPENDIX E -- STATEMENT OF ELLIOT MINCBERG, VICE PRESIDENT AND LEGAL DIRECTOR, PEOPLE FOR THE AMERICAN WAY, WASHINGTON, D.C.

TESTIMONY OF ELLIOT M. MINCBERG
People For the American Way & People For the American Way Foundation
BEFORE HOUSE EDUCATION AND WORKFORCE COMMITTEE
July 23, 2002

Good morning, Mr. Chairman and members of the Committee, and thank you for inviting me to testify here today. My name is Elliot Mincberg and I am the Vice-president and Legal and Education Policy Director of People For the American -- a citizens' organization with 500,000 members and supporters dedicated to protecting constitutional and civil rights, improving public education, and promoting civic participation. I am also Vice President of People For the American Way Foundation, which along with the NAACP, has formed Partners for Public Education that has been mobilizing communities to become strong advocates for their local public schools, and working with parents to become effectively involved in their children's schools. People For the American Way and the Americans we represent are vitally concerned with the overall subject of this hearing: preserving and improving our nation's system of public education so that all children learn and achieve and, so that no child is left behind.

Today, I will focus today particularly on the issue of equal educational opportunities for parents and students in the District of Columbia School System. Despite the claims made by some, providing effective educational options for needy students and supporting vouchers are two very different things.

Residents of DC, like any other locality, deserve to make their own choices in educating their children. Despite what some may think, the DC public school system is not a laboratory for the nation. DC's children should not be used as pawns by voucher proponents in their zeal to weaken the public school system. Private schools are exactly that, schools supported by private funds. On the other hand, public schools just rely on public dollars. If the federal government can afford to send money to private schools, then it can afford to fully fund the public education system.

Time and time again, the public has overwhelmingly rejected vouchers, yet proponents still believe that vouchers are the cure to our nation's education problems and now they wish to test this theory in D.C. Vouchers have not been proven to accomplish any meaningful reform, they merely divert public taxpayer dollars to private and religious institutions. On the other hand, there are immediate reforms that have been proven to work, such as smaller class sizes and teacher quality initiatives. PFAW supports ideas that truly provide effective public school educational options, particularly for low-income students, such as magnet schools, properly run charter schools, and even the recent provision in ESEA that allows parents in chronically failing public schools the ability to transfer to better performing public schools. These methods can help provide quality public education, with accountability for educational performance and true choice by parents and students. These methods can and should be allowed to work.

DC's children deserve reforms that work. Voucher programs divert the public's attention from helping to reform the public education system that will continue to educate the vast majority of our nation's children.

Zelman v. Harris

As the Committee is aware, in a 5-4 decision, the deeply divided United States Supreme Court ruled on June 27th that the Cleveland voucher program did not violate the First Amendment's Establishment Clause. But what may be legally sound is not educationally sound. The Court stated that there was sufficient "parental choice" present in the Cleveland voucher program to not violate the Establishment Clause of the First Amendment. However, the Court did not discuss whether other voucher programs would withstand constitutional scrutiny, nor did it dispute the fact that through the use of vouchers, the Cleveland Public School System is deprived of precious funds that could otherwise be used for the majority of students left in Cleveland's public school system. This is precisely the issue today. The constitutionality of voucher initiatives has never been the major reason for its rejection by voters. The diversion of public school dollars has.

HR 5033, the DC Scholarship Opportunity Act

H.R. 5033, the DC Scholarship Opportunity Act, purports to provide low-income parents with "school choice" by giving them up to $5000 to send their child to` a private school. However, this is extremely misleading. The fact is that, at best, this bill would provide only 1400 vouchers at $5000 each for the 2003 school year. However, there are over 70,000 students in DC schools. Therefore, under H.R. 5033, only 2% of DC public school students would be eligible. Don't all of them deserve a quality education? This bill leaves 98% of DC school students behind.

Additionally, there is no guarantee that any of the voucher recipients will be accepted to the private schools in the surrounding area so that they might use the vouchers. In D.C., only 11 private schools, K-12, have tuition costs less than $5000. The availability of private schools in Southern Maryland and Northern Virginia is similarly limited especially considering the additional costs of transportation.

Considering the new accountability measures in the No Child Left Behind Act, it is irresponsible to support a bill that directs public funds to schools over which the public does not exercise effective oversight. H.R. 5033 fails to require participating schools to adopt academic standards like those just adopted under NCLB, nor does it require participating schools to hire qualified teachers.

Moreover, H.R. 5033 would impose a system that has already been shown to be fraught with problems. For example, despite the declared constitutionality of the Cleveland voucher program, this program has cost taxpayers over $43 million, the vast majority of which is taken from disadvantaged pupil impact aid that otherwise would have gone to the most disadvantaged children in the Cleveland public schools. Although

voucher advocates claim that this provides choice for kids in public schools, in fact only about one fifth of Cleveland voucher students ever attended public schools. Taxpayer dollars are being used to subsidize students, many of whom are not low-income, who were already attending private schools. In the meantime, the Ohio Supreme Court has ruled three times that the state of Ohio has violated the state constitution by providing woefully inadequate funding for its public schools. Rather than working to fund and improve the public schools in Cleveland and elsewhere that serve more than 90% of our children, the state has diverted precious energy and resources on vouchers.

Another problem is that the Cleveland voucher program provides choice primarily for private schools, not parents and students. Private voucher schools in Cleveland can and do exclude special education students and H.R. 5033 will allow this in D.C. as well. Further, voucher schools can and do "choose" students through the back door as well, so that large numbers of students in the program one year simply "disappear" the year after.

Finally, there are serious accountability problems in Cleveland voucher schools. Despite all the hoopla by supporters, an independent evaluation of the program has found no significant academic gains by voucher students. Individual voucher schools have had a number of problems. One school that was in the voucher program operated for two years despite the fact that its 110 year-old building had no fire alarm or sprinkler system, and was under a fire watch requiring staff to check for fires every 30 minutes. Lead-based paint, which can cause brain damage in children, was found in the school at a level eight times greater than generally regarded as safe. Additionally, the school had to repay nearly $70,000 in tax dollars because it was getting voucher money for students that were not in the school at all. Similar problems at another voucher school were compounded by clearly inadequate classroom instruction in which the school was effectively a video school where students sat in front of a TV and watched recorded lessons on screen. Clearly, accountability remains a serious problem in voucher schools.

In light of these various problems of the Cleveland system, it is curious why anyone would want to interject these problems into the DC Public School System. While no one will dispute the fact that there are many problems within the DC Public School System, H.R. 5033 fails to specifically address any of these problems. For example, finding 1(f) claims that in 1999, nearly one in five District of Columbia high school students stated that, at some point in the preceding month, they felt too unsafe to go to school, while nearly one out of every seven students admitted to bringing a weapon to school. However, H.R. 5033 does nothing to address this problem for the 98 percent of students left in the DC schools assuming all 1400 of the eligible students receive a $5000 voucher. On the other hand, the DC school system has already taken steps to address this concern by implementing reforms such as: 1) outfitting all secondary schools with have both walk-through and hand-held metal detectors, 2) installing Video Intercom Systems at 103 Elementary Schools, 3) Installing Closed Circuit Television at over 100 sites, and 4) Installing state of the art alarm systems at 72 elementary and secondary schools to enhance or replace the existing systems.

Additionally, finding 1(g) claims that many of the District of Columbia's 146 schools are in a state of terrible disrepair, including leaking roofs, bitterly cold classrooms, and numerous fire code violations. Even assuming this is true, once again, H.R. 5033 does nothing to correct this problem for the 68,000 plus school children left in the DC schools. Instead, the bill directs money toward the funding of private schools that, as previously exemplified in the Cleveland system, have little to no accountability for such things as facility maintenance. In doing so, H.R. 5033 neglects the DC facilities that will continue to educate the majority of DC's school children. On the other hand, the DC Public School System (DCPS) recently completed and the Board of Education has approved a long-range educational facilities master plan that will result in nine long-promised whole-school modernizations. DCPS has also completed major component replacements (roofs, boilers, windows, etc) at numerous schools, and reduced the work order backlog from 10,000 to 3,000.

Similarly, finding 1(b) claims that 72 percent of fourth graders in the District of Columbia tested below basic proficiency in reading on the National Assessment of Education Progress in 1998. Once again, while this may have been true in 1998, results from the 2001 Stanford 9 test reveal that 76 percent of all fourth graders scored at the basic reading level or above. Further, Superintendent Paul L. Vance stated that reports show "significant gains" for most mainstream District public school students in all of the major areas covered by the test.

Furthermore, the DC Public School System closes schools that are not up to standard and reopens them under new leadership. Nine schools were reconstituted last year and all signs suggest that they are already showing remarkable results.

So, what does this tell us? It tells us that current reforms are indeed improving DC Public Schools. What is needed is a not a new voucher initiative that diverts precious resources, but increased support of current measures that encourage more immediate reforms in the public school system.

Public Opinion

The last time a voucher proposal was brought to the residents of D.C. it was overwhelmingly rejected by a vote of 85% to 11%. Across the nation, parents have done the same. Since 1972, there have been 8 attempts to pass voucher initiatives that would enable public tax dollars to subsidize private and parochial education. All attempts have been consistently—and in most instances, resoundingly—defeated by the American electorate. In fact, all seven voucher and tuition tax credit referenda introduced in the 1990s have been defeated by at least 60 percent of the vote. Overall, voters in eight states have voted by a cumulative 68 to 32 percent margin against vouchers and tax credits on 12 ballot initiatives from 1970 to 2000.

Most recently, vouchers were resoundingly defeated in Michigan and California. This was especially true among minority and urban voters, at whom these voucher proposals were aimed. African-American voters in Michigan rejected vouchers by 77% to

23%. In California, Latino voters rejected vouchers by the same margin. Detroit voters turned down the voucher proposal by an 82-18% margin. What this tells us is that when voters are educated about the realities of vouchers, that they choose to invest in public schools so that the vast majority of the nation's children can receive a quality education, not just a select few.

Current Reforms and Initiatives

As stated, current reforms within the DC Public School system are already showing significant progress and should be encouraged, not discouraged. Additionally, DC schools will also benefit from the recent reforms enacted under the No Child Left Behind Act. These reforms would allow for the continued funding of properly run charter and magnet schools, better accountability measures, and would even give parents in chronically failing public schools the ability to transfer to better performing public schools. These initiatives should be funded and supported.

Admittedly, many public schools have failed to properly educate our nation's youth and are in need of immediate assistance. Many of us held out hope that, with full funding, the recently passed No Child Left Behind Act would address many of the problems within our public school system. Yet, this hope was quickly diminished when the President released his education budget that fails to support the very accountability measures in the bill he signed just 2 weeks before.

Voucher initiatives undermine efforts to immediately and effectively address the needs of the majority of this nation's children by diverting precious funding for public school reforms that have proven success rates.

The fact is that we know a lot about some proven reform programs that work. In Wisconsin, for example, there's a program called SAGE that reduces smaller class sizes in early grades in schools serving poor children. SAGE works. The evidence is clear that SAGE helps close the achievement gap between white and minority students – with long-lasting results. You would think that with that kind of proven result, public officials would be falling over themselves to replicate that success. Unfortunately it's not true. In Wisconsin last year, activists had to work hard to defeat a proposal by the governor to cut millions of dollars out of the SAGE program in order to expand Milwaukee's voucher program, which by contrast has no demonstrated proof of improving students' academic achievement in the long run.

Furthermore, successful initiatives like that in Wisconsin have encouraged additional class size reduction proposals that will bring better education to more students. People For the American Way is proud to be taking a leadership role, with the NAACP and other national and state organizations, in helping Florida State Senator Kendrick Meek gather signatures to add an amendment to the state Constitution that would put limits on class size in Florida public schools.

Conclusion

There is no substitute for a strong and vibrant public education system, which educates 90 percent of our children. Vouchers divert precious funds needed to strengthen public education. This Congress passed landmark education legislation that can truly make a difference for all our students – if the legislation is adequately funded. Diverting more resources into voucher schemes, with their lack of accountability and failure to provide true, equitable options for all students, is not the answer. To ensure that no child is left behind, we need to follow the example of voters across the nation, reject voucher schemes, and work to improve and strengthen our public schools. Making those schools as strong as possible must be the goal and the focus of our government policy. Preserving public education and strengthening public schools must be our top substantive priority as advocates over the next decade.

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Elliot Mincberg

	Yes	No
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the committee).		✓

2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999:

	Yes	No
3. Will you be representing an entity other than a government entity?	✓	

4. Other than yourself, please list what entity or entities you will be representing:

People For the American Way
People For the American Way Foundation

5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4:

Vice President, Legal + Education Policy Director

6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1999, including the source and amount of each grant or contract:

	Yes	No
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:		✓

Signature: [signature] Date: 2/24/02

Please attach this sheet to your written testimony.

APPENDIX F -- STATEMENT OF DOUGLAS W. KMIEC, DEAN AND ST. THOMAS MORE PROFESSOR, SCHOOL OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA, WASHINGTON, D.C.

Statement of Dean Douglas W. Kmiec
Before the
U.S. House of Representatives
Committee on Education and the Workforce
July 23, 2002

Thank you Mr. Chairman for the opportunity to appear before you today to address the Supreme Court's decision in *Zelman v. Simmons-Harris*, 122 S.Ct. 2460 (2002), and its implications for the law as it relates to school choice as an educational policy option. As the Dean & St. Thomas More Professor of the law school of the national university of the Catholic Church in America, The Catholic University of America School of Law in Washington, D.C., and as the former Assistant Attorney General for the Office of Legal Counsel to President Reagan and President George H.W. Bush, I am pleased to appear before you today and lend my analysis of these important developments. For close to three decades, I have been litigating, teaching and writing about constitutional law, including the authoring of three books and dozens of scholarly articles directly related to constitutional topics. I ask that my full statement be incorporated into the record.

The end of federal religious discrimination

Perhaps, it is enough to say that the decision in *Zelman* ended a long period of federal constitutional misconstruction and deeply offensive religious discrimination. No longer are religious believers mistakenly barred, under federal constitutional law, from participating in the neutral and evenhanded allocation of general funds for education that all contribute to, believer and nonbeliever taxpayer alike, premised upon the specious claim that such participation constitutes an unlawful establishment of religion by the government. It remains to be seen whether a new form of state constitutional discrimination will now arise in an effort to reimpose this religious animus. Unfortunately, because of a 19th century backlash against newly arrived Catholic and Jewish immigrants from Europe, over thirty states have state constitutional and state law provisions that can be primed to exclude religious believers from their full participation in government educational support (see discussion below). Of course, if the federal constitutional concepts of free exercise, free speech, and equal protection have sufficient vitality, renewed emphasis upon state discrimination should not, in my judgment, survive federal constitutional scrutiny. However, it took almost sixty years to undo a discriminatory and exclusionary interpretation of the federal constitution, so one cannot, with equanimity, look forward to now more decades of delay while individual state constitutions are interpreted and then reconciled with federal constitutional principle.

I. The Zelman Oral Argument & *The Court's Response*

The outcome in the *Zelman* case was so long in coming to the Court that the arguments before the Court both for and against its constitutionality seemed almost anti-climactic. As the Ohio scholarship beneficiaries reasoned, the State created a program that simply included religious schools among a broad range of educational choices and that the choice was made wholly independently of the State by parents. By contrast, the scholarship opponents thought any participation by religious schools in a program where tuition might result in religious

instruction was off-limits. The beneficiaries believed constitutional neutrality meant evenhandedness and nondiscrimination in the allocation of public funds. Opponents contended that neutrality meant an affirmative pursuit of secularity, and therefore the exclusion of religious educators from public funds. Any inclusion of religious schools in any public program providing more than incidental benefits was argued to be prohibited by the federal establishment clause.

Scholarship or school choice opponents thus insisted that the underlying axiom that defines neutrality as exclusion was traceable to the First Amendment's prohibition of an established church. The exaction of taxes for religious uses cannot be justified, the opponents asserted, merely on the grounds that public funds are being used for comparable educational uses in public schools.

By contrast, the scholarship beneficiaries thought this argument of categorical exclusion overbroad, pointing especially to the concurring opinion of Justices O'Connor and Breyer in *Mitchell v. Helms,* 120 S.Ct. 2530 (2000) (upholding the nondiscriminatory provision of computers and other educational equipment to public and religious school alike where these justices drew a distinction between the direct and indirect provision of public funds). While assistance given directly to a religious school raises issues of improper endorsement, there is little or no endorsement difficulty, noted these justices in *Mitchell,* when "aid flows to the religious school and is used for the advancement of religion [that is a decision] . . . wholly dependent on the student's private decision." Id. at 2559. Six members of the Court seemed to say the same thing in *Good News Club v. Milford Cent. School*, 121 S.Ct. 2093 (2001) (upholding the nondiscriminatory after-school use of public school classrooms by religious and nonreligious student clubs – including specifically in this instance a Bible Study Club), writing "the 'guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.'" Id. at 2104, quoting *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 839 (1995) (requiring that a public university not discriminate against a student religious publication in the allocation of a fund derived from student activity fees).

How did the Court Respond in *Zelman*?

Said the Chief Justice for the Court:

> "Mueller, Witters, *and* Zobrest *thus make clear that where a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause. A program that shares these features permits government aid to reach religious institutions only by way of the deliberate choices of numerous individual recipients. The incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual recipient, not to the government, whose role ends with the disbursement of benefits."*

In short, the argument of the scholarship beneficiaries, the argument in favor of school choice, was entirely vindicated.

The Legislative Instruction:

The federal constitution permits aid to be disbursed:

1. To a broad class of citizens, including religious believers
2. And if the program is not biased or skewed toward religion
3. Participants may direct that aid to religious schools as a matter of true private choice.

Returning to the Zelman oral argument

Scholarship opponents didn't deny the above propositions, but contended instead that evenhandedness and nondiscrimination cannot be the guiding principle where parents have, in fact, chosen to use public funds largely in religious schools and religious schools predominate among the available options.

The principal precedent in dispute between opponents and beneficiaries was *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756 (1973) (invalidating, among other things, a program of unrestricted grants of $50- $100 per child who sent their children to nonpublic elementary and secondary schools, the great majority of which were religious and where the Court stated "the effect of the aid is unmistakably to provide desired financial support for nor nonpublic, sectarian institutions." Id. at 783. The opponents admitted that *Nyquist* specifically reserved the validity of providing educational assistance like the G.I. Bill which afforded aid to recipients for "a broad variegated range" of secular and religious institutions. More than a few returning service personnel used their military benefits at The Catholic University of America or Notre Dame, for example, and no one has ever thought that an unlawful establishment of religion. But the G.I. Bill was not this case, argued the opponents, since the range of options for scholarships, they claimed, was too narrow or "skewed towards religion."

The scholarship beneficiaries in *Zelman* thought the *Nyquist* analogy inapt. In *Nyquist*, religious schools were the ends -- the purpose of the program was specifically to benefit private religious schools. By contrast, religious schools within the context of the Ohio scholarship program is merely one of several means of broadening educational opportunities especially for a discrete group of low income families. *Nyquist* involved an aid program that gave direct money grants to schools for maintenance and repair; supplied tuition reimbursement *only* to parents of nonpublic school students, and allowed a tuition tax deduction exclusively for those with students enrolled in private school. The whole idea in *Nyquist*, say the scholarship beneficiaries, was to "bail out religious schools," whereas, the present program is the exact reverse enlisting "private and religious schools to bail out failing public schools."

There were thus many factual differences between *Nyquist* and the Ohio program, though at the time of the argument it remained to be seen if the Court would articulate this

clearly. The difference given most emphasis by the scholarship beneficiaries was the allocation of assistance via the free choice of the parents: Ohio's program does not offer direct aid to private schools and the support given is subject to the uncoerced, discretion of parents. This has been important to the Court, noted the beneficiaries, because it goes beyond evenhandedness and nondiscrimination to also avoid impermissible endorsement. As Justices O'Connor and Breyer observed in *Mitchell*, "[i]n terms of public perception, a government program of direct aid to religious schools based on the number of students attending each school differs meaningfully from the government distributing aid directly to individual students who, in turn, decide to use the aid at the same religious schools." 530 U. S. at 843. Ohio's program, say the beneficiaries, is two steps removed from direct assistance, since parents must first decide to participate in the program, and then secondly must decide which school, religious or not, that will receive the scholarship.

How did the Court Respond in *Zelman*?

Said the Chief Justice for the Court:

> Committee for Public Ed. & Religious Liberty v. Nyquist, 413 U.S. 756, 93 S.Ct. 2955, 37 L.Ed.2d 948 -- *a case that expressly reserved judgment on the sort of program challenged here -- does not govern neutral educational assistance programs that offer aid directly to a broad class of individuals defined without regard to religion.*

The legislative instruction:

> The federal establishment clause is offended by direct grants of aid for the general support of private religious schools, but that is not true with regard to the free choice implicit in school vouchers. In fashioning school choice plans, it is very important for legislatures to make the choices available to *all* parents, and not – as *Nyquist* did only to the parents of children already in private schools.

The Zelman argument continued:

Free choice by parents is not good enough, said the opponents, since nearly all the schools that have ended up participating are religious. This had been, however, a long discredited argument. In *Mueller v. Allen*, 463 U. S. 388 (1983) (upholding a tax credit available for tuition expenses at either public or private, including private religious, schools), for example, the Court held that the constitutionality of a program cannot be made to turn "on annual reports reciting the extent to which various classes of private citizens claimed [the] benefits. . . to which they are entitled." Id. at 401. The Court further explained in *Agostini v. Felton*, 521 U.S. at 229 (upholding the provision of remedial educational services by public school teachers in private and public school alike): "we are [un]willing to conclude that the constitutionality of an aid program depends upon the number of sectarian school students who happen to receive otherwise neutral aid."

How did the Court Respond in *Zelman*?

Said the Chief Justice for the Court:

> *Respondents and Justice Souter claim that even if we do not focus on the number of participating schools that are religious schools, we should attach constitutional significance to the fact that 96% of scholarship recipients have enrolled in religious schools. They claim that this alone proves parents lack genuine choice, even if no parent has ever said so. We need not consider this argument in detail, since it was flatly rejected in* Mueller, *where we found it irrelevant that 96% of parents taking deductions for tuition expenses paid tuition at religious schools. Indeed, we have recently found it irrelevant even to the constitutionality of a direct aid program that a vast majority of program benefits went to religious schools.*

The Legislative Instruction

> 1. So long as the program is neutrally designed, and especially if the aid is delivered to religious schools indirectly through parents, the choices parents make – even if they are predominantly religious – do not create an establishment clause violation.

Returning to the Zelman argument:

The scholarship opponents claimed nevertheless that the pool of available schools in the Ohio program was skewed or too narrow since the available scholarship was capped at $2250 and only pays 90% of tuition. It was additionally implied that private nonreligious schools have higher costs than religious schools. This point was not elaborated in the record, and as an empirical matter it may or may not be true, as religious schools can no longer rely on a large number of religious personnel working at modest stipend. The opponents also noted that there were no participating public schools from the suburban districts surrounding Cleveland. This latter fact is certainly a sociological embarrassment for local public education policy, but the scholarship beneficiaries very charitably did not belabor the point, noting only that "one can only speculate why suburban public schools declined to open their doors to inner-city Cleveland school children." On solely economic terms, the nonparticipation of suburban public schools is especially odd since, had these public schools joined in, they would have likely received over $6500 per student under state law to do so. When the opponents posit that the State could have required the suburban districts to participate, the beneficiaries respond that, while surely that may be, such is not constitutionally required – a point the Court made plain as recently as its decision in *Good News*, where the availability of a public school classroom for a Bible Club after hours did not turn on whether other nonreligious clubs had actually taken advantage of an invitation to use public classrooms after they were invited to do so. *Cf.,* Kmiec & Presser, *The American Constitutional Order* 10 (Anderson 2001 Supp.) (observing that Justice Thomas in last term's *Good News* decision commented with regard to the after hours use of a public school classroom that " . . . we would not find an Establishment Clause violation simply because only groups presenting a religious viewpoint have opted to take advantage of the forum at a particular time."). In any case, legislature could have simply decided the better policy course was to treat public and private school alike: allowing both to opt in or out of the program as they choose.

As reflected below, the Court did not penalize the scholarship beneficiaries because

suburban public schools excluded inner city students. Instead, the Court would pay close attention to the additional contextual argument of the Ohio parents, who urged the Court to see the scholarship option in the context of pre-existing educational possibilities. This is what the Supreme Court of Wisconsin did in *Jackson v. Benson*, 578 N.W.2d 997 (1998), where the state high court observed that the private religious school option "merely adds religious schools to a range of pre-existing educational choices available to [Milwaukee Public School] children." Id. at 614 n.9. In each case, noted the *Jackson* court, "the programs let state funds follow students to the districts and schools their parents have chosen."

The opponents responded that the scholarship program must be judged on its own terms. Why that was, however, was a bit unclear, and the Court was decidedly unpersuaded, especially Justice O'Connor who would write separately to say so. At argument, the opponents could say only that it would "prove too much," and then shift gears to claim that it would justify "a government program of direct unrestricted payments to sectarian private schools, secular private schools and free public schools 'of choice' based on the number of students attending such schools." Yet, this argument, itself, conflated direct aid to schools with scholarship assistance given to parents. Given the sensitivities of endorsement analysis, these propositions are arguably distinct, especially for Justices O'Connor and Breyer who distanced themselves from the *pro rata* allocation approach of the plurality in *Mitchell*, even as they acknowledged that the Constitution is unoffended where the actual allocation of assistance results from specific parental decisonmaking.

How did the Court Respond in *Zelman*?

Said the Chief Justice for the Court:

> *That 46 of the 56 private schools now participating in the program are religious schools does not condemn it as a violation of the Establishment Clause. The Establishment Clause question is whether Ohio is coercing parents into sending their children to religious schools, and that question must be answered by evaluating all options Ohio provides Cleveland schoolchildren, only one of which is to obtain a program scholarship and then choose a religious school.*
>
> *Justice Souter speculates that because more private religious schools currently participate in the program, the program itself must somehow discourage the participation of private nonreligious schools. (dissenting opinion).But Cleveland's preponderance of religiously affiliated private schools certainly did not arise as a result of the program; it is a phenomenon common to many American cities.*

The Legislative Instruction

1. The Constitutionality of school choice or voucher programs that supply aid to parents is judged in context – the context or vantage point of the parent. The key is "true private choice." And that private choice is judged in relation to the pre-existing public school (traditional, magnet, charter/community) school options.

Justice O'Connor's concurring opinion gives further legislative instruction – that voucher programs are not invalid because they involve substantial assistance

1. A true private choice voucher program is not invalid because it involves substantial sums. Justice Souter argued in dissent that prior cases of indirect support had been upheld only for incidental or isolated cases of assistance, e.g, small tax credits, vocational assistance, sign language interpreters. Justice O'Connor noted that up to $8.2 million was being supplied in Ohio under the program, "but that the support the Cleveland voucher program provides religious institutions is neither substantial nor atypical of existing government programs." Justice O'Connor went on to suggest that the amount of aid did not affect the Establishment Clause analysis.

Does it matter whether the participating religious schools choose students or their own personnel on the basis of faith criteria?

This is unanswered in the opinion directly. The Ohio program had nondiscrimination provisions that arguably applied to both student admission and faculty hiring, and the majority of the Court mentions them, but does *not* rely upon them in its analysis to sustain the Ohio program. While, theoretically, one might imagine a choice program with only a narrow range of schools without a nondiscrimination provision where the Court might find true private choice to be absent, this is unlikely so long as religious schools are considered in context with the pre-existing public school programs or other quasi-public alternatives, like charter schools.

Justice Souter in his *Zelman* dissent posits that the nondiscrimination provisions of the Ohio law trench closely upon the free exercise of religion, and it is clear from prior case law, that these provisions are not mandated by the requirements of the establishment clause, nor does a religious exemption from a nondiscrimination provision offend the establishment clause. See, *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. Amos*, 483 U.S. 327 (1984) (upholding the Title VII exemption against an establishment claim).

The Legislative Instruction:

1. Nondiscrimination provisions like those in Ohio raise unnecessary free exercise concerns, and in order not to manifest hostility toward religion and to follow the injunction toward accommodation, they should be avoided especially as they relate to employment decisions. Here, the religious exemption of Title VII of the Civil Rights Act is instructive.

II. Will state constitutions now defeat school choice?

Notwithstanding the clarity of the Supreme Court's ruling in *Zelman*, there is the prospect and reality of much school choice litigation ahead.

As already noted, largely because of anti-immigrant and anti-Catholic bigotry of the late 19th century, numerous states have so-called Blaine amendments. Other states have "no compelled support" clauses in state constitutions, which can also be argued to block school choice even as the federal constitution does not. Approximately, thirty-six states have one or the

other.

Here, the prior case law is tangled. For example, some states with Blaine amendments (Wisconsin, Ohio, Arizona, Illinois) have upheld school choice variants, notwithstanding the state constitutional prohibitions that typically provide that "no money raised by taxation for the support of public schools, or derived from any public fund, . . .shall ever be under the control of a religious sect." The no-compelled support provisions, which may separately exist in as many as 29 states, provide that no person shall be compelled to support any ministry, and date back in some instances to colonial times.

What do these clauses mean?

It varies. Some have been construed identically, if not consistently, with federal constitutional law in terms of a school voucher program for grades K-12 (e.g., Wisconsin). Yet, eleven states (Alaska, Colorado, Iowa, Kentucky, Michigan, Missouri, Oregon, Texas, Virginia, Washington, and Wisconsin) are said to see these clauses as blocking state aid to religious colleges in their states. Others, however, have been successfully used to prevent school choice at the secondary level (e.g., Maine, Vermont). Still others (e.g., Arizona) have been narrowly construed to permit school choice via a tax credit mechanism (providing credits for donations to foundations that facilitate choice) on the theory that the latter does not constitute a prohibited "appropriation."

At the moment, the Institute for Justice, which has been at the forefront of parental and school choice litigation, is in trial in Tallahassee, Florida, arguing that Florida's constitution, which provides that "no revenue of the state . . . shall ever be taken from the public treasury directly or indirectly in aid of any church. . .or in aid of any sectarian institution," does not apply to a program of "true parental choice" as the U.S. Supreme Court has now conceived it in *Zelman*. Such monies, it is said, do not aid sectarian institutions, but Florida's students.

But wait, doesn't the opinion in *Zelman* mean that states cannot use their own laws to block school choice?

No, it only means that the federal establishment clause does not preclude it, if a state authorizes it.

But isn't there a federal constitutional violation if a state singles out a religious person or entity for disfavor?

The state and lower federal courts are split on that question and it is destined to go higher.

The primary argument here is that – given the bigotry out of which these state law and state constitutional provisions arose – such specific discrimination against religion and religious believers violates the federal free exercise clause.

Alternatively, such religious discrimination may be argued to violate either the protection of free speech (insofar as it results in the censorship of religious speech) or the guarantee of

equal protection since identifying citizens by their religion for disfavor should require a compelling governmental interest of some kind.

Many of these arguments were recently considered by the Ninth Circuit in its July 18, 2002 opinion in *Davey v. Locke*, 2002 WL 1578831 (9th Cir.) construing the Washington state constitutional language ("no public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment)" not to permit the state to preclude a college student from using a general state scholarship for the study of theology.

The Ninth Circuit found:

> 1. The scholarship program facially discriminated on the basis of religion, and therefore must survive strict scrutiny. It could not do so. The state desire to observe its Blaine amendment or more restrictive establishment clause equivalent was "not a compelling reason" under federal constitutional jurisprudence, said the appellate court.

What are the competing arguments in this area?

The Ninth Circuit nicely summarized them.

> **Unconstitutional singling out of religious believer**
>
> *On the one hand,* singling Davey out for unfavorable treatment in an otherwise neutral program on account of a religious major violates the free exercise rule of *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993), as well as the rule of *McDaniel v. Paty,* 435 U.S. 618 (1978), that a state offering a benefit may not impose a disability on the basis of religious status. Thus, Washington's restriction may not stand unless it is narrowly tailored to advance a compelling state interest.
>
> Or
>
> **Simple declination to subsidize a constitutional right**
>
> *On the other hand,* declining to subsidize the exercise of a constitutional right is permissible under *Rust v. Sullivan,* 500 U.S. 173 (1991), and *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540 (1983). The focus in free exercise inquiries is on what the government prohibits rather than on what the individual can exact. *Lyng v. Northwest Indian Cemetery Protective Ass'n.,* 485 U.S. 439 (1988). Here, Washington simply refuses to underwrite the education of students who pursue a degree in theology, but does not prohibit Davey from freely practicing or pursuing his religious views, speaking about them, or associating with others of like mind. Accordingly, strict scrutiny is inapplicable.

To say that federal precedent clearly favors one or the other side would be overstatement. Both arguments are tenable depending upon one's initial characterization.

If there is a trend line, however, it would recognize, as the Ninth Circuit did, that the bedrock principle of the First Amendment must be that a law targeting religious beliefs, or disfavoring their pursuit, is never permissible. *McDaniel v. Paty*, 435 U.S. 618 (1978), holding that a state law cannot prevent members of the clergy from being delegates to a constitutional convention.

Yes, the government may use its dollars to present its own point of view or only pay for those programs that it believes are in the public interest. See, *Rust* and *Regan*, supra. However, even in *Regan* (upholding the denial of a tax exemption for lobbying) the Court pointed out that the issue is different "if Congress were to discriminate invidiously in its subsidies in such a way as to aim at the suppression of dangerous ideas."

So which is it? Is a state government denying religious school participation merely speaking or setting policy, or is it seeking to punish or disfavor within a broader general policy already set? Much, as I said, depends upon the conceptualization. However, if the legislature follows the Court's *Zelman* advise on how to properly design a constitutional school choice program, the sheer general availability of the aid to a broad class of citizens can be argued to preclude carving out a subset of religious perspectives or recipients for disfavor. Thus, a state may not be constitutionally obligated to fund any school other than a public one; however, if a state chooses to fund public and private schools, but not private religious schools, under a general program, that should be seen as not a mere failure to subsidize, but as an act of religious discrimination.

The above principle is consistent with the Court's treatment of religious believers with respect to generally available public resources like the after-school use of classrooms or the use of student activity funds for a religious newspaper. As the Ninth Circuit put it: "The bottom line is that the government may limit the scope of a program that it will fund, but once it opens a neutral 'forum' (fiscal or physical), with secular criteria, the benefits may not be denied on account of religion, citing Good News Club v. Milford Cent. Sch., 533 U.S. 98 (2001)*and* *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 544 (2001), Lamb's Chapel v. Ctr. Moriches Union Free School District, 508 U.S. 384 (1993), *and* *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). *While these are technically speech/public forum cases, the Ninth Circuit believed that they "are instructive in subsidy cases as well."*

In short, a state may rely on their own more broadly worded no establishment provision (or Blaine amendment), but only if there is no free exercise problem. Where state money goes to individual students under a broadly based scholarship program, no reasonable observer could believe that the state was supporting any religious establishment. As a consequence, a state constitutional limitation cannot preclude an award based on objective criteria "solely on account of [the student's] personal decision to pursue a degree in theology."

Judge McKeown dissented from the Ninth Circuit ruling in Davey. He saw the case as a funding case, not one of free speech or free exercise.

It is fair to say that *Zelman* significantly influenced the Ninth Circuit's ruling in *Davey*, though it obviously did not directly decide it. Two state decisions prior to *Zelman* that reached

an opposite conclusion, and one similar to the *Davey* dissent, are *Chittenden Town School District v. Department of Education*, 169 Vt. 310 (1999), in which the Vermont Supreme Court relied upon the state's no compelled support clause to preclude a local district from authorizing tuition reimbursement to a religious school, and *Bagley v. Raymond School Department*, 728 A. 2d 127 (1998), where the Maine Supreme Court upheld a state statute that authorized the reimbursement of tuition paid at private non religious, but not religious, schools. The inconsistency of these decisions with the general direction of *Zelman* can be gleaned from the passage in *Chittenden* that reasoned that even if parental choice satisfied the federal constitution it was insufficient to survive Vermont's "no compelled support" limitation. Wrote the court: "If choice is involved in the equation, it is the choice of those who are being required to support the religious education, not the choice of the beneficiaries of the funding." Both *Chittenden* and *Bagley* may turn most directly on not seeing a free exercise violation (since as these judges saw it denials of tuition reimbursement merely made religion more expensive, it did not prohibit it), whereas the Ninth Circuit found a free exercise violation in *Davey* (when a general scholarship program disqualified students undertaking religious study). This is admittedly a proposition that will likely be closely debated should *Davey* or a similar case reach the high court. However, to the extent that the *Bagley* court avoided a federal equal protection violation for including private, but not private religious schools, in tuition reimbursement plan based on the need to avoid a federal establishment clause violation, *Zelman* changes that calculus entirely.

Is there a role for Congress?

Yes, federal education funding should be premised upon the nondiscrimination principle clearly articulated in *Zelman*. *Zelman* establishes that Congress may fund religious and nonreligious school choice opportunities alike. It remains to be seen whether the deliberate exclusion of a religious school from a generally designed funding program violates other constitutional guarantees like free exercise or equal protection or free speech. Yet, there is no reason for Congress to do only what it is judicially ordered to do on pain of violating the constitution. In the distribution of federal funding to the several states, an overt, unequivocal spending power condition ought to encourage the states to pursue school choice and to do so by including religious and nonreligious private schools together with existing public school alternatives.

It is well accepted that parental involvement with multiple educational choices is a positive good. Advocates of school choice have recognized that choice need not be, nor should be, anti-public school since the best of these schools will remain important if not primary options in even those states that add private school options. Even the opponents of scholarship or choice programs now more readily admitting the sad and disturbing truth of the "extensive accounts of the unquestionably depressed state of [many urban] public schools" like Cleveland's.

Increasingly, States have experimented with ways of improving the educational lot of economically disadvantaged children. Wisconsin, as noted, allows the additional choice of private schools; Florida provides opportunity scholarships for children in failing public schools; Maine and Vermont pay private or public school costs of children residing in towns that lack their own public schools (though, as stated, the courts of these states have wrongly – in my

judgment – excluded costs associated with religious schools); Illinois has sanctioned income tax credits for public and private school tuition; and Arizona, Pennsylvania and Florida all provide individual or corporate tax credits for contributions to private school tuition scholarship organizations.

Historically, Congress has led in the fight for civil rights. There is no more important civil right, than the right to pursue one's faith freely. As a matter of formal constitutional law, States may not infringe the freedom of religion by declining to fund any private school options whatever, but given what we know about the role of parents and educational choice that is not likely a prudent course. That imprudent course arguably becomes an unconstitutional one when States do allow parents the right to use the education fund for private options so long as they are not religious. When educational policy warrants giving parents a choice between public and private schools, deliberately excluding the choice of a private religious school should be seen as transgressing the religious freedom secured under the federal constitution. Such exclusion is nothing more than rank discrimination. Congress need not wait for the Supreme Court to say so.

Congress can lead with an appropriately overt funding condition creating the incentive for the States to fashion policy that advances the well-being of all citizens. The wording of such a spending condition is not complex; it might simply read:

> In the distribution of programs or activities supported by the funds provided under this title, no state or any subpart thereof shall deny benefits to or otherwise discriminate against any private person or group on account of religious expression, belief, or identity.

Committee on Education and the Workforce
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Douglas W. Kmiec		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the committee).	Yes	No ✓
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999: None		
3. Will you be representing an entity other than a government entity?	Yes	No ✓
4. Other than yourself, please list what entity or entities you will be representing:		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: Assistant Attorney General (Office of Legal Counsel) U.S. Dept. of Justice		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1999, including the source and amount of each grant or contract: None		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No ✓

Signature: [signature] Date: July 23, 2002

Please attach this sheet to your written testimony.

PERSONAL INFORMATION: Please provide the committee with a copy of your resume (or a curriculum vitae). If none is available, please answer the following questions:

a. Please list any employment, occupation, or work related experiences, and education or training which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:

- Dean, The Catholic University of America School of Law
- Professor of Constitutional Law
- former head of the Office of Legal Counsel, U.S. Dept. of Justice (Reagan + Bush I) (1985-89)

b. Please provide any other information you wish to convey to the committee, which might aid the members of the committee to understand better the context of your testimony:

Please attach to your written testimony.

APPENDIX G -- STATEMENT OF ROBERTA KITCHEN, PARENT, CLEVELAND, OHIO

Committee on Education and the Workforce

U.S. House of Representatives

"It's Not About a Choice; It's About a Chance"

July 23, 2002

Opening Statement of Ms. Roberta Kitchen

Good morning. My name is Roberta Kitchen and I am a school choice parent from Cleveland. Thank you for asking me to testify today on the Supreme Court's decision in favor of school choice. I am here today to represent the many other parents across the nation who are in support of the Cleveland Scholarship and Tutoring Program and who hope to have similar programs implemented in their cities.

When I heard the news the Court's decision, a sense of relief washed over me. For five years, I've fought for the right to educate my children as I choose. Finally, the U.S. Supreme Court vindicated that right, ruling that the Cleveland school choice program that allows my daughter a chance at a good education is constitutional.

These are worries I never thought would be mine. When a family friend living on the streets strung out on drugs and alcohol asked me to take in her three children, I did. A few years later, two more babies arrived. Seemingly overnight I had become a single mother of five, and I had to find a way to educate them, to give them a chance to break the cycle of poverty and despair into which they had been born. I didn't take the kids just to lose them.

The public schools in the Collinwood section of Cleveland, infested with drugs and crime, were not an answer, although I've tried. Tiffany, my eldest, was promoted to the sixth grade, despite not being able to read. When I asked that she be allowed to repeat the sixth grade, I was informed she could not. There are strict quotas for promoting children in the public schools, I was told. At that same school, one of Tiffany's teachers had her arm broken by a student who then threatened rape.

I met a lot of good teachers who cared when my kids were in the public schools. The problem is, they're in a system that doesn't let them care.

People say to be patient, the system will get better. But which of my babies am I supposed to sacrifice, because it won't be in time for them?

With five children, money was a barrier to escaping the public schools. I went from private school to private school, asking about tuition and everything else. I became a beggar for my children. I took on a second job, but without enough time to care for my children, I was forced to quit. I offered my clerical skills in exchange for reduced tuition, anything to get my kids into a good school. It was the lowest point of my whole life.

When Toshika, my youngest, won a tuition voucher through Cleveland's new school choice program, I could finally breathe a little easier. In her six years at St. John Nottingham, a Lutheran school, she has always been on the honor or merit roll, the teachers know her, and she is happy. I never fully explained to her the legal challenges facing the program that pays her tuition, or that a single Supreme Court decision could mean we would have to find her a new school. It would have broken her heart.

I couldn't—and still can't—understand why some people worry more about a cross on the wall than the drug dealers on the block or the prostitutes up the road.

So I did what I could to defend the program, working with the Institute for Justice to tell my story to the media, hoping that the people who make decisions would listen to parents' voices. I've given more than 75 interviews, appeared on network television and in papers and on local stations from Maine to Hawaii. George Will and writers for *The Wall Street Journal* and *USA Today* have interviewed me. I've spoken at rallies and press conferences and even to President Bush.

If at any point I had quit, giving in to exhaustion, I would have felt that I let my children and the children of Cleveland down.

In this trip to Washington, I want to help bring the same opportunities that I've won to parents across the nation. I am not alone. There are so many parents like me that know how important education is. They know that it's the only way for their children to have a chance at a good life. It's essential that parents demand the choices in education they deserve. Parents need to know that they can make a difference, just like we did in Cleveland.

And it's essential that policy-makers listen to parents. We know our children best, and we know that choice works. For me, the Supreme Court decision means that my daughter can continue to attend a school where the principal knows all the students by name, where the environment is safe and where she learns and is happy. With the court battle now over, I hope that policy-makers will give more parents a real voice in the most important decision we'll ever make for our children—how to educate them.

To the committee, thank you for taking the time to listen to my story. You should know that there are many, many parents like me who are looking to people like you—those who have the power to bring school choice to more families—to give our children not just a choice, but a chance.

Thank you.

Committee on Education and the Workforce
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Roberta Kitchen		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the committee).	Yes	No X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999: NONE		
3. Will you be representing an entity other than a government entity?	Yes	No X
4. Other than yourself, please list what entity or entities you will be representing: NONE		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: NONE		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1999, including the source and amount of each grant or contract: NONE		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: Roberta Kitchen Date: 7-22-02

Please attach this sheet to your written testimony.

TABLE OF INDEXES

Chairman Boehner, 1, 4, 7, 8, 9, 11, 12, 15, 17, 19, 21, 24, 25
Mr. Armey, 5, 7, 8, 9, 10, 11, 16, 27
Mr. Holt, 32, 33, 34
Mr. Isakson, 27, 29
Mr. Kildee, 36, 37, 38
Mr. Kmiec, 19, 25, 26, 33, 34, 37, 43, 44
Mr. McKeon, 11
Mr. Miller, 3, 9, 10, 11
Mr. Mincberg, 17, 24, 25, 28, 29, 30, 31, 33, 34, 37, 42, 43
Mr. Payne, 38, 39
Mr. Schaffer, 34, 36, 40, 41, 42
Mr. Scott, 29, 30, 31, 42, 43
Mr. Tancredo, 27, 28, 29, 31, 32, 34, 36, 38, 40, 42, 44
Mr. Tiberi, 31
Ms. Kitchen, 21, 29, 40
Ms. Moody, 15, 26, 29, 30, 31, 33, 42, 43
Ms. Williams, 12, 28, 29, 30, 31, 36, 41
Ms. Woolsey, 25, 26