

# Voting **Down**

BY CLINT BOLICK

**In** 1999 the Ohio Supreme Court found the Cleveland school voucher program to be constitutional, thereby allowing the three-year-old initiative to continue. Shortly thereafter, the anti-voucher coalition filed suit in federal court, asking for a preliminary injunction that would end the program until the court could decide the case. Despite the disruption such an injunction would cause, Judge Solomon Oliver proved remarkably cooperative, enjoining the program on the eve of the fourth year of its operation: four thousand students from low-income families would have to give up the voucher assistance that had allowed them to attend private (mainly religious) schools until it could be determined whether the program violated the “establishment of religion” clause of the U.S. Constitution’s First Amendment.

Teachers unions and other members of the anti-voucher coalition were elated. For the first time, an ongoing school voucher program had been halted.

But the judge’s decision provoked a powerful backlash. Newspaper editorials condemned it; one cartoon depicted a school bus running down black children, with a crazed Judge Oliver at the wheel. The Bradley Foundation, John Walton, Ted Forstmann, and others pledged millions of dollars to keep the kids in school. Realizing he had reached too far, Judge Oliver reversed part of his ruling, and the U.S. Supreme Court dissolved the remainder of the injunction. Even though an appeals court later affirmed the judge’s subsequent ruling on the substance, that decision was itself overturned in 2002 by the Supreme Court in *Zelman v. Simmons-Harris*, which found no violation of the “establishment clause” as long as students had a choice of school, religious or secular.

The anti-voucher lobby learned a valuable lesson: fighting school choice in the abstract is fine, but forcing disadvantaged kids out of good schools is risky business.



# Vouchers

Five years later, the tables turned. School choice activists, myself included, celebrated the passage of the nation's first universal voucher program in Utah. But it turned out, just as it had for the unions in Cleveland, that we had badly overplayed our hand. Making use of a little-known provision in the Utah constitution, voucher opponents put the new law up for a referendum, where voters killed the voucher program by a large margin.

The teachers unions and their public-school allies schooled us. Now our future prospects depend on how much we learned in the process.

## Vouchers in Utah

Since the landmark *Zelman v. Simmons-Harris* ruling, the school choice movement's

# learned from Utah

progress in enacting vouchers and tax-credit legislation has been steady but slow. Voucher and tax credit programs have been enacted by the District of Columbia, Florida, Arizona, Pennsylvania, Wisconsin, and elsewhere, but such gains have been offset by disappointing setbacks in states such as Texas, South Carolina, and Missouri, despite energetic pro-choice campaigns in these states. Even worse, courts in Colorado and Florida struck down voucher programs that had survived the legislative gauntlet. While each year since 2002 has witnessed new programs and a net increase in children enrolled in them, only around 100,000 students in the United States today are enrolled in publicly funded voucher or tax-credit programs.

So when a universal voucher program was proposed for Utah, the school choice

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*In 2000, Parents for Choice in Education, given financial backing by Patrick Byrne, CEO of Overstock.com, took the lead in promoting vouchers for disadvantaged youngsters.*

movement jumped at the opportunity, even though it arose in perhaps the most unlikely of places. Utah's public schools compare well nationally, with students scoring higher than the U.S. average in every subject and at every grade level. The state has relatively small urban, minority, and low-income populations, the key constituencies for school choice. Utah's population is only 17 percent nonwhite, compared with 26.1 percent nationally; only 33 percent of its students are eligible for free or reduced-price lunch compared with 42 percent nationally. The state's large Mormon population generally eschews private alternatives in favor of public schools.

Though Utah's public-school system outperforms those in most states, it is not without its weaknesses. Problems are especially pronounced among Hispanics, who account for 12 percent of the state's population but a much larger share of dropouts. While most Utahns give high grades to public schools, half of Utah's Hispanics rank their public schools fair or poor.

In 2000, Parents for Choice in Education (PCE), a pro-voucher advocacy group, spearheaded by businessman Doug Holmes and given handsome financial backing by the founder and CEO of Overstock.com, Patrick Byrne, took the lead. Like groups then emerging in other states, PCE promoted vouchers for disadvantaged youngsters, even though its long-term objective was to provide choice for all families in Utah.

PCE was encouraged in its efforts by a variety of groups, foundations, and philanthropists from across the country. The Alliance for School Choice, a group financed by wealthy philanthropists, provided funding for lobbying and educational efforts in states, like Utah, that seemed ready to consider voucher or tax-credit legislation. The late Milton Friedman and

his wife, Rose, economists whose advocacy of school vouchers began as early as 1955, had poured much of their personal fortune into a foundation bearing their name and solely devoted to turning their voucher theory into legislated reality. Meanwhile, Dick and Betsy DeVos (Dick, son of Amway cofounder Rich DeVos, is the former president of Amway's parent company and was a 2006 Michigan gubernatorial candidate; Betsy is former chairperson of the Michigan Republican Party) established All Children Matter, a group that sought to elect state and local officials committed to choice. All three groups viewed Utah's prospects favorably and supported PCE's local efforts.

PCE focused its attention primarily on legislative and electoral politics. The organization's first foray was

a tiny special-needs voucher program called the Carson Smith bill, which was passed by the Utah legislature but vetoed by Republican governor Olene Walker. PCE and its allies helped thwart Walker's subsequent election bid, and she was replaced in 2004 by a pro-voucher Republican, Jon Huntsman Jr.

While in March 2005 Huntsman reversed the Walker veto by signing into law the Carson Smith bill providing vouchers for students with special needs, the legislature fell just short of assembling the coalition necessary to enact a broader voucher bill. Again the Utah and national forces went to work, and in 2006 Utah was one of only two states to elect state legislatures that were more Republican than before. (The other, Georgia, passed its first school-voucher program, for children with disabilities, the following year.)

Led by PCE, the voucher coalition developed an innovative legislative vehicle. Bridging the gap between advocates of universal vouchers (favored by the Friedman Foundation) and means-tested vouchers (preferred by the Alliance for School Choice), the bill made vouchers available to all, but staggered the amounts by family income, with awards ranging from a minimum of \$500 to \$3,000 for the lowest-income children. Moreover, the bill provided that public schools would keep for a period of five years the difference between the voucher amount and ordinary per-pupil funding.

Hamstrung by a paycheck protection law that forbids the involuntary use of union dues for political purposes, the Utah teachers union proved no match for the school choice team in either the electoral or legislative arenas, and the bill was enacted and signed into law. But the union did not give up. Expected to file a legal challenge, for which the program's

backers were prepared, the union instead invoked a little-used procedure to refer the program to the ballot, which had the effect of halting the program's implementation. A legal battle ensued over whether the procedure was applicable, with the union prevailing.

At that point, though months short of the actual vote, the battle was over. The bill's opponents had moved the issue into the arena that is more favorable to them than the courts or legislatures: the voting booth. In that forum, when they are challenging programs that are not yet operational, the unions have never lost. In as many as ten ballot contests initiated by school choice proponents or referred to the ballot by unions, the opponents have prevailed in every one—even a Washington State referendum on charter schools in 2004—by resounding margins.

That record is not the result of unequal resources—Silicon Valley entrepreneur Tim Draper poured \$20 million into a California initiative several years ago, and the Utah coalition reportedly spent \$4 million, only half a million less than the unions—but rather of operating in the realm of the hypothetical. All the unions have to do is raise the specter that public schools may be harmed, and the electorate is likely to vote no.

All of the anti-school choice ballot campaigns have struck consistent themes. Utah choice opponents ran television advertisements warning about the demise of public

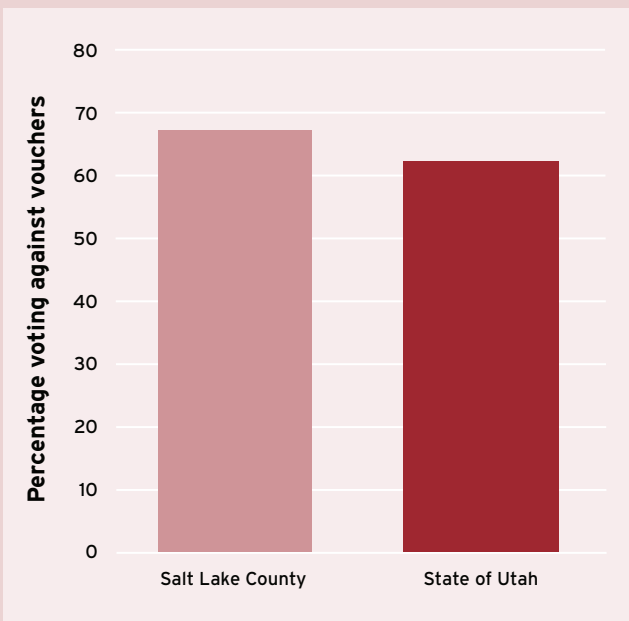
schools should the initiative pass. One ad featured Utah's "teacher of the year," who worried that vouchers would "take resources from the public schools." The furiously anti-school choice *Salt Lake Tribune* questioned the initiative backers' motives, charging that these "adherents to the philosophy of the late Milton Friedman have tried for years not just to undermine public schools, but to eliminate them." Other arguments focused on the issues of accountability for voucher schools and separation of church and state.

PCE and its allies, including the Sutherland Institute, a free-market policy group, gamely parried the charges, pointing to the poor performance of minority students in Utah public schools, explaining that public schools would lose students but keep most of their funding, and so on. The local school-choice team made some mistakes, too, most notably refraining from countering the signature-gathering effort with an advertising campaign that could have cast doubt on the nature and goals of the opposition. But overall, the campaign in support of vouchers was well run.

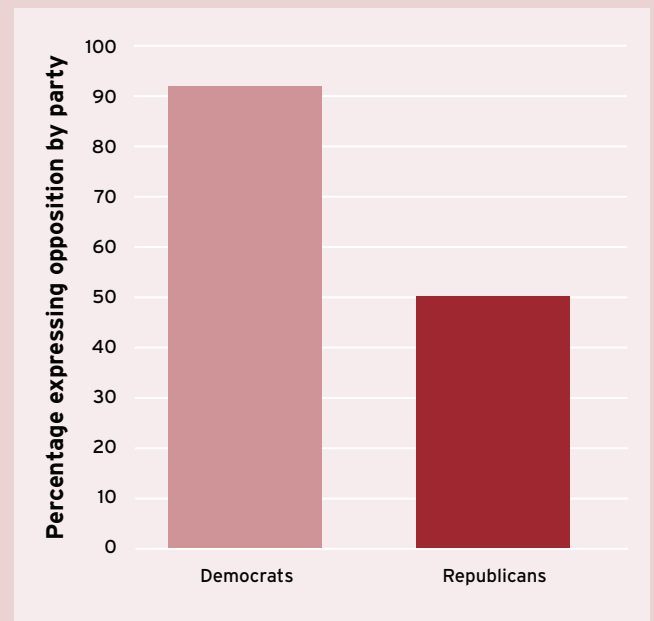
Regardless, in the end, 62 percent of Utah voters cast their votes against school choice (see Figure 1). Supporters failed to carry a single county. Opposition was even higher in Salt Lake County, an urban area where students were performing especially poorly.

## Politics in Utah (Figure 1)

*There was somewhat less opposition to vouchers across Utah as a whole than in the urban center of Salt Lake County, a traditionally Democratic area. Democratic voters opposed the bill, while Republicans divided equally.*



SOURCE: State of Utah; Federal Election Commission



SOURCE: Utah Voter Poll 2007, conducted by the Center for the Study of Elections and Democracy (CSED) at Brigham Young University

## The Milwaukee Model

The school choice movement is remarkably diverse in nearly every way, not the least in differences over goals. Disputes center around universal versus means-tested school choice, tax credits versus vouchers, and other issues. But most school choice advocates have set aside such disputes in specific instances so long as the ball is moved forward.

Where differences are increasing is on strategy, and the movement divides between those who favor an incrementalist approach and those who prefer bigger, bolder action. Considering that the movement is animated by a belief in individual choice, it is surprising how many advocates believe there is one right way to deliver school choice, and one right strategy to achieve it.

Among those who favor a one-size-fits-all approach, the Milwaukee voucher program is the preeminent model. It has endured stiff legal and political challenges and today provides educational opportunities for tens of thousands of disadvantaged schoolchildren. Yet Milwaukee has proven remarkably difficult to replicate. If only we concentrate the movement's resources on a handful of promising states, some assert, we can create new Mil-

The replicationists, for lack of a better term, miss two important points. The first is that all school-choice politics are local. Each state's political, legal, demographic, and cultural environments define the possible. In one state, vouchers for kids in failing schools might present a viable option, while a special-needs voucher might be all that is feasible in another. A heavily Catholic state might favor tuition tax credits, while a state with large urban populations might prefer scholarship tax credits. The replicationists can summon at best mild enthusiasm for such cacophony, while incrementalists believe that at this embryonic stage in its development, the movement should promote every form of school choice and let a thousand flowers bloom.

The second insight is that the Milwaukee program was the product of an incrementalist approach. The original school-choice program enacted in 1990 was limited to one percent of the public school students and encompassed only nonsectarian private schools. The scope was limited because only a tiny program could be enacted.

Like subsequent school-choice initiatives, the Milwaukee program evolved in predictable ways. First, the program introduced consumers to the concept of school choice in a

tangible rather than hypothetical way. Families watched as others enrolled their children in good schools, and demand grew to expand the effort. Those whose children entered the program developed a stake in defending it. New schools opened to meet increasing parental demand, and the program expanded to more than 20 times its original student eligibility (to 22,500 students), along with the inclusion of religious school options. Most important, the myths that can bedevil school choice were replaced by reality, leading even the city's major daily newspaper to switch its editorial position from opposition to support. When the inevitable political challenge came in the form of a governor dead set on destroying school choice, the movement was so powerful that it forced the governor to capitulate and even sign an expansion. Milwaukee exemplifies the success and endurance of the incrementalist approach.

Indeed, the incrementalist approach has fueled nearly all the movement's legislative triumphs, yielding the single most important insight for future school-choice strategy: choice begets choice. Even the smallest programs are worth pursuing because they can expand, lay the groundwork for additional efforts, or both.



*Raise the specter that public schools will be harmed, and voters are almost certain to vote "No."*

waukees; moreover, lesser efforts should be put aside to pursue that overarching goal. The largest and longest-running cloning initiative is in Texas, where over the past decade school choice advocates have invested tens of millions of dollars in political and legislative campaigns to create a large multicity voucher program, each time failing to pass any legislation.

## Future Prospects

Does the Utah defeat spell the end of vouchers, or even a slowing of momentum? While any defeat administered so decisively when victory seems at hand is inevitably discouraging, the national impact of the setback should not be exaggerated. After all, similar ballot defeats in California and Michigan have not prevented progress, however tortoiselike, in other states. But to generate faster movement, we need to focus on tactics that register enduring successes. Otherwise, the school choice movement is no more likely to win its struggle than the Super Bowl is going to be won by a series of long tosses into the end zone. But if first downs are ground out a few yards at a time, eventually we will see the goal line pass beneath our feet.

Since 2000, the number of jurisdictions with programs targeted toward disadvantaged youngsters has grown from four to ten (nine states plus the District of Columbia). Two programs started with vouchers for low-income children or students in failing schools, four with scholarship tax credits, and two with vouchers for kids with special needs. Some observations about this growth are worth noting. First, in terms of outcomes produced compared to dollars invested by the school choice movement, legislative success in the form of new or increased programs was *much* more likely to occur in states that already had some type of school choice program than in states that had none. Ohio, for instance, built upon the Cleveland program by enacting a statewide initiative for children in failing schools, while Arizona added to its individual scholarship tax-credit program with a corporate tax-credit and two new targeted voucher programs. Second, the growth rate has been greatest in programs that have reached their initial caps. Finally, Democratic governors and legislators (such as Pennsylvania's Edward Rendell and Wisconsin's Jim Doyle) are more likely to agree to expand existing programs, or (like Arizona's Janet Napolitano and the heavily Democratic Rhode Island state legislature) to approve small new ones, than they are to support large new projects.

Utah's strategy started out as an incrementalist approach, but the Carson Smith special-needs program was too new and too small to dispel concerns that Utahns might have about universal vouchers. A modest next step—such as a program targeted to disadvantaged children, who generally perform poorly in inner-city schools—might not have evoked a referendum, and if it did, likely would not have fared so badly.

Currently, the state with possibly the brightest prospects for school choice is Arizona, where choice through charter

schools, open public school enrollment, scholarship tax credits, and special-needs voucher programs has made it all but impossible for opponents to demonize school choice. When Governor Napolitano pushed a full-day public-school kindergarten program, she referred to it as a “choice” program (families could choose whether or not to participate). Though antagonistic to school choice, she signed the voucher bills and allowed the corporate scholarship tax credit to become law without her signature. Should a Republican succeed Napolitano as governor, universal school choice could occur either

as a result of legislation or even by voter initiative, as the number of program beneficiaries begins to eclipse the tally of teachers union members.

A state like Louisiana—with a newly elected, passionately pro-school choice governor, a legislature that has passed school choice with bipartisan support, a lousy inner-city public-school system, a long tradition of Catholic schools serving disadvantaged students, and no constitutional obsta-

cles—may eventually present an opportunity for a sustainable large program, though the Utah experience cautions against overreaching in the short run. A state like Missouri, with support from minority legislators but opposition from rural Republicans, may at best be able to enact a small targeted program at the outset. The ultimate goal in either case remains the same: education funding that follows children to the school of their choice, with schools as the means rather than ends in themselves.

One bedrock lesson of warfare is that armies never should outpace their supply lines. That is the mistake that was made in Utah. Though school choice should be as American as apple pie, as with any type of change people may find it scary, especially when the issue is the education of children. People may know the status quo is bad, but fear that the unknown may be worse.

In the case of school choice, familiarity breeds demand. When it moves from hypothesis to reality, choice is increasingly difficult for opponents to distort. The faces of real children in good schools are the best reason to expand and sustain programs—and the best defense against the inevitable efforts to dismantle them.

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