

March 2013

Making Texas Public Education More Efficient: Taxpayer Savings Grant Program

by Joseph Bast¹

Introduction

This *Policy Brief* summarizes past research and presents new analysis showing how a proposal called the Taxpayer Savings Grant Program would enable the state to comply with its constitutional mandate to “establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”

The Taxpayer Savings Grant Program (TSGP) is, strictly speaking, a budget reform proposal not a school reform proposal. It is administered by the state Comptroller’s office rather than the Texas Education Agency, and the whole proposal Prof. John Merrifield and I were asked to evaluate in 2011 was only four sentences long.

The TSGP differs from voucher and tax credit plans in several ways. Unlike voucher plans, enrollment isn’t capped, there are no means tests, no new regulations on participating schools, and no enrollment lotteries. Unlike tax credit plans, participation is not limited to people who pay state taxes, every child receives the same-sized grant, and there are no “scholarship granting

Table of Contents

Introduction

1. What is the Taxpayer Savings Grant Program?
2. Enrollment Projections
3. Impact on the State’s Budget
4. Benefits to Students and Parents
5. Benefits to Teachers
6. Making Texas Public Schools More Efficient

Conclusion

- Appendix 1: Vouchers and Private School Freedom
- Appendix 2: TSGP, Courts, and the Constitution
- Appendix 3: 12-Year Forecast of Taxpayer Savings

¹ Joseph Bast is president of The Heartland Institute. See page 33 for a more complete bio. This *Policy Brief* builds upon and updates testimony he delivered to the Texas Senate Committee on Education, August 24, 2012. The author thanks friends as well as critics for pointing out errors and omissions in earlier work that this report seeks to correct. Any errors that remain are the author’s only.

entities” standing between parents and the schools they choose.

A draft bill to create the Taxpayer Savings Grant Program was submitted to Prof. Merrifield and me for analysis in 2011.

In 2011, I worked with Prof. Merrifield, an authority on the economics of education in Texas,² and other experts to produce reports on the impact of the Taxpayer Savings Grant Program (TSGP) on the Texas state budget and on teachers. Some of this *Policy Brief* repeats what appeared in those earlier

publications I wrote or coauthored, but much is new. In particular, the spreadsheet that appears in Appendix 3 makes many adjustments and refinements to the original analysis reported in the *Policy Brief* coauthored by Prof. Merrifield and me in 2011.³ The estimates of enrollment and cost savings differ from those in the earlier report.

For ease of reference, key numbers that appear in the current analysis appear in Table 1.

Table 1. Key Numbers Used in the Current Analysis	
Description	Number
Texas Public School Enrollment (2011-2012)	5,094,000
Texas Private School Enrollment (2011-2012)	245,568
Average State Management and Operations (M&O) Spending	\$8,386
Average State Foundation School Program Entitlement (FSP)	\$7,750
Maximum Taxpayer Savings Grant Size	\$5,032
Enrollment in First Year of Program as % of Public School Enrollment	6.0%
Enrollment in Second Year of Program as % of Public School Enrollment	7.2%
Enrollment in First Year, number of students	320,906
First Year State Savings from Taxpayer Savings Grant Program	\$560,780,400
Second Year State Savings from Taxpayer Savings Grant Program	\$762,328,287

² John Merrifield, Ph.D. is a professor of economics at the University of Texas at San Antonio and director of the E.G. West Institute for Effective Schooling. He is the author of four books, including *The School Choice Wars*, *School Choices*, and *Parental Choice as an Education Reform Catalyst: Global Lessons*. Dr. Merrifield is editor of the *Journal of School Choice*. Dr. Merrifield has written 45 articles published in peer-reviewed journals and several book chapters in his primary teaching and research fields of education economics, urban and regional economics, environmental and natural resource economics, and public finance. He received his Ph.D. in economics from the University of Wyoming in 1984.

³ John Merrifield and Joseph Bast, “Budget Impact of the Texas Taxpayers Savings Grant Program,” *Policy Brief*, The Heartland Institute and the E.G. West Institute for Effective Schooling, April 2011.

1. What is the Taxpayer Savings Grant Program?

A bill to create the Texas Taxpayer Savings Grant Program was submitted to Prof. Merrifield and me for analysis in 2011. It read as follows:

1. Any parent or legal guardian of a school-age child who resides in Texas and is entering kindergarten or attended a public school for all of the academic year prior to their participation in this program, who is willing to help the State of Texas save money by accepting less than the average per-pupil maintenance and operations expenditure in the district in which they reside, may receive reimbursement from the state for tuition paid for enrollment of said child at a private school in the amount of actual tuition or sixty percent of the state average per-pupil maintenance and operations expenditure, whichever is less, and the gratitude of the State of Texas.
2. Within 45 days of the passage of this Act, the Comptroller shall adopt rules solely to effectuate reimbursement and prevent fraud in financial transactions under this program. Such rules shall include the method for counting Taxpayer Savings Grant students in the Foundation School Program and the consequent savings therefrom. No funds from the Available School Fund shall be used for Taxpayer Savings Grants.

An amended version of the bill was submitted in the Texas House of Representatives as HB 33 on June 7, 2011. Further amendments made subsequently may affect enrollment, costs, and savings to the state. While this *Policy Brief* uses the latest data available as of March 2013, it has not tried to take into account changes to the proposal that its proponents may have made since the bill's original introduction.

Except for kindergarten students, children who are already enrolled in private schools would not be eligible for the tuition grants.

By reimbursing parents and legal guardians for “the amount of actual tuition costs or sixty percent of the state average per-pupil maintenance and operations expenditure, whichever is less,” the state expects to save money every time a child is moved from a public to a private school. The TSGP limits participation to the parents of a child who “resides in Texas and is entering kindergarten or attended a public school for all of the academic year prior to their participation in this program.” Except for kindergarten students, children who are already enrolled in private schools would not be eligible for the tuition grants.

Eligibility to participate in the program is not limited to students from low-income families or who attend failing public schools or to one or a certain number of cities or school districts. The proposal allows parents to add their own money to the savings grant in cases when private school tuition exceeds the amount of the grant. Private schools would only be subject to rules and regulations now in place. The TGSP would not impose any new requirements on suppliers of education services.

2. Enrollment Projections

If the Taxpayer Savings Grant Program were implemented, how many students would switch from public to private schools? Prof. Merrifield and I addressed this question in depth in a policy brief jointly published in April 2011 by The Heartland Institute and the E.G. West Institute for Effective Schooling.⁴

If the Taxpayer Savings Grant Program were implemented, how many students would switch from public to private schools?

On June 6, 2011, the Texas Legislative Budget Board (LBB) released a fiscal note on the TSGP bill that took issue with our estimates of enrollment and savings.⁵ That note provided updated information on state average per-pupil M&O expenditures and reported the Comptroller's Office had

estimated its administrative costs to be \$4.8 million annually to implement the program. A subsequent letter from LBB to state Rep. Bill Callegari dated June 20, 2011⁶ resolved some but not all of the disagreements between our forecast and LBB's.

This *Policy Brief* updates the original enrollment projections conducted by Prof. Merrifield and me in light of new information from LBB, the Texas Education Agency (TEA) and others. It also updates public and private school enrollment estimates, more carefully tracks the costs incurred by strategic behavior, and for the first time accounts for the cost of allowing all kindergarten students to begin in the program, something overlooked in our first analysis.

A. Demand Side Response

National surveys find many parents say they would choose to send their children to private schools if tuition were not a factor. A Phi Delta Kappa International/Gallup Poll conducted in 2004 found 57 percent of parents with children now attending public schools would send them to private schools if tuition scholarships or "vouchers" were available.⁷ A survey by Public Agenda in 1999 found 55 percent of all parents and 67 percent of inner-city parents of public school

⁴ Merrifield and Bast, *supra* note 2.

⁵ Legislative Budget Board, Austin, Texas, "Fiscal Note, 82nd Legislature 1st Called Session – 2011," June 6, 2011. See Joseph L. Bast, "Corrections to Fiscal Note for Taxpayer Savings Grants Program," *Policy Brief*, The Heartland Institute, June 8, 2011.

⁶ Legislative Budget Board, Austin, Texas, letter to state Rep. Bill Callegari, chairman, Government Efficiency and Reform Committee, from John O'Brien, director, June 20, 2011, "Your Request for a Letter of Estimate on Draft Committee Substitute for House Bill 33 (82S107895 EAH-D)."

⁷ George A. Clowes, "Polls Show Vouchers Are Popular and Would Be Widely Used," *School Reform News*, October 2004.

students said they would choose private schools if tuition was not a concern.⁸ The Harwood Group in 1995 found about 80 percent of African-American families said they would choose private schools if they could afford tuition.⁹

These surveys reveal widespread interest in school choice but do not accurately predict how parents behave when given that choice. Experience and research show the actual enrollment rates in school choice programs are much lower, at least at first. This is partly due to the design of the programs, which often come with heavy restrictions on who can participate and pay less than the full amount of tuition. But it is also because some parents delay making a decision about moving their children to new schools until the end of a school year or the end of elementary or middle-school so they graduate with their classmates. Others require time to learn about and apply for tuition assistance and learn about what schools they can choose. Some may discover that factors they didn't take into consideration at first, such as transportation costs and the limited availability of high-quality private schools, make choice a less-attractive option.

A more reliable estimate of how many parents would choose private schools if tuition were not a factor was produced by Barry R. Chiswick and Stella Koutroumanes (C&K) in peer-reviewed research published in 1996 and still regarded as seminal.¹⁰ They studied actual choices made by parents and used regression

Multiplying the C&K coefficient by the amount of the grant shows the TSGP would increase private school enrollment by 6.3 percentage points.

analysis to determine that a \$1 reduction in private school tuition in 1990 (the year of their data) increased the probability of choosing a private school by 0.000021 percent. Prof. Merrifield and I consulted with the authors and updated their formula using the Consumer Price Index to adjust for inflation, arriving at a new C&K coefficient of 0.0000125.

The TEA puts current average per-pupil M&O expenditures at \$8,386.¹¹ The TSGP would offer parents a maximum grant of 60 percent of the per-pupil M&O amount, \$5,032, or the cost of private school tuition, whichever is less. Average enrollment-weighted tuition for all private

⁸ Public Agenda, *On Thin Ice: How Advocates and Opponents Could Misread the Public's View on Vouchers and Charter Schools*, 1999.

⁹ Harwood Group, *Halfway Out the Door: Citizens Talk About Their Mandate for Public Schools*, Kettering Foundation, 1995.

¹⁰ B.R. Chiswick and S. Koutroumanes, "An Econometric Analysis of the Demand for Private Schooling," *Research in Labor Economics*, Vol. 15 (1996), pp. 209–37. Since this article was published, Stella Koutroumanes has changed her name to Stella Hofrenning.

¹¹ Lisa Dawn Fisher, Associate Commissioner of Finance, TEA, responding to a question during testimony before state District Judge John Dietz on January 10, 2013, transcript of testimony in possession of the author, pp. 113-117.

schools in the U.S. was approximately \$9,030 in 2011-12.¹² Since this exceeds \$5,032, most parents would qualify for the maximum grant amount. If we assume all parents choosing private schools would qualify and apply for the maximum grant, the C&K coefficient predicts that 6.3 percent ($5,032 \times 0.0000125 = 0.0629$) of all students would be enrolled in private schools.

The total population of K-12 students in Texas in 2011–12 was approximately 5,339,568, but only 5,094,000 of those students attended public schools while the remaining 245,568 students attended private schools.¹³ The C&K coefficient is a percentage of total (public and private) enrollment rather than of only public school enrollment. The number of students newly enrolled in private schools would be about 6.6 percent of current *public* school enrollment.

A third way to estimate enrollment in the TSGP is to find real-world experiences with similar tuition support programs. Two programs are sufficiently similar to provide some guidance. The first is the Milwaukee Parental Choice Program (MPCP), which currently enrolls more than 24,000 students. Scholarships are currently capped at \$6,442, about 45 percent of per-pupil public spending for Milwaukee Public Schools (MPS).¹⁴

A third way to estimate enrollment in the TSGP is to find real-world experiences with similar tuition support programs.

Prior to 1998–99, the cap on the number of choice scholarships and restrictions on schools eligible to participate in the program meant the rate at which parents chose to switch to private schools wasn't a reliable indicator of parental interest. In 1995, religious schools were allowed to enter the

program, but court challenges to the program were not resolved until 1998. In the 1998–99 school year, the first year when supply was actually free to meet demand, enrollment jumped to 5,740, or approximately 5.75 percent of MPS enrollment. The following year, enrollment was 7,596, approximately 7.62 percent of MPS enrollment. By 2009–10, enrollment was 20,042,

¹² U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics*, 2011, Table 64, http://nces.ed.gov/programs/digest/d11/tables/dt11_064.asp. NCES reports enrollment-weighted average paid tuition was \$8,549 in 2007-08. Adjusted for inflation, average tuition would be approximately \$9,030 in 2011–12. Average private school tuition in Southern states tends to be lower than the national average but it is not more than 44 percent less.

¹³ Public school enrollment is from U.S. Department of Education, National Center for Education Statistics, *Projection of Education Statistics to 2021*, Table 6, http://nces.ed.gov/programs/projections/projections2021/tables/table_06.asp?referrer=list. Private school enrollment is from U.S. Department of Education, National Center for Education Statistics, *Private School Universe Survey 2009-10*, Table 15, http://nces.ed.gov/surveys/pss/tables/table_2009_15.asp. NCES reports falling private school enrollment nationwide from 2009 to 2012. In the absence better state-specific data we assume 2011-12 enrollment is the same as 2009-10. We realize there are varying estimates of public and private school enrollment in Texas and chose to rely on NCES for one consistent and public source. The differences among competing estimates are small enough to be immaterial to our analysis.

¹⁴ John Robert Warren, "Graduation Rates for Choice and Public School Students in Milwaukee, 2003–2009," *School Choice Wisconsin*, 2011, in "Sources" to introduction by Susan Mitchell, p. 1, <http://www.schoolreform-news.org/article/29370>.

about 24.41 percent of MPS enrollment.¹⁵

A second real-world school choice program is the CEO Horizon Edgewood Tuition Voucher Program (ETV). From 1998 to 2008, that program provided privately funded vouchers to parents and guardians in the Edgewood, Texas school district to allow them to enroll their children in private schools. The tuition grant amount ranged from \$2,000 to \$4,700 and varied according to grade level and whether the school was inside or outside the Edgewood school district. To stay within the program's \$52.4 million budget, the 2004–05 to 2007–08 scholarship funding had to be confined to continuing scholarship users.¹⁶

In the first year of the ETV program, 770 students received scholarships, a number equal to 5.8 percent of enrollment in Edgewood public schools. In year two, participation rose to 888 students, 6.8 percent of public school enrollment. Participation rose steadily to 15.9 percent in 2003–04, the year before scholarships stopped being offered to new students, and then gradually fell as the program was phased out.¹⁷

To review,

- The best academic estimate of enrollment would lead us to predict 6.6 percent of students in public schools would move to private schools.
- The Milwaukee Parental Choice Program recorded enrollment of 5.75 percent of public school enrollment in the first year following the end of litigation and 7.62 percent in the second year.
- The Edgewood Tuition Voucher program had first-year enrollment of 5.8 percent of public school enrollment and a second-year enrollment rate of 6.8 percent.
- Enrollment in the Milwaukee program, the nation's oldest program, has reached 25 percent of public school enrollment and shows no sign of stopping. Edgewood's program reached almost 16 percent before new enrollment was ended due to budget constraints.

The best academic estimate of enrollment would lead us to predict 6.6 percent of students in public schools would move to private schools.

¹⁵ MPS and MPCP enrollment from Wisconsin Department of Public Instruction, <http://dpi.wi.gov/lbstat/mps-enr.html> and <http://dpi.wi.gov/sms/geninfo.html> ("Overall Membership and Payment History"). Note state estimates differ from numbers reported by the MPS and other sources, which use different methods that include or exclude charter schools, contract schools, part-time students, etc. We use the latest state statistics for both MPS and MPCP enrollments.

¹⁶ John Merrifield, Nathan Gray, Yong Bao, and Hiran Gunasekara, "An Evaluation of the CEO Horizon, 1998–2008 Edgewood Tuition Voucher Program," August 31, 2009, <http://www.schoolreform-news.org/article/29372>.

¹⁷ *Ibid.*

The Chiswick and Koutroumanes, Milwaukee, and Edgewood estimates are remarkably close, suggesting a forecast in that range would be robust. Later in this paper we propose using an average of the C&K estimate and first-year enrollment of the Milwaukee and Edgewood programs, 6.0 percent $((6.6 + 5.75 + 5.8) / 3)$, as the most likely enrollment rate for the first year of the TSGP, and the average second-year enrollment of the Milwaukee and Edgewood programs, 7.2 percent $((7.62 + 6.8)/2)$, as the most likely enrollment rate for the second year of the program.

B. Supply Side Response

As previously reported, private schools in Texas enroll approximately 245,568 students. Later in this *Policy Brief* we estimate the Taxpayer Savings Grants Program would increase private school enrollment by approximately 291,000 in the first year and 349,000 in the second year. So private schools would need to increase their capacity 118 percent in the first year and 142 percent in the second year.

Private schools will need to increase their capacity between 118 percent and 142 percent. We are confident this would occur for three reasons.

Critics of the TSGP and even some of its supporters question whether it is reasonable to assume private school capacity would grow fast enough to accommodate so many students switching from public to private schools. We are confident this would occur for three reasons:

1. The “inputs” needed to expand existing schools or create new schools are plentiful.

The private K-12 schooling sector constitutes a very small part of an education marketplace that includes public pre-kindergarten and K-12 schools, public and private technical and business training, and public and private higher education.¹⁸ Therefore, even if it were to double or triple in size, it would divert only a few percent of currently deployed assets and personnel. This would have little effect on wages or rents.

It is important to keep in mind that the TSGP would not increase the total amount of schooling demanded but merely reallocate the shares of the public and private sectors. The same number of students would be educated: that is not changing, only *in which sector*, public or private, the assets and personnel reside. Resources would be released from the public sector in amounts roughly equal to their acquisition by the private sector. This process need not take years or even many months to occur.

¹⁸ See Chiswick and Koutroumanes, *supra* note 10, p. 217.

2. The TSGP would generate sufficient revenue to fund rapid expansion.

The TSGP would generate a large stream of public funding going to new and existing private schools and entrepreneurs interested in starting new schools. This revenue will prompt a rapid expansion of facilities and hiring of new staff to meet the new demand.

If grants average \$5,032, the TSGP would bring approximately \$1.5 billion of new money to private schools in the program's first year and approximately \$1.7 billion in the second year, more than \$3.2 billion in just 24 months.

(\$5,032 x 291,000 = \$1.46 billion in the first year; \$5,032 x 349,000 = \$1.76 billion in the second year; 2 years total = \$3.22 billion).

Anyone who says he “can’t imagine” private schools doubling their capacity in a single school year needs to subscribe to the *Wall Street Journal*. In the private sector, much larger and more rapid build-outs of successful business models occur frequently.

The TSGP would generate a large stream of public funding going to new and existing private schools and entrepreneurs interested in starting new schools.

3. Capacity expanded to meet demand in cities with similar school choice programs.

Experience in other states and in the Edgewood School District in San Antonio demonstrates that private schools can increase their capacity quickly, certainly in the 15 months that would pass between enactment of the TSGP and the start of the second year. Neither Milwaukee nor Edgewood saw enrollment limited by school capacity and neither saw significant increases in tuition following adoption of scholarship programs.

The start-up of new schools should be even faster and more successful today than in the past thanks to the experience gained by national charter school management companies. These companies have systems in place to recruit boards of directors, principals, and administrators; choose curriculum; find and renovate space; buy insurance; and register with government authorities.

Competition and choice in the delivery of other public services have led to more efficient use of resources and lower prices, rather than increased competition for scarce resources and higher prices.¹⁹ Experts in the field talk of the “rule of two”: Public provision of a service generally costs twice as much as does private provision. If education savings grants bring the same cost savings to schooling, the same number of children could be taught with fewer resources than are currently used resulting in less demand and lower prices for those resources.

¹⁹ See Charles Wolf, Jr., *Markets or Governments: Choosing between Imperfect Alternatives* (Cambridge, MA: The MIT Press, 1988).

C. What about Strategic Behavior?

The TSGP restricts eligibility to students entering kindergarten or who have been enrolled in a public school for an entire school year. Some parents might withdraw their children from private schools and put them in public schools for one year only to move them *back* to private schools a year later in order to qualify for the grants. Can we forecast how many parents might engage in such strategic behavior?

Prof. Merrifield and I estimated the *maximum* percentage of parents with children already in private schools who would engage in this sort of behavior would fall in the same range – about 6 percent in the first year and 7.2 percent in the second year – as our estimate of the percentage of parents with children in public schools choosing to send their children to private schools.

Some parents might withdraw their children from private schools and put them in public schools for one year, only to move them *back* to private schools a year later in order to qualify for the grants.

We arrived at this conclusion by asking: Which is more likely, that parents already paying tuition to enroll their children in private schools are *more* sensitive or *less* sensitive to the price of tuition than parents with children in public schools? The answer is, they must be *less* sensitive since by choosing to pay tuition at their current levels their actions have revealed that the high price of choosing a private schools is not an

obstacle to making that choice. This is also consistent with the surveys cited earlier showing many parents believe tuition is a barrier to enrolling their children in private schools. Parents who make that choice despite the high price must be relatively insensitive to the price.

Therefore, the TSGP enrollment rate for parents with children in public schools must be the highest estimate for the percentage of parents who might move their children from private to public schools for a year in order to take advantage of the TSGP later. Using this logic, our analysis shows strategic behavior could lead to *at most* 14,734 students ($245,568 \times .06$) moving from public to private schools in the first year of the program and 17,681 ($245,568 \times .072$) in the second year to become eligible for tuition grants in the second and subsequent years of the program.

3. Impact on the State's Budget

Texas has a school financing system that equalizes per-pupil spending on management and operations (M&O), whereas other costs such as interest and sinking fund are funded mainly with local bonds and some state appropriations.²⁰ While the spending formula is complex in many

²⁰ Texas Education Agency, Office of School Finance, *School Finance 101: Funding of Texas Public Schools*, April 2010, <http://www.clyde.esc14.net/users/0015/docs/TEA.pdf>.

ways, the LBB, Comptroller's Office, and Texas Education Agency (TEA) appear to agree that the state saves an amount equal to the average Foundation School Program (FSP) entitlement every time a child moves from public to private school.²¹ According to TEA, the current average FSP entitlement is \$7,750 and the current per-pupil M&O expense is \$8,368.

The maximum grant available under the TSGP would be 60 percent of the M&O figure, or \$5,032. So for each child who uses the TSGP to move from public to private school, and whose parents or guardians apply for and receive the maximum grant amount, the state saves \$2,718 (\$7,750 - \$5,032).

A complete determination of the budget impact of the TSGP is more complicated than simply multiplying the number of children enrolled in the program by \$2,718, as the rest of this section shows.

A. Calculation of Net Savings

A spreadsheet calculating the budget impact of the TSGP appears in Appendix 3. It is available in Microsoft Excel on The Heartland Institute's Web site and by email to other researchers upon request. Following is a brief summary:

1. The average of the enrollment rate forecast by Chiswick and Koutroumanes and the observed enrollment rates in the first years of the Milwaukee and Edgewood programs is 6.0 percent. The average of Milwaukee's and Edgewood's enrollment rates in their second years is 7.2 percent. We will use these figures as our estimates of first and second year enrollment rates for the TSGP.

2. Texas public school enrollment is approximately 5,094,000. An enrollment rate of 6.0 percent in the first year would mean 305,640 students in the program, and of 7.2 percent in the second year would mean 333,768 students in the program.

Each student who leaves the public school system saves the state \$7,750 (the average Foundation School Program (FSP) entitlement) but costs the state \$5,032 (the cost of the grant).

3. Each student who leaves the public school system saves the state \$7,750 (the average FSP entitlement) but costs the state \$5,032 (the cost of the grant) for a net savings of \$2,718.

4. Strategic behavior would lead to as many as 14,734 students already in private schools to be enrolled in public schools in the first year in order to become eligible for grants in future years. This would reduce savings to state taxpayers by \$114 million (14,734 x \$7,750) in the first year and about \$96 million (2,770 x \$7,750 plus 14,734 x \$5,032) in the second year.

²¹ See the letters cited in footnotes 5 and 6. The specific numbers have been updated based on more recent information received from LBB and testimony presented by TEA cited in footnote 11.

5. Allowing all children entering kindergarten to participate in the TSGP means all kindergartners in Texas enrolled in a private school would be eligible for the maximum grant of \$5,032. About 30,000 children attended private kindergarten in Texas in 2011-12.²² If we assume that approximately the same number enter private kindergarten every year, and that all of their parents apply for grants and all of them qualify for the maximum grant amount, then the reduction in savings to taxpayers would be \$151 million a year (30,000 x \$5,032).

6. The Comptroller's office estimated its annual cost of administering the program would be \$4.8 million. This too must be subtracted from possible savings to the state.

7. Subtracting the costs of strategic behavior, allowing all children entering kindergarten to participate and administration yields net savings of \$561 million in the first year and \$762 million in the second year. Since the state of Texas operates under two-year budgets, it is useful to state the projected savings on a biennial basis: \$1.3 billion.

Cumulative savings for the first 12 years would be \$22.8 billion.

8. The spreadsheet in Appendix 3 projects costs and savings out for 12 years, assuming 2 percent annual growth in the K-12 student population and 1.5 percentage point annual growth in TSGP enrollment as a percentage of public school enrollment. Annual

savings gradually grow to \$1 billion by the fourth year, \$2 billion by eighth year, and \$3 billion in the 11th year. Cumulative savings for the first 12 years would be \$22.8 billion.

B. LBB's Objections

The previously reported fiscal note and letter to State Rep. Bill Callegari by the Legislative Budget Board (LBB) clarified some issues for us but left others unresolved. In particular, LBB forecast a much lower enrollment rate than we did. In the fiscal note, LBB objected to our original calculations on four grounds.

First, LBB assumed the state would lose federal money whenever a student enrolled in the program. We explained no state has ever lost federal funding due to students enrolling in private schools through a school choice program. For federal funding purposes, these students are still "counted" as public school students. (See the discussion in Appendix 1.) LBB dropped this claim in its letter to Rep. Callegari, and we hope the issue is resolved.

²² 7.7 percent of public K-12 students in Texas attend kindergarten, according to Texas Education Agency, Division of Accountability Research, Department of Assessment, Accountability, and Data Quality, "Enrollment in Texas Public Schools 2007-2008," January 2009. We expect the percentage of private school students attending kindergarten is higher, since tuition tends to be much lower than for private middle- and high-schools. If 15 percent of private school students are in kindergarten, then approximately 35,300 children (235,241 x .15) would be enrolled. One Web site estimates private kindergarten enrollment at 24,069. See <http://texas.educationbug.org/private-schools/>. We split the difference and assume 30,000 is an accurate approximation.

LBB's second objection was that the expense of savings grants would occur in the first fiscal year while the savings would not be realized until the next year, resulting in a net cost rather than savings to the state in the first year. Conversations between LBB and the bill's sponsors resolved that issue by having the "settle up" occur in the same year. Once again, LBB recognized this in its letter to Rep. Callegari.

The third objection was that the actual per-pupil savings would be the difference between the tuition grant and the average Foundation School Program (FSP) entitlement, not average M&O spending as we had assumed. LBB wrote, "The state would save the difference between the average FSP entitlement of \$7,750 and the reimbursement amount for each student in average daily attendance who left the public system and attended a private school..."

Apparently the M&O figure includes some funds the state would not save, though presumably school districts would. *We accept that correction*, but also its logical implication that the cost incurred if students move from private to public schools – the strategic behavior described earlier – would be the smaller average FSP entitlement rather than the larger average M&O expenditure. We have also updated LBB's estimate of M&O expenditures based on the testimony by TEA cited earlier.

LBB's fourth objection is to our forecast of enrollment in the TSGP. LBB presented and explained its much lower forecast in its letter to Rep. Callegari:

... the Texas Education Agency (TEA) assumed that one-half of 1 percent of FSP-eligible students (22,545) would choose to attend a private school and take advantage of the rebate in the first year of the program, rising to 1 percent of FSP-eligible students (45,753) in FY 2013. In each successive year, the number of participating students as a percent of total FSP-eligible students is assumed to increase by one percentage point annually until reaching 6 percent, or approximately 300,000 FSP-eligible students, where it is assumed participation growth would level off and remain stable thereafter.

LBB reports the source of the estimate was TEA. TEA was put on the spot when asked to produce an estimate on short notice and may have consulted contacts in the private school sector, asking how many open seats they had available and how quickly they could expand. It was a very small number relative to public school enrollment, perhaps the 22,545 figure mentioned in LBB's letter to Rep. Callegari.

We hope TEA and LBB revisit the topic and work with us to produce a more sophisticated forecast.

Prof. Merrifield and I have presented a very careful and robust estimate of enrollment that is much larger than what TEA produced. The current analysis responds to criticism and uses new information to produce a new and (we hope) more accurate forecast. Heartland, TEA, and LBB largely agree on everything except the enrollment rate. We hope TEA and LBB revisit the topic and work with us to produce a more sophisticated forecast.

4. Benefits to Students and Parents

Allowing parents to choose which schools their children attend is a powerful way to promote student achievement as well as reduce spending.²³ Parents respond to school choice by becoming more involved in their children's education, which is strongly correlated with improved academic success.²⁴ Parents who are empowered by school choice – who know their concerns are being taken seriously and who are welcome to participate in their schools' management – respond by becoming educational partners with teachers and administrators.

A. Benefits for Students

Students who attend schools of choice learn more, have higher attendance and graduation rates, and are more likely to go on to college. These benefits come about because choice allows a diversity in teaching methods and school management that closely reflects the diversity of learning styles and interests of students and parents.

These programs have been carefully studied by many scholars, who find positive effects on academic achievement, retention, student and parent satisfaction, and other measures.

School choice can also reduce spending. As Dr. Walberg wrote recently, "Schools that must compete with one another for students, funding, and teachers, even if that competition is muted and indirect, are less able to tolerate the waste and featherbedding that often accompany monopolies in a wide range of enterprises."²⁵

In 2012, 29 voucher and scholarship tax credit programs operated in 21 states and the District of Columbia and enrolled 212,000 children.²⁶ These programs have been carefully studied by many scholars, who find positive effects on academic achievement, retention, student and parent satisfaction, and other measures.

Dr. Walberg conducted a comprehensive survey of the literature on the effects of school choice for a book published in 2007.²⁷ A table appearing in that book is reproduced below as Table 2.

²³ See Herbert Walberg and Joseph Bast, *Education & Capitalism* (Stanford, CA: Hoover Institution, 2003).

²⁴ Sam Redding, *Parents and Learning* (Geneva, Switzerland: International Bureau of Education, 2000), www.illinoisparents.org/pr/English/Booklets/Parents%20and%20Learning.pdf.

²⁵ Herbert J. Walberg, *Transformational Innovation in K-12 Education: Achieving More, Spending Less in Schools, Districts, and States* (Chicago, IL: The Heartland Institute, 2011), pp. 7–8.

²⁶ A. Campanella, M. Glenn, and L. Perry, *Hope for America's children: school choice year book 2010–11*, Alliance for School Choice, 2011.

²⁷ Herbert J. Walberg, *School Choice: The Findings* (Washington, DC: Cato Institute, 2007).

Table 2. Sufficiency of the Evidence for Positive School Choice Effects					
Form of choice	Point-in-time academic achievement	Value-added over-time achievement gains	Cost efficiency	Parent satisfaction, citizens' favorable regard, or both	Social integration, citizenship, or both
Charter schools	Conclusive	Conclusive	Conclusive	Conclusive	Suggestive
Vouchers	Conclusive	Conclusive	Conclusive	Conclusive	Suggestive
Private schools	Conclusive	Suggestive	Conclusive	Conclusive	Conclusive
Competition	Conclusive	Suggestive	Suggestive	Conclusive	Suggestive
<i>Source: Herbert Walberg, School Choice: The Findings (Washington, DC: Cato Institute, 2007), Table 7-1, p. 108.</i>					

Commenting on this table, Dr. Walberg wrote: “The evidence supports every single one of the 20 possible choice effects, and the evidence is conclusive rather than suggestive for 14. It is statistically improbable that these overall results arose by chance. The results are about as consistent as can be found in the social sciences, and it thus seems clear that school choice works.”²⁸

B. What about School Segregation?

Concern has been expressed that school choice programs may segregate students on the basis of race, ethnicity, socio-economic status, or ability level.²⁹ This is an inflammatory claim that cannot be supported by an objective review of the literature.

School segregation occurs in public schools throughout the U.S. due to the current system’s reliance on geographic assignment of students to schools – sorting by ZIP code – and its tendency to create school systems with only a few readily observable differences among schools except student body composition. Having no other basis on which to select a school, parents choose based on convenience (often distance from home) and race and socio-economic status.

This is an inflammatory claim that cannot be supported by an objective review of the literature.

A system of schools having significant differences in school pedagogy and subject themes, such as what would likely emerge under the TSGP, would produce sorting based on parental insights

²⁸ *Ibid.*, p. 107.

²⁹ See John Merrifield and Joseph Bast, “Taxpayer Savings Grants: Reply to Fuller,” *Policy Brief*, Heartland Institute and the E.G. West Institute for Effective Schooling, June 10, 2011.

into what kinds of schools are best for their children, which in turn could have desegregating effects. Understanding that school choice can lead to greater racial integration and other types of sorting that benefit children is the reason school choice programs were created in many parts of the country to achieve integration without busing. For example, in Cambridge, Massachusetts schools are encouraged to differentiate themselves to achieve, through choice, improved racial balance.³⁰

The impact of school choice programs specifically on African-American students has been closely studied. Researchers from Harvard University, the RAND Corporation, and the Urban Institute all found positive effects on student achievement, even in cases where white students showed no improvement.³¹ Dr. Walberg writes, “In conclusion, the fact that African-American students benefit disproportionately from education vouchers rebuts concerns that school choice would be injurious to minorities.”³²

C. What about New Regulations on Private Schools?

While political liberals tend to worry that allowing school choice would result in segregation, political conservatives tend to worry school choice would result in more regulations on

While political liberals tend to worry that allowing school choice would result in segregation, political conservatives tend to worry school choice would result in more regulations on participating private schools.

participating private schools, undermining the very things that make them so successful today. The fear that “vouchers lead to more regulation of private schools” is expressed by many people in the school reform movement and must not be taken lightly.³³

Various school choice programs have been designed with this concern in mind. Design features can raise several barriers to increased regulation of participating schools:

- *Multiple authorities for accreditation:* One early version of the TSGP bill specified that only students attending accredited private schools would qualify for the grants, but the authors were careful to specify that schools can be accredited by “any accrediting association recognized by the commissioner to accredit nongovernmental schools in this state.” Texas has a unique private school accreditation system: Private schools certify and oversee one

³⁰ For other examples, see Walberg, *supra* note 27, pp. 47–49, and footnotes numbered 27–35 appearing on pp. 116–17.

³¹ See Walberg, *supra* note 27, pp. 40–42.

³² *Ibid.*, p. 42.

³³ See Walberg and Bast, *supra* note 23, pp. 260–264 and the Postscript titled “Why Conservatives and Libertarians Should Support Vouchers,” pp. 331–344.

another. This helps prevent the certification process from becoming a way to regulate private schools.

- *Regulatory authority kept out of the hands of the public education establishment:* State government education agencies have an inherent conflict of interest that tends to bias them against private schools. The original TSGP bill specified the state comptroller, who doesn't have that conflict of interest, would adopt rules and oversee implementation of the program.
- *Regulations restricted to implementation and prevention of fraud:* Choice legislation should not create any new basis for regulating private schools. The original TSGP bill gave the comptroller (not the Texas Education Agency) authority to "adopt rules solely to effectuate reimbursement and prevent fraud in financial transactions under this program."

Conservative critics of "vouchers" need to keep in mind that state governments have the power to regulate private schools heavily with or without the cash nexus created by public funding. Religiously affiliated schools are protected by the First Amendment against federal or state regulations that would interfere with their freedom of religion. Other schools are protected from over-regulation only by the vigilance of parents, teachers, and private school administrators. That will not change.

The State of Texas already has the power to regulate private schools heavily, with or without the "cash nexus" created by school vouchers.

Additional concerns about the effect of the TSGP on the autonomy of private schools were raised in 2011, so we asked one of the nation's leading authorities on the matter, Dick Komer, a senior attorney with the Institute for Justice, to weigh in on it. He addressed these concerns in some detail in a memorandum that appears in Appendix 1.

5. Benefits to Teachers

The TSGP would benefit teachers at least four ways, starting with increasing their average annual compensation by as much as \$12,000.³⁴

A. TSGP would increase teacher compensation.

The current organization of public schools allows school districts to adopt personnel policies affecting all of the schools inside the district's borders. This eliminates most competition among

³⁴ Much of this discussion is taken from Joseph L. Bast, Herbert J. Walberg, and Bruno Behrend, "How Teachers in Texas Would Benefit from Expanding School Choice," *Policy Brief*, The Heartland Institute, April 2011.

schools for students and for personnel and weakens the ability of teachers to negotiate for higher pay. Since private schools can't receive public funding, most of them cannot afford to pay teachers attractive salaries.

Under the TSGP, private schools could afford to compete with public schools for teachers, and as a result they would bid up teacher compensation. How much? Previous research surveyed by Prof. Merrifield as well as his own original research allows us to estimate the effect.³⁵

Using data from 118 school districts in 48 counties in Texas, Prof. Merrifield found the smaller each district's share of the teachers within a 25-mile radius, the higher teachers were paid, with all other variables held constant. That difference is the pay increase attributable to competition. By allowing individual private schools to compete with public school districts for teachers and other staff, the bargaining power of the public school districts would decline, resulting in teacher raises ranging from \$2,173 in rural districts to as much as \$12,000 in a large urban district such as Houston.³⁶

B. TSGP would improve working conditions for teachers.

Schools that compete for students *and teachers* have strong incentives to create a positive working environment for teachers. Schools that don't compete can tolerate lax security and unsafe conditions in classrooms and on school grounds.

Public school teachers are almost three times as likely as private school teachers to say they will retire as soon as they are eligible.

How much better are working conditions for teachers in private schools than in public schools? A survey of teachers conducted by the U.S. Department of Education revealed private schools have dramatically better working conditions than public schools.³⁷ For example, one in five public school teachers reported being physically threatened in the

previous year, versus only one in 20 private school teachers. One in eight public school teachers reported physical conflicts with students every day, while only one in 50 private school teachers reported such frequent conflicts.

Public school teachers are almost three times as likely as private school teachers to say they will retire as soon as they are eligible (33 percent versus 12 percent). Nearly twice as many public school teachers as private school teachers say they would leave immediately if they could find a

³⁵ See the literature review in John Merrifield, "Monopsony Power in the Market for Teachers," *Journal of Labor Research*, Vol. 20, No. 3 (Summer 1999), pp. 377–91.

³⁶ Merrifield and Bast, *supra* note 3.

³⁷ U.S. Department of Education, National Center for Education Statistics, "Schools and Staffing Survey (SASS)," <http://nces.ed.gov/surveys/sass/>, last visited February 16, 2011.

higher-paying job (20 percent versus 12 percent).

In light of these differences in the experiences and opinions of public and private school teachers, it is hardly surprising that private school teachers are much happier with their teaching careers and plan to stay in the classroom longer than their public school counterparts.

C. TSGP would result in more money spent in the classroom.

Lack of competition leads to waste and inefficiency in every activity or industry, and K-12 education is not an exception. By encouraging schools to compete, TSGP would reward schools that minimize their spending on bureaucracy and overhead and devote more resources to supporting classroom teachers.

Private schools report spending more of their budgets – about 72 percent according to one study – on classroom instruction than do public schools, which rarely get above 60 percent.³⁸ For a state the size of Texas, that means billions of dollars more would go to teachers under the TSGP.

Another reason school choice would mean more money in classrooms is because schools in a competitive education industry would not have externally imposed budget caps. Classroom achievements that please parents would increase enrollments and budgets, thereby raising teachers' market value.

Under the current public school financing system, one school's or one teacher's gain comes at the expense of a different school or teacher. Under a school choice program that allows parents to add to the amount of their grants, as the TSGP does, the pie grows as parents are satisfied and willing to invest more in a service they like.

Under a school choice program that allows parents to add to the amount of their grants, as the TSGP does, the pie grows as parents are satisfied and willing to invest more in a service they like.

Teachers, along with students, parents, and taxpayers, would benefit if a school choice program were to *change the incentives* of school administrators so some of the money now going to bureaucracy and nonteaching personnel went to teachers instead. This is already happening in private schools, where money is scarce and competition is keen. Teachers should support school choice because they stand to reap big rewards from the efficiency gains choice is likely to bring about.

³⁸ Andrew Coulson, "Arizona Public and Private Schools: A Statistical Analysis," *Policy Report #213*, Goldwater Institute, October 17, 2006.

D. Better matching of teachers, students, and parents.

We know children learn differently, parents look for different things in the schools they want for their children, and teachers have different strengths and weaknesses. So why do we have a school system that assigns children to schools based on where their parents live, rather than which schools are best for them?

Why do we require parents with very different views on what would be best for their children nevertheless to send their children to “one size fits all” schools?

Why do we require parents with very different views on what would be best for their children nevertheless to send their children to “one size fits all” schools? And why should teachers be assigned to schools based on seniority or labor contracts rather than being encouraged to seek out (or even start) schools that are a “good fit” for their teaching style?

The TSGP would allow parents to choose the schools their children attend, bringing together teachers, students, and parents who want to learn together, rather than being thrown together by an educationally irrelevant variable such as their ZIP codes.

* * *

In conclusion, the TSGP would not hurt public school teachers. It would help them by making schools compete to hire them, leading to higher pay and better working conditions, less bureaucracy, and a better matching of teachers, students, and parents.

6. Making Texas Public Schools More Efficient

The State of Texas is being sued by several groups of plaintiffs alleging it has failed to create “an efficient system of public free schools” as required by Article VII, Section 1 of the state’s constitution.³⁹ I have read the plaintiffs’ petitions in which school districts and others deplore a financing system that relies on out-of-date information on revenues and enrollment to allocate funds and combines “hold harmless” provisions with “Robin Hood” provisions in ways that ensure only the Texas Education Agency’s computers can determine the actual impact on a given school district of a change in state policies.

I agree in particular with this statement in the petition submitted by the Fort Bend Independent School District et al.,

The State must do what Texas courts have repeatedly and consistently said it must do:

³⁹ Texas Taxpayer and Student Fairness Coalition et al. v. Michael Williams, Susan Combs, and Texas State Board of Education, 200th Judicial District Court, Travis County, Texas. The case was decided on February 4, 2013 and is being appealed to the state Supreme Court.

make fundamental, structural and lasting changes to ensure a state funding system that adequately and equitably funds public schools to the high standards established by both the Texas Constitution and the Texas Legislature without depriving local school districts of meaningful discretion over local property tax rates.

Although they didn't intend to, the plaintiffs' facts and arguments make it clear that, short of the kind of structural reforms made by the Taxpayer Savings Grant Program, there can be no sustainable solution to the problems they describe. So long as Texas lawmakers fail to act on an idea like the TSGP, they are passing up an opportunity to improve the efficiency of the state's system of public education. By definition, that makes them inefficient.

The plaintiffs' facts and arguments also make it clear that, short of the kind of structural reforms made by the Taxpayer Savings Grant Program, there can be no sustainable solution to the problems they describe.

A. Spending Adequacy

Most petitioners complain the state doesn't send enough money to the school districts to meet their financial needs. Of course this is not a new concern or one that is unique to Texas. But it is the wrong area on which to focus.

Total spending by all levels of government in Texas on public schools in 2008–09 was \$54.7 billion and total enrollment that year was 4,728,204, so average per-student annual spending that year was \$11,567.⁴⁰ National enrollment-weighted average private school tuition in 2008–09 was \$8,549, a figure that includes extremely high per-student spending levels at exclusive and residential high schools. Tuition at Catholic and other religious schools was much lower than the average, and there is some evidence that private school tuition in Texas tends to be below the national average.

Critics of this sort of comparison say private school tuition doesn't include charitable contributions and other sources of revenue or adequately cover depreciation and other expenses that must be paid in order for a school to be sustainable. But public school spending figures considerably understate true per-pupil spending by leaving out many expenses.⁴¹ In the end, most experts agree private schools spend, on average, less than public schools and achieve superior results.

⁴⁰ Texas State Comptroller, Financial Allocation Study for Texas (FAST), Part 1, Exhibit 4, <http://www.fastexas.org/study/exec/exhibits/ex4.php>.

⁴¹ See Adam B. Schaeffer, "They Spend WHAT? The Real Cost of Public Schools," *Policy Analysis* No. 662, Cato Institute, March 10, 2010, http://www.cato.org/pub_display.php?pub_id=11432.

The plaintiffs and the legislature need to confront the fact that many private schools produce a higher-quality product spending much less than public schools currently spend. This is *prima facie* evidence that the problem with Texas's school system is not one of inadequate funding, but misuse of available funds.

The plaintiffs and the legislature need to confront the fact that many private schools produce a higher-quality product spending much less than public schools currently spend.

By allowing parents to choose higher-performing but lower-cost private schools for their children, the TSGP improves the quality of education while reducing state spending. It is perhaps the only structural reform that would allow the state to fulfill its duty to maintain an "efficient system of public free schools" without increasing taxes and spending.

On this point, the Texas Supreme Court seems ahead of the plaintiffs and the legislature. It held in 1995 that "money is not the only issue, nor is more money the only solution" to the state's educational problems (*Edgewood IV*) and in 2005 that "improvements in education ... could be realized by eliminating gross wastes in the bureaucratic administration of the system" (*West Orange-Cove II*).

B. Administration and Bureaucratic Waste

As reported earlier, the number of nonteaching staff in Texas is nearly the same as the number of teaching staff. A much higher percentage of spending by private schools finds its way into classrooms.

Inefficiency and bureaucracy are natural consequences of systems that aren't exposed to competition and consumer choice.⁴² They are clumsy, expensive, and often ineffective substitutes for the natural processes in markets that otherwise reward responsible innovation and punish failure and laziness. Inefficiency is the result of resources – in this case, taxpayer's dollars along with teachers and school buildings – remaining in the hands of people who aren't effectively managing them, rather than moving through purchase or even bankruptcy proceedings into the hands of those better able to meet the demands of consumers.

There is no line-item in a public school district's budget titled "waste" or "fraud." Instead, activities are undertaken and contracts signed that would not be approved if the district faced tough competition for students and funding from another school district nearby. The pressure to hold down costs is even more acute when individual schools compete and when the marketplace

⁴² James Q. Wilson, *Bureaucracy: What Government Agencies Do And Why They Do It* (New York, NY: Basic Books, 1991); Gordon Tullock, *Bureaucracy: The Selected Works of Gordon Tullock*, Vol. 6, edited and introduction by Charles K. Rowley (Indianapolis, IN: Liberty Fund, 2005).

is open to new entrants not bound by old ways of doing things.⁴³ Every line-item in a budget is then scrutinized to see if it helps or hurts the school’s ability to attract and retain students.

The TSGP would create that kind of competition and consequently would create the incentives needed to identify and eliminate “waste” and “fraud” from public school budgets, and from private school budgets as well. It would add only a trivial amount to the administrative expenses of the state – \$4.8 million a year, according to the comptroller. This is less than 1 percent of the projected annual *savings* the program would create.

C. Accountability

Part of “efficiency” is ensuring a quality service is delivered. Later versions of the TSGP required that participating schools be accredited, but experience suggests this won’t satisfy critics who believe school choice cannot achieve the level of “accountability” the myriad public laws and massive bureaucracies of the public sector have achieved. But this is profoundly anti-parent and simply wrong.

Perhaps the strongest argument for overhauling K-12 funding and governance is that the supposed accountability of traditional public schools to taxpayers and more generally to the American people is a myth. The accountability critics of choice fear losing has created a level of dysfunction and plummeting productivity “that threatens

Against this background of failed public-sector “accountability,” the real accountability created by parental choice in education looks promising indeed.

our very future as a Nation and a people.”⁴⁴ As more and more is spent, achieving virtually unchanged levels of utterly unacceptable measured performance, mounting anecdotal evidence points to plummeting levels of performance in the untested subjects.

Public education in America today is a system in crisis. It fails to graduate a quarter of the children it is supposed to serve; it fails to recruit, frustrates, or outright rejects talented people who would be great teachers and administrators; it produces test scores that put the U.S. behind most of the developed countries of the world; and it does all this while burning through taxpayer dollars at an unsustainable pace.

Against this background of failed public-sector “accountability,” the real accountability created by parental choice in education looks promising indeed. In a competitive education marketplace, schools that fail to satisfy parents *go out of business*, something so rare in the public sector that it generates headlines whenever it happens. In such a marketplace, teachers who are good *get paid*

⁴³ John Merrifield, *The School Choice Wars* (Lanham, MD: R&L Communication, 2001).

⁴⁴ National Commission on Excellence in Education, *A Nation at Risk* (Washington, DC: U.S. Department of Education, 1983), p. 5.

more, also something unheard of in public schools. Bad teachers *lose their jobs*, whereas in many public school systems they simply get transferred from one school to another, the infamous “dance of the lemons.”⁴⁵

D. Constitutionality

Regarding the constitutionality of school choice in Texas, the U.S. Supreme Court ruled in *Zelman v. Simmons-Harris* (2002) that tuition support for parents choosing private schools was constitutional even when the schools they chose were run by religious orders.⁴⁶ The Texas Supreme Court ruled in *Edgewater IV* (1995) that the issue of whether to provide education either in whole or in part through a system of school choice was a question for the Legislature rather than the courts.

An essay by Allen E. Parker on the constitutionality of school choice in Texas appears in Appendix 2.

E. TSGP: A Long-Term Solution

Why not entertain a reform proposal that changes the way educational services are delivered in Texas from a public-sector monopoly where competition is forbidden, parents are ignored, quality lags, and costs soar, to a dynamic marketplace where education service providers compete by satisfying parents and delivering high-quality services?

The Taxpayer Savings Grant Program is the pathway to that second vision.

The TSGP would save taxpayers billions of dollars while expanding parental choice and benefitting students and teachers.

The TSGP would save taxpayers billions of dollars while expanding parental choice and benefitting students and teachers. We project taxpayer savings of \$22.8 billion over the course of 12 years. (See Appendix 3.) The TSGP is also a long-term solution to the problems Texas faces in educating a growing

population of multicultural and low-income students. With slightly more optimistic assumptions about enrollment and the size of the grants issued, the state could see much larger savings over 12 years.

⁴⁵ Peter Schweizer, “The Dance of the Lemons,” *Hoover Digest*, Hoover Institution, January 30, 1999. For more about how public schools mistreat good teachers and tolerate bad ones, and how this would not be tolerated in a competitive education marketplace, see Bast, Walberg, and Behrend, *supra* note 34.

⁴⁶ The *Zelman* opinion may be viewed at <https://supreme.justia.com/cases/federal/us/536/639/case.html>.

Conclusion

The Taxpayer Savings Grant Program would enable approximately 321,000 students to use savings grants to enroll in private schools in the first year saving taxpayers some \$561 million.⁴⁷ Savings in the first biennial budget would be \$1.3 billion. In subsequent years savings would grow so that over the course of 12 years, using extremely conservative estimates, taxpayers would save \$22.8 billion.

Students would benefit as well. Other school choice programs around the country have demonstrated how choice improves student achievement, retention, and other outcomes. Parents and teachers will be happier.

“The Texas plan may be the last, best hope for American K-12 education.”

– Dr. Herbert J. Walberg

The Taxpayer Savings Grant Program would solve the problems identified by plaintiffs in the court case pending against the state by using markets to make the state’s school system more efficient, by *reducing* the cost of education while *increasing* its quality.

School choice is not a radical or new idea. It is being used by some 20 states and cities across the country to solve problems similar to those Texas is experiencing. A successful experiment with school choice took place right here in Texas, in the Edgewood school district, proving this is an idea that can work for Texas’s unique mixture of students.

Dr. Herbert Walberg may have put it best when he wrote in November 2012:

The Texas plan will give parents substantially more choice than charter, voucher, and tax deduction plans.... [I]t appears that the Texas plan may be the last, best hope for American K-12 education.

The failures and high costs of American public schools have remained a threat since publication of *A Nation at Risk*, in 1983. Subsequent reforms and rising expenditures have accomplished little in three decades. The future of our children and this nation requires a bold new vision for school reform. The Texas Savings Grant embodies that vision.⁴⁸

#

⁴⁷ The 321,000 figure that appears here and in Table 1 is 305,640 (6% of public school enrollment) minus 14,734 (students already in private schools who are enrolled in public schools for one year so they qualify for grants in later years) plus 30,000 (all children attending private kindergarten in 2011-12).

⁴⁸ Herbert Walberg, “School Reform, the Texas Way,” *Defining Ideas*, Hoover Institution, November 27, 2012, <http://www.hoover.org/publications/defining-ideas/article/135371>.

Appendix 1.

Do vouchers threaten private school freedom?

Dick Komer, Senior Attorney, Institute for Justice
June 16, 2011

I have worked at the Institute for Justice for the past 18 years, mostly part-time, almost exclusively in the area of school choice, but perhaps more importantly, prior to working at IJ I was a career civil rights attorney for the federal government. My final position, however, was not a career job, but a political one as Deputy Assistant Secretary for Civil Rights at the U.S. Department of Education. That previous incarnation ended with the commencement of the Clinton Administration.

I was the number two person at the Office for Civil Rights, which enforces the federal civil rights laws that educational recipients of federal funds become subject to when they accept federal financial assistance. I realize that this is a pretty unusual background for a lawyer at a libertarian law firm like IJ, but it does mean I am more familiar with federal civil rights laws than the average bear. [No doubt this background may make me suspect in the eyes of folks who don't trust the federal government, but quite frankly it actually means that I have a more solid basis for distrusting it than other people ever will.]

In any case, I have some modest familiarity with both federal civil rights law and school choice programs. It is not like IJ is a newcomer to school choice; we have been involved one way or another in the creation and/or defense of every school choice program enacted since 1990. And it is not like the question of federal regulations has never come up before. So let's start at the beginning.

Recent History of Concerns about Federal Intrusion

It appears that some observers have concluded that private schools that participate in school choice programs (or perhaps only the program contemplated by the Texas legislation) would be subject to the federal Individuals with Disabilities Education Act (IDEA) and have to provide a free and appropriate education to any students receiving a voucher. Under the current interpretation as I understand it this is simply mistaken. (If I am the one mistaken, then it is because the original interpretation has changed, because I am the source of the original interpretation.)

This question arose in 1990 when the original Milwaukee program was passed (the Milwaukee Parental Choice Program or MPCP). The Wisconsin Superintendent of Public Instruction,

Herbert Grover, was charged by the legislation with administering the MPCP, but was a stout opponent of the Program. He issued proposed regulations or instructions to the potential participating schools stating that they would be subject to all the same requirements that federal civil rights law, including the IDEA, imposed on public schools. This led the backers of the Program to get Senator Kasten to request an evaluation of that position from the U.S. Department of Education. The Department agreed to do so, and a task force was put together to answer the question.

The task force included members from the Office for Civil Rights (OCR), which enforces Title VI, Title IX, and Section 504, the Office of Special Education and Rehabilitative Services (OSERS), which administers the IDEA, and the Office of General Counsel (OGC), the Department's lawyers. The Deputy Secretary of Education who created the task force appointed the Deputy Assistant Secretary for Policy of the Office for Civil Rights to head it. That was me.

Voucher-Receiving Schools Still Private Schools

I prepared a memorandum concluding that no federal funds were used for the Program and that any participating schools were thus not recipients of federal financial assistance directly subject to the laws enforced by OCR. That memo also concluded that the schools remained private schools, and that the children were "parentally-placed private school students" under the IDEA, which meant that they were not entitled to a free and appropriate public education in their private schools.

Although I authored the memo, its conclusions were concurred in by OSERS and OGC, so its conclusions represented the official position not just of OCR but of the department as a whole. This report was sent to Senator Kasten by the Deputy Secretary as the Department's response, was filed by the defendants' attorneys with the trial court, which accepted the conclusions and held that the private schools remained private schools if their students received vouchers and the kids were considered private school students for IDEA purposes. The Wisconsin Supreme Court ultimately adopted this position in its decision on final appeal in *Davis v. Grover*, upholding the constitutionality of the Program.

While I as an official of OCR had no authority to issue official interpretations of the IDEA, because that was OSERS' job, the Assistant Secretary of Education, whose job it was to interpret the IDEA, and the General Counsel of the Department, whose job it was to review legal interpretations, concurred in my report, as did my boss, the Assistant Secretary for Civil Rights, as to those provisions OCR enforces.

Voucher Recipients Not Public School Students

The issue of how the IDEA applies to voucher programs arose again after Florida passed its McKay voucher program, which, as you know, is limited to children with disabilities, meaning that they are eligible for IEPs if enrolled in public schools. The question was again asked of

OCR whether such students should be considered as public school students because they receive vouchers and the answer was again given that they were not, and that they were classified the same as if their parents placed them in private schools with their own money exclusively.

Consequently, unless there has been a more recent interpretation changing this conclusion of which I am not aware, when a parent uses a state-provided voucher to place his or her child in a private school that student is treated the same as when a wealthy parent does so using his or her own funds. The full panoply of Free Appropriate Public Education services and procedures do not apply to such students in private school, although of course they would apply anew if the student returned to public school.

On State Regulation of Private Schools

On the broader question of states actually imposing regulation on schools participating in school choice programs, I would note that to properly understand this issue one needs to know what sort of regulation any given state has already imposed on private schools. This varies considerably from state to state.

There is unquestionably a tendency for states to impose additional regulatory burdens on private schools whose students receive various forms of state aid, but what is rarely understood is that states can impose substantial regulatory burdens on private schools in the absence of any form of state assistance to the private schools' students and some states do. They do this on the basis of the state's interest in a well-educated citizenry, the same interest that justifies the compulsory education laws every state imposes. While the U.S. Supreme Court's decision in *Pierce v. Society of Sisters* from 1925 is rightly viewed as upholding the Constitutional right of parents to use private schools, that decision also spoke of the legitimate interest of the state in regulating the education received in those private schools.

Voucher programs vary dramatically in the extent of additional regulation they impose on private schools, and as libertarians we at IJ prefer less rather than more such regulation. But the MPCP itself imposes very significant regulations on the private schools, and such regulation was recently increased when the Democrats dominated all parts of the legislative process there. We expect that some of the increase will be rolled back now that the Democrats' political monopoly has been broken, but this history demonstrates the need for constant vigilance. But as a matter of comparison, the new Indiana program imposes far less intrusive regulation than the MPCP or the Cleveland Program upheld by the U.S. Supreme Court in *Zelman v. Simmons-Harris* in 2002 do. This is where the importance of current regulation comes in.

State Tests in Private Schools

The large majority of private schools in Indiana were required to administer the state tests (known as ISTEP) to their students long before the new voucher program was enacted. Indiana has long provided free transportation to private school students but as a condition for

participating the private schools had to administer ISTEP. This was also the case in Cleveland, Ohio; virtually all the private schools participating in the voucher program there were already required to administer the state tests. So, except for a relative handful of private schools in Indiana, the requirement to administer ISTEP duplicates a pre-existing requirement they are already complying with. And we strongly suspect that as occurred with the Catholic schools in Cleveland, the performance of their students on the state tests will become one of their strongest selling points with the public at large. The Cleveland Catholic and Lutheran schools, which formed a large majority of the schools in the Cleveland Program, had been out-performing the local public schools on the state tests for years before enactment of the Program there, and local parents were well aware of that fact.

While we do not advocate for imposition of the state testing regime on private schools participating in voucher programs, we do believe that not all state tests are the same and a hideous danger to private schools' independence. Given the generally weak nature of these tests, due in part to the motivation of public schools not to look bad, students at private schools with decent academic programs will usually do just fine on the state tests. Again, our preference as libertarians is for as little state regulation as possible, and we believe the best form of accountability is to make schools accountable directly to the parents. But the political realities are that sometimes some regulation must be accepted, and so far we have not seen much evidence that what regulation has been imposed has devastated private education.

There can be no doubt that an administration as anti-voucher as the Obama Administration has proved itself to be could reverse the long-standing interpretation I have described above, and it's also possible a reversal happened already when I wasn't looking. But to the best of my knowledge, students placed by their parents in private school do not subject those schools to the IDEA as if they were public schools. Private schools are subject to some or all of the Americans with Disabilities Act, although religious schools get various exemptions, but that Act applies regardless of whether a private school or its students participate in public aid programs.

#

Appendix 2.

Taxpayer Savings Grants, Courts, and the Constitution

by Allan E. Parker, J.D.
President of The Justice Foundation

The Texas Supreme Court

In *Edgewood IV*, the Texas Supreme court held that the issue of whether to provide education either in whole or in part through a system of school choice was a question for the Legislature rather than the courts, 893 S.W.2d 450, 463 (Tex. 1995). At the same time, the Court cast light upon its view of school choice if it were to be adopted by the Legislature. It appears certain that a system of school choice would be constitutional in Texas.

In 1995, the court majority (eight Justices) went to great lengths to say that education does not have to be provided solely by the State to be considered a valid means of education under the Texas Constitution:

In Senate Bill 7, the Legislature fulfills its mandate to provide a general diffusion of knowledge by establishing a regime administered by the State Board of Education. The [Texas] Constitution *does not require*, however, that the State Board of Education or *any state agency* fulfill this duty. As long as the Legislature establishes a suitable regime that provides for a general diffusion of knowledge, the Legislature may decide whether the regime should be administered by a state agency, by the districts themselves, or by *any other means*. (emphasis supplied) (footnote 8, per Cornyn)

Finally, the Court has expressed its great desire on numerous occasions to defer to the Legislature in determining the method of establishing a suitable system. In fact, that was the reason for denying school choice as a *judicially imposed remedy* (per Cornyn, citing *Edgewood I. Edgewood II*) (See also *Mumme v. Marrs*, 40 S.W.2d 31, 35 (Tex. 1931) and *Love v. City of Dallas*, 40 S.W.2d 20 (Tex. 1931), but it would be acceptable if the Legislature adopted it.

The above analysis is consistent with a conservative judicial philosophy which would not impose a judicial remedy upon the Legislature but which would clearly uphold a school choice remedy voluntarily adopted by the Legislature as a legitimate means of financing public education.

After this decision in 1995, the Texas Senate adopted a pilot school choice program for twenty districts, but it was defeated in the House. In 1997, a pilot program for school choice for children

in low performing schools was defeated in the Texas House on a 68–68 tie.

The U.S. Supreme Court

The U.S. Supreme Court has clearly established the constitutionality of school choice plans that include public benefits which the individual beneficiary may freely choose to use at religious schools. *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

Other cases upholding a school choice-type benefit include:

1. Financial assistance to students attending religious colleges, like Texas Tuition Equalization Grant Program: *Americans United for Separation of Church & State v. Blanton*, 433 F. Supp. 97 (M.D. Tenn. 1977) aff'd, 4 U.S. 803 (1977)
2. Tax credits to attend private school: *Mueller v. Allen* 463 U.S. 388 (1983)
3. Vocational rehabilitation tuition to attend a religious seminary: *Witters v. Washington Dept. of Services for the Blind*, 474 U.S. 481 (1986)
4. Deaf interpreter at public expense even saying Lord's Prayer for student at Catholic school: *Zobrest v. Catalina Foothills School District*, 113 S.Ct. 2642 (1993)
5. Student groups cannot be denied equal access to student activity funds because they are Christians: *Rosenberger v. University of Virginia*, 115 S. Ct. 2510 (1995)
6. Government can provide neutral reading support even on religious school campus: *Agostini v. Felton*, 117 S.Ct. 1997 (1997)

Test for Constitutionality

School choice programs must meet four tests to survive constitutionality challenges:

- A. The financial assistance is available to a broad class of individuals defined without regard to religion.
- B. The benefit is intended for a public purpose, i.e. an educated citizenry. Saving taxpayers' money is also a secular purpose.
- C. The decision to attend a religious school is entirely voluntary, and thus religious schools are only indirect beneficiaries. No money goes to private schools directly, only if individuals voluntarily choose such schools.
- D. No financial incentives are created to attend private over public schools, nor are benefits

limited to private school students, as was the case in *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973).

#

Allan E. Parker, president, The Justice Foundation, 8122 Datapoint, Suite 812, San Antonio, TX, 78229, phone (210) 614-7157.

About the Author

Joseph Bast is president and CEO of The Heartland Institute, a 29-year-old national nonprofit research center located in Chicago, Illinois. He is the author or editor of 21 books, including *Rebuilding America's Schools* (1990), *Education & Capitalism* (2003), *Climate Change Reconsidered* (first volume, 2009; second volume, 2011), and *The Patriot's Toolbox* (2010, rev. ed. 2011).

His writing has appeared in *Phi Delta Kappan*, *Economics of Education Review*, *Independent Review*, *Journal of Private Enterprise*, *The Cato Journal*, *Wall Street Journal*, *Investor's Business Daily*, *USA Today*, and many of the country's largest-circulation newspapers. He has been profiled in feature articles appearing in *Nature*, *The Nation*, and *E&E News*.

Bast is publisher of five monthly newspapers sent to every national and state elected official and 8,400 county and municipal officials. Those publications are titled *School Reform News*, *Environment & Climate News*, *Health Care News*, *Budget & Tax News*, and *FIRE Policy News*.

Bast has been recognized many times for his contributions to public policy research and debate, including being awarded the 1994 Roe Award from the State Policy Network, the 1996 Sir Antony Fisher International Memorial Award, the 1998 Eagle Award from Eagle Forum, and the 2004 Champion of Liberty Award from the Libertarian National Committee. He was commissioned a Kentucky Colonel by Gov. Paul E. Patton in 1996, elected a member of the Philadelphia Society in 2002, and elected to the boards of directors of the American Conservative Union in 2007 and the Chicagoland Chamber of Commerce in 2012.

About The Heartland Institute

The Heartland Institute is a national nonprofit research and education organization. Founded in Chicago, Illinois in 1984, Heartland's mission is to discover, develop, and promote free-market solutions to social and economic problems. Its activities are tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

Heartland is headquartered in Chicago, Illinois and has a full-time staff of 31 and a 2013 budget of \$6 million. It is supported by the voluntary contributions of approximately 6,000 supporters. For more information, please visit our Web site at www.heartland.org, call 312/377-4000, or write to The Heartland Institute, One South Wacker Drive #2740, Chicago, Illinois 60606.

© 2013 The Heartland Institute. Distributed by **The Heartland Institute**, a nonprofit and nonpartisan public policy research organization. Nothing in this report should be construed as reflecting the views of The Heartland Institute, nor as an attempt to aid or hinder the passage of legislation. Additional copies of this Policy Brief are available for \$6.95 from The Heartland Institute, One South Wacker Drive #2740, Chicago, IL 60606; phone 312/377-4000; fax 312/377-5000; email think@heartland.org; Web <http://www.heartland.org>.