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Are Charters Enough Choice? School Choice and the Future of Catholic Schools

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INTRODUCTION

Padua Academy—an Indianapolis charter school—opened in August 2010. Technically speaking, that is. Until May 2010, a Catholic school—St. Anthony Academy—occupied the same school build-

* Professor of Law, Notre Dame Law School. I am indebted to Ken Ogorek and Connie Zittnan of the Archdiocese of Indianapolis for their insights on the charter school conversions discussed here, to Margaret Brinig, my co-author on the school closure research discussed herein, for empirical support, and to Richard Garnett and Peter Schuck for helpful suggestions about this essay. I also received valuable input at the *Notre Dame Law Review* symposium on "Law and Educational Innovation." Kathleen Brogan, Alison Curran, and Brian Mahoney provided excellent research assistance. Mistakes are my own.

ing. Catholics will immediately notice the connection between the names of the charter school and its Catholic antecedent. Both were named for Saint Anthony of Padua—a thirteenth-century priest renowned for his preaching, who is popularly revered as the patron saint of lost things.[1] The nomenclative similarity between Padua Academy's sister school, Andrew Academy, and its Catholic predecessor, St. Andrew/St. Rita Academy, is even more readily apparent. This is not mere happenstance. In 2010, the Archdiocese of Indianapolis decided to close St. Anthony and St. Andrew/St. Rita and reopen them as charter schools. The Archdiocese justified the decision as a means of "saving" the schools, explaining, "[m]any urban Catholic schools are closing across the nation, and we did not want to leave the students or communities we currently serve . . . . Through this transformation, an urgent and unmet need within urban Indianapolis will be filled."[2]

The "transformation" is a curious one. Much has changed inside the walls of these two school buildings since May 2010. Most significantly, religion has been stripped from the schools' curricula and religious iconography from their walls. Still, the schools' day-to-day operations continue to be directly managed by the Archdiocese, students continue to wear uniforms; and the schools educational culture continues to mimic in many respects the traditional "Catholic school" formula—high expectations for both student academic performance and parental involvement, a disciplined and orderly school environment, and an emphasis on character education.[3] Moreover, the Arch-

1 Anthony of Padua was canonized in 1232, less than a year after his death, and named a "Doctor of the Church" in 1946. *St. Anthony of Padua Doctor of the Church*, CATHOLIC ONLINE, http://www.catholic.org/saints/saint.php?saint_id=24 (last visited Mar. 9, 2012).

2 *Archdiocese Gets OK to Create Two New Charter Schools*, CRITERION ONLINE EDITION (Apr. 16, 2010), http://www.archindy.org/criterion/local/2010/04-16/charter.html.

3 Before the fall of 2010, the schools were a part of a consortium of schools, the Mother Theodore Catholic Academies, which the Archdiocese created in an effort to strengthen schools serving inner-city communities. Named for Mother Theodore Guerin, a French nun who established Catholic schools throughout Indiana during the mid-nineteenth century, the Mother Theodore Catholic Academies have the explicit mission of providing a Catholic education in inner-city Indianapolis. *Id.*; *About St. Theodora Guerin*, MOTHER THEODORE CATH. ACADS., http://www.archindy.org/mtca/guerin.html (last visited Mar. 9, 2012). Technically, Padua and Andrew Academies are no longer part of this network. The charter operator is an independent corporation called ADI Charter Schools (for "Archdiocese of Indianapolis"). However, ADI Charter Schools, by contract, has delegated responsibility for day-to-day operations to remain with the Mother Theodore Academies. Telephone Interview with Connie Zittnan, Dir., Mother Theodore Acads. (Aug. 18, 2011). Mother Guerin was canonized St. Theodora by Pope Benedict XVI in 2006. *About Saint Mother Theo-*

diocese offers religious education classes after school for charter school students, and, while attendance at these classes is not mandatory (and cannot be, by law), participation rates exceed fifty percent at the predominantly Latino Padua Academy and falls just shy of that level at Andrew Academy, where the student body is predominantly African American and non-Catholic.[4]

Padua and Andrew Academies are, in some respects, *sui generis*: the Archdiocese of Indianapolis appears to be the only diocese in the United States directly operating charter schools and also appears to be the only diocese that provides after-school religious education targeted specifically for charter school students. The facts underlying the Archdiocese's decision to close St. Anthony and St. Andrew/St. Rita, however, are anything but *sui generis*. At least 1600 Catholic schools, most of them located in urban areas, have closed during the past two decades, displacing over 300,000 students. The persistence of the financial and demographic realities underlying these school closures suggest that this trend will continue and even accelerate in the coming years.[5] The Archdiocese of Indianapolis also is not the only diocese to consider "converting" its inner city Catholic schools to charter schools rather than close them altogether. Although such conversions are controversial in Catholic education circles, the financial realities facing many dioceses and the concomitant desire of bishops to avoid abandoning inner city neighborhoods suggest the number of charter conversions likely will increase in coming years. Even in dioceses that do not intentionally convert their schools, many charter schools will—and already do—operate in closed Catholic schools. School buildings are, after all, ideal locations for schools.

Catholic and charter schools are linked in a number of other underappreciated ways. To begin, charter schools, which are free, compete with Catholic schools, which are not. And there is little doubt that the declining enrollments in Catholic schools are at least partially attributable to the rise of charter schools. As Diane Ravitch has observed, "[w]here charter schools are expanding, Catholic schools are dying."[6] Second, charter schools not only operate in

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dore Guerin, SISTERS OF PROVIDENCE, http://www.spsmw.org/sisters-of-providence/saint-mother-theodore/about-saint-mother-theodore-guerin.aspx (last visited Mar. 9, 2012).

4 Telephone Interview with Ken Ogorek, Dir. of Catechesis, Archdiocese of Indianapolis (May 11, 2011).

5 Margaret F. Brinig & Nicole Stelle Garnett, *Catholic Schools, Urban Neighborhoods, and Education Reform*, 85 NOTRE DAME L. REV. 887, 889 (2010).

6 Samuel G. Freedman, *Lessons from Catholic Schools for Public Educators*, N.Y. TIMES, May 1, 2010, at A17; Mitchell Landsberg et al., *L.A. Charter Schools Flex Their*

closed Catholic schools, but the leasing revenue generated by this arrangement may incentivize some school closures.[7] Third, as Catholic schools close, charter schools are filling the resulting educational void by providing alternatives to traditional public schools. Charter schools, rather than Catholic schools, are becoming the dominant schools of choice in many inner city communities. Finally, and importantly for purposes of this essay, in education-reform debates, charter schools are often cited as a means of capturing the educational benefits of school choice without enlisting private schools, including Catholic schools, through voucher or tax-credit programs.[8]

This Essay is, in essence, a response to this final, "charters are enough choice," argument. It proceeds from the simple (and, in my view, regrettable) reality that current education policy in most states offers Catholic school leaders an unacceptable ultimatum: if you want access to public education funds for your schools, then secularize and relinquish control of them. As a result of this ultimatum, Catholic schools will continue to close by the dozens in the inner city neighborhoods each year, and many of them will be replaced by charter schools, either by design or default. For reasons articulated below, Catholic schools' departure is a loss for civil society, especially for the urban communities where they have served for decades. Furthermore, it is a loss that could be mitigated by school-choice devices that make private schools financially accessible for the children living in these communities who desperately need the high-quality education that Catholic schools have long provided.

Building upon the reality of Catholic school closures—and, in some dioceses, their conversion to charter schools—this Essay makes a case that charter schools *are not enough choice.* Charter schools are, by and large, a valuable addition to the American educational landscape and a critical piece of the education-reform puzzle. But, urban Catholic schools have long been, and remain, a critical piece of that puzzle as well—a piece that will continue to gradually disappear absent a shift in education policy embracing school choice. Thus, making public resources available to students who wish to attend private schools likely will have the important side benefit of stemming the tide of Catholic school closures, thereby helping to preserve the very schools with arguably the most successful track record of educating disadvan-

Educational Muscles, L.A. TIMES (Jan. 10, 2010), http://articles.latimes.com/2010/jan/10/local/la-me-charters10-2010jan10.

7 Interview with Sister Mary Paul McCaughey, Superintendent of Cath. Schs., Archdiocese of Chi., in Chi., Ill. (Mar. 20, 2009).

8 *See infra* notes 63–74 and accompanying text.

taged children and that, as my own research with Margaret Brinig suggests, are important incubators of social capital in struggling urban communities.

The Essay proceeds in two parts: Part I provides a brief overview of Catholic and charter schools, and the connections between them. It also describes the legal landscape governing the "conversion" of Catholic schools to charter schools, the reasons why this option is attractive to many Catholic leaders, and the forms that such conversions have taken. Part II canvasses the evidence suggesting that Catholic school closures are a source of serious concern for urban communities and uses this evidence to expand the case for comprehensive school choice.

I. CATHOLIC SCHOOLS, CHARTER SCHOOLS, AND THE "CONVERSION" DEBATE

This Part provides a brief overview of the phenomena underlying this Essay—Catholic school closures, the ascendancy of charter schools, and the decision of some dioceses to relinquish control of their schools and convert them to secular charters.

A. Catholic Schools

Beginning in the second half of the nineteenth century, Catholic bishops, responding in frustration to widespread anti-Catholicism and pervasive Protestant indoctrination in the nation's fledgling public schools, began to demand that every Catholic parish build and support a school.[9] As a result, by the middle of the twentieth century, many American cities were densely blanketed with Catholic schools, including, in some neighborhoods, multiple schools serving different ethnic groups.[10] This system thrived until the second half of the twentieth century, when the number of religious sisters, who had long staffed parochial schools for little more than a "token wage," plummeted and Catholics suburbanized *en masse*. Together, these phenomena caused urban Catholic schools to experience dramatic

9 On the nineteenth century "school wars," *see generally* LLOYD P. JORGENSON, THE STATE AND THE NON-PUBLIC SCHOOL 1825–1925, at 69–146 (1987) (discussing the movement to exclude Catholic schools from public funding in the nineteenth century); JOSEPH P. VITERITTI, CHOOSING EQUALITY (1999) (describing the attractiveness of Catholic schools to newly arrived immigrants in the nineteenth century); Richard W. Garnett, *The Theology of the Blaine Amendments*, 2 FIRST AMEND. L. REV. 45 (2003) (highlighting the pervasive anti-Catholic sentiment prevalent in the United States since the Founding).

10 JOHN T. MCGREEVY, PARISH BOUNDARIES 10 (1996).

increases in labor costs just as collection revenues declined precipitously.[11] Dioceses were forced to take on more of the financial burden of operating urban parish schools at the same time they were obligated to build new schools in the suburbs. The urban parochial model began to unravel, and dioceses began to close schools in large numbers.[12]

Many urban parochial schools, however, survived. Gradually, schools built to educate working class Catholic children adapted to and excelled at a new role of educating poor, and frequently non-Catholic, ones. These schools remained open thanks to the "sweat equity" of pastors, administrators, teachers, parents, financial support from dioceses, and, increasingly, private philanthropy. It was these schools that were the backdrop of the studies, discussed below, demonstrating the benefits of urban Catholic schools, especially for disadvantaged minority children. Recognizing the value of these schools to their communities, some bishops committed to keeping them open no matter how desperate their financial situation. Cardinal John O'Connor of New York, for example, refused to close any Catholic schools between 1994 and his death in 2000.[13] O'Connor also repeatedly offered to absorb the lowest-performing 5% of New York City's public school children and pledged that, in Catholic schools, they would quickly be performing at grade level.[14] Both O'Connor's refusal to close additional schools in New York and his public challenge to the quality of instruction in urban public schools are emblematic of a post-1960s commitment by Catholic leaders to maintain schools in the inner city for poor minority students. For some Catholics like Cardinal O'Connor, this commitment flowed from an unwavering belief that maintaining inner city Catholic schools was an important act of social justice. The Catholic Church's continued support of urban Catholic schools also represented in some dioceses a sort of compromise between Catholic leaders and African American parents in the wake of the radical racial transformation of formerly Catholic urban neighborhoods and perhaps, at least initially, reparation for the unseemly and racist behavior of some Catholics as that transformation occurred.[15]

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11 *Id.* at 236.

12 *See, e.g.*, Brinig & Garnett, *supra* note 5, at 900–02.

13 David M. Herszenhorn, *3 Financially Troubled Schools Will Be Closed by Archdiocese*, N.Y. TIMES, May 2, 2001, at B4.

14 Frank Bruni, *Giuliani Backs Catholic Offer of School Slots*, N.Y. TIMES, Sept. 9, 1996, at B1.

15 *See* MCGREEVY, *supra* note 10, at 97–110.

By the mid-1990s, however, the viability of urban Catholic schools was again called into question, as enrollments declined and dioceses faced new financial pressures, including, unfortunately, the need to settle clergy abuse lawsuits. Today, the mood in Catholic education circles is somber at best. The number of Catholic schools in the United States fell from 13,000 schools in 1960 to 7500 in 2006.[16] Enrollment declined by roughly half during that same time period, to 2.3 million.[17] The percentage of students being educated by Catholic schools in the United States has fallen by more than half—from 12% in 1965 to 5% today.[18] And student-attrition rates in Catholic schools outpace school-closure rates.[19] Between 2000 and 2006, 600 Catholic schools closed (nearly 7%), but 290,000 students left the Catholic school system (nearly 11%).[20] Elementary schools in the largest urban dioceses experienced the most dramatic rates of attrition, losing nearly 20% of their students.[21] The vast majority of school-aged Catholic children are enrolled in public schools today, making it difficult for church leaders to prioritize Catholic schools.[22] And, tellingly, only 3% of Latino students—the group most likely to fill empty seats in urban schools—attend Catholic schools.[23]

New York's Archbishop, Cardinal Timothy Dolan recently complained that a "hospice mentality" has "hypnotized Catholic leadership in our nation."[24] For years, Dolan grumbled, Church leaders have acted as if the "best thing we can do is prolong [Catholic schools'] death and make them as comfortable as possible."[25] Yet despite his call for "renewed confidence" and plea that Catholics "recover their nerve" to support Catholic schools, the Archdiocese of

16 Peter Meyer, *Can Catholic Schools Be Saved?*, EDUC. NEXT, Spring 2007, at 14, *available at* http://educationnext.org/files/ednext_20072_12.pdf.

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.* at 16.

21 *Id.*

22 Sol Stern, *Save the Catholic Schools!*, CITY JOURNAL, Spring 2007, at 74.

23 THE NOTRE DAME TASK FORCE ON THE PARTICIPATION OF LATINO CHILDREN AND FAMILIES IN CATHOLIC SCH., TO NURTURE THE SOUL OF A NATION 9 (2009).

24 Robert Costa, *Reviving the Catholic Schools*, NAT'L REV. ONLINE (May 12, 2010), http://www.nationalreview.com/articles/229738/reviving-catholic-schools/robert-costa.

25 *Id.*; Timothy M. Dolan, *The Catholic Schools We Need*, AMERICA, Sept. 13–20, 2010, at 14.

New York closed more twenty-seven schools at the end of the 2011–2012 school year.[26]

B. Charter Schools

In contrast to urban Catholic schools—some of which have been in operation for over 150 years and most which have been operating for a half of a century—charter schools are educational upstarts. While charter schools are now authorized in forty states and the District of Columbia, the first charter school law (in Minnesota) was enacted only two decades ago, and most charter schools opened in the last decade.[27] Also in contrast to Catholic schools, charter schools are opening, not closing. In 2010, for example, 465 new charter schools opened—nearly a 9% increase over 2009.[28] During the same year, thirty-four new Catholic schools opened and 172 closed—a net decrease of 2.5%.[29] Thus while Catholic schools continue to outnumber charter schools, and Catholic school students to outnumber charter school students—in 2010, there were approximately 1500 more Catholic schools and 336,000 more Catholic school students than charter schools and charter school students—the balance likely will tip in favor of charter schools in the near future.[30]

Charter schools are public-private hybrids—they are publicly funded, but privately operated, schools. Charter schools resemble public schools since they are tuition free, secular, and are open to all who wish to attend. But, like private schools, they usually are created as the result of private, entrepreneurial action—that is, the request of a private entity (the charter "operator") for permission to open a school from a governmental entity (the charter "sponsor")—and operate more or less independently of local school authorities

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26 Paul Moses, *27 Catholic Schools to Close in New York*, DOTCOMMONWEAL (Jan. 11, 2011, 11:09 PM), http://www.commonwealmagazine.org/blog/?p=11694. The Archdiocese's decision emerged from a strategic planning process that seeks to stabilize the remaining schools through regionalization. *Id.*

27 *See* THE CTR. FOR EDUC. REFORM, ANNUAL SURVEY OF AMERICA'S CHARTER SCHOOLS 2010, at 3, 7 & fig. 1 (2010), *available at* http://www.edreform.com/wp-content/uploads/2011/09/CER_Charter_Survey_2010.pdf.

28 *National Charter School and Enrollment Statistics 2010*, CTR. FOR EDUC. REFORM, http://www.edreform.com/2012/01/26/national-charter-school-and-enrollment-statistics-2010/ (last visited Mar. 9, 2012).

29 Dale McDonald & Margaret M. Schultz, *United States Catholic Elementary and Secondary Schools 2010–2011: The Annual Statistical Report on Schools, Enrollment and Staffing*, NAT'L CATH. EDUC. ASS'N, http://www.ncea.org/news/annualdatareport.asp (last visited Mar. 9, 2012).

30 *See supra* notes 28–29 and accompanying text.

(although the extent of the autonomy varies by state).[31] Charter schools also are schools of choice—that is, parents select them for their children, much as they would a private school.

The institutional diversity among charter schools is breathtaking. Some focus on a particular curricular theme, and many target a particular student population, including, in many cases, low-income, disadvantaged, urban children. In fact, 26% of charter schools report that "serving a special population," especially poor, urban students, was a primary motivator for opening a charter school.[32] Not surprisingly, charter schools are particular popular in cities with underperforming public schools.[33] Over 55% of charter school students attend schools that are located in urban areas,[34] and over 60% of students enrolled in charter schools are racial minorities.[35] Some charter schools do not exist in the formal, "bricks-and-mortar" sense at all. As of 2008, there also were 185 "virtual" charter schools in twenty-five states.[36]

C. "Religious" Charter Schools and the "Conversion" Debate

There is one universal limit on charter schools' institutional diversity—they must be secular schools. All states prohibit charter schools from teaching religion *as religion* (that is, from teaching religion as the truth of the matter). State laws express this prohibition in various ways. The majority approach is to simply require that charter schools be "nonsectarian." Seven states (and the federal government) additionally prohibit charter schools from being "affiliated" with religious institutions, and two others (Maine and New Hampshire) prohibit such affiliation to the extent that it is prohibited by the U.S. Constitution. Others (for example, New York) prohibit charter schools from being "under the control" of a religious institution. Still others (for example, Georgia) explicitly *permit* religious institutions, including religious schools, to operate charter schools, so long as the

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31 CHESTER E. FINN, JR. ET AL., CHARTER SCHOOLS IN ACTION 14–17 (2000).

32 *Id.* at 157.

33 *See* NAT'L ALLIANCE FOR PUB. CHARTER SCH., TOP 10 CHARTER COMMUNITIES BY MARKET SHARE (2009), *available at* http://dashboard.publiccharters.org/files/publications/MarketShare_P4.pdf.

34 *Students by Geographic Locale*, NAT'L ALLIANCE FOR PUB. CHARTER SCH., http://www.publiccharters.org/dashboard/students/page/locale/year/2010 (last visited Mar. 9, 2012).

35 – *Students by Race and Ethnicity*, NAT'L ALLIANCE FOR PUB. CHARTER SCH., http://www.publiccharters.org/dashboard/students/page/race/year/2010 (last visited Mar. 9, 2012).

36 *Charter Schools*, HOME SCH. LEGAL DEF. ASS'N (Mar. 11, 2010), http://www.hslda.org/docs/nche/issues/c/charterschools.asp.

charter schools that they operate are secular schools. Some states' laws are silent on the question, although the universal view is that the First Amendment's Establishment Clause prohibits authentically religious charter schools.[37]

That said, "character"- and "morals"-based curricula pervade the world of charter schools, and some schools' character-education curricula fall relatively close to the "religion" line.[38] Some charter schools also are structured around cultural themes with strong religious overtones,[39] and some charter schools are operated by religious clergy members motivated by a religious call to serve the poor.[40] And, as mentioned previously, many charter schools operate in closed Catholic schools. This is hardly surprising, given that closed Catholic schools are not in short supply in many urban areas and are natural locations for new schools to open. For example, a spokesman for the Archdiocese of Detroit estimated recently that 90% of the closed Catholic schools in Detroit are currently occupied by charter schools. Some dioceses, in contrast, have flatly refused to lease their school facilities to charters, citing a concern that charter schools are attracting students away from Catholic schools.[41]

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37 *See, e.g.*, Daugherty v. Vanguard Charter Sch. Acad., 116 F. Supp. 2d 897, 912–16 (W.D. Mich. 2000).

38 *See id.* at 912–14 (rejecting an Establishment Clause challenge to a "morals based" curriculum at a charter school).

39 For example, in ongoing litigation in Minnesota, the ACLU asserts that the Tarek ibn Ziyad Academy (TiZA) in Minnesota is effectively a Muslim school in disguise. *See* Sarah Lemagie, *State Orders Charter School to Correct 2 Areas Tied to Islam*, STAR TRIB. (May 28, 2008, 4:21 PM), http://startribune.com/local/south/19076119.html?page=all&prepage=1&c=y#continue. Katherine Kersten, a columnist with the *Star Tribune*, has been writing about the school for several years, leading to a state investigation of the school and instigating the ACLU lawsuit. *Id.* The Ben Gamla Charter School in Hollywood, Florida has been subject to similar scrutiny. *See* Noah Feldman, *Universal Faith*, N.Y. TIMES MAG., Aug. 26, 2007, at 13.

40 For example, in 2002, the Superintendent of Chicago Public Schools, Arne Duncan (who currently serves as President Barack Obama's Secretary of Education) asked Brother Edmund Siderewicz to consider opening a charter school in an impoverished Chicago neighborhood that would be modeled on two successful Catholic middle schools that he had founded in the previous decade. *See* Peter Meyer, *Catholic Ethos, Public Education*, EDUC. NEXT, Spring 2011, *available at* http://educationnext.org/files/ednext_20112_Meyer.pdf. Brother Siderewicz agreed to open two charter schools, which provide a structured and intensive academic program for low-income students, but in a completely secular environment, albeit one that incorporates many of the structural elements of Catholic schools. *See About Catalyst*, CATALYST SCH., http://www.catalystschools.org/about_catalyst/ (last visited Mar. 9, 2012).

41 *See, e.g.*, Erica L. Green, *Charters Emerge as Threat to Catholic Schools*, BALT. SUN, March 16, 2011, at 1A.

The intentional conversion of Catholic schools to charter schools, however, is different in kind than any of the phenomena described above. Some charter school skeptics vehemently object to the conversion of *any* private school—religious or not—into a charter school. For example, the National Education Association (NEA), the nation's largest teachers union, asserts that "[p]rivate schools should not be allowed to convert to public charter schools."[42] And, in fact, private-school conversions to charter schools is expressly forbidden by law in twelve states, although, in practice, these prohibitions have little bite since school conversions can be structured so as to easily avoid offending them. In contrast, many urban leaders and charter school proponents welcome the conversion of private schools, including Catholic schools, to charter schools because such conversions introduce established schools with strong educational track records into a pool of educational upstarts. For example, when the Diocese of Brooklyn sought to convert some of its parochial schools to charters, Mayor Michael Bloomberg not only welcomed the diocese's decision, but actively helped the diocese structure the school closures so as to avoid New York's express prohibition on private-school conversions.[43] More recently, the Mayor of Indianapolis agreed to serve as the charter sponsor for Andrew and Padua Academies. "Choices for our students and parents are important especially when it comes to education," the mayor observed. "I am pleased and honored to fully support the transformation of both St. Anthony and St. Andrew & St. Rita into charter schools and look forward to the quality of education the schools will provide."[44]

Charter-school conversions are the subject of an intense debate among Catholic leaders and educators. Some Catholics, including some bishops, view the loss of religious identity and autonomy that conversions entail as too high a price to pay for public funding of their struggling schools. They worry, in the words of the president of the National Catholic Education Association, about the "ripple effect of people thinking that when their Catholic school is in trouble either for enrollment or financial reasons, charter schools are the automatic

42 *Charter Schools*, NAT'L EDUC. ASS'N, http://www.nea.org/home/16332.htm (last visited Mar. 9, 2012).

43 Javier C. Hernandez, *Secular Education, Catholic Values*, N.Y. TIMES, Mar. 9, 2009, at A17.

44 Press Release, Archdiocese of Indianapolis, Indianapolis City-County Council Votes to Transform Two Catholic Schools into Mayor-Supported Charters (April 8, 2010), *available at* http://www.prnewswire.com/news-releases/indianapolis-city-county-council-votes-to-transform-two-catholic-schools-into-mayor-sponsored-charters-90263377.html.

solution."[45] Some bishops, facing escalating costs and dwindling enrollments, have reluctantly come to view charter-school conversions as preferable to school closures, since they offer the resources to enable the schools to continue serving children in the inner cities, even if not as Catholic schools. For example, when Archbishop Donald Wuerl announced his decision to convert seven Washington, D.C. Catholic schools to charter schools, he reflected, "It's a heartache to know that we wouldn't have these schools any longer. But the sadness is sweetened by the fact that these students would continue to have an education."[46]

Catholic supporters of charter conversions argue that there are ways of maintaining continuity with the mission of the former parochial schools. For example, when the Archdiocese of Washington, D.C., decided to convert seven inner city parochial schools to charter schools, Archbishop Wuerl assured skeptics that he was determined to maintain "a level of value formation" in the charter schools.[47] Catholic educators also are attracted to the promise of a "wrap around" charter school model that incorporates voluntary religious education classes before or after school.[48] Diocese opting to convert parochial schools to charter schools have taken different institutional approaches—with some (for example, Washington, D.C.) opting to create new charter operators to run the schools, and others (for example, Brooklyn and Miami), enlisting existing operators. With the exception of Indianapolis, however, even where church authorities have been actively involved in structuring the transition to charter status, the resulting charter schools do not appear to have embraced a wrap-around model as promised at the time of the conversion.

The recent experience with charter conversions in Washington, D.C., is a case in point. In 1997, the Archdiocese created an eight-school "Center City Consortium," to enable struggling inner city schools to take advantage of economies of scale and offload many time-consuming administrative tasks to a central office.[49] A decade later, the Consortium had grown to twelve schools and had amassed a $1.7 million dollar deficit, leading Archbishop Wuerl to convert seven schools, which collectively enrolled about half of the Consortium stu-

45 ANDY SMARICK, CATHOLIC SCHOOLS BECOME CHARTER SCHOOLS 11 (2009), *available at* http://www.setonpartners.org/Seton_DC_Case_Study_FINAL.pdf.

46 *Id.* at 10.

47 *Id.* at 16.

48 Andy Smarick, *Can Catholic Schools Be Saved?*, NAT'L AFF., Spring 2011, at 113, 129, *available at* http://www.nationalaffairs.com/publications/detail/can-catholic-schools-be-saved.

49 *See* SMARICK, *supra* note 45, at 5.

dents, into charter schools.[50] While the D.C. government welcomed the proposal, citing the advantages of converted parochial schools to charter start ups (for example, buildings, strong test scores, and established programs and faculties),[51] the conversions were extremely controversial among Catholics.[52] Many of the schools' teachers and parents expressed anger and feelings of betrayal, and a local advocacy group—Black Catholics United to Save Black Catholic Schools—charged the Archdiocese with "backing away from providing a Catholic education to African-American children."[53] But the Archdiocese stood firm, justifying its decision as the only way to avoiding abandoning the inner city and maintaining "consistency, predictability, and stability" at the schools.[54]

In December 2007, the Archdiocese announced that it had "selected" Center City Public Charter Schools as the charter management organization for the converted schools.[55] In reality, the Archdiocese directed the formation of the charter organization, and the leadership teams of the Center City Consortium and the Center City Public Charter Schools overlapped significantly.[56] Although the Archdiocese made maintaining continuity between the new and old schools a priority, the charter schools were in many respects very different than their parochial predecessors. Sixty percent of the staff in the charter schools was new, and reports on the ground suggest significant additional staff turnover (including the replacement of many teachers and principals) has occurred since they opened.[57] Only about 35 to 40% of the parochial school students remained in the charter schools, with some opting to transfer to another Catholic school.[58] The charter-school students were slightly poorer (75%, rather than 65% qualify for free and reduced lunches), and significantly more likely to have fallen behind academically than the Catholic school students they replaced.[59] These realities generated new educational and disciplinary challenges and a rather dramatic decline

50 *See id.* at 6–9.
51 *Id.* at 12.
52 *Id.* at 10.
53 *Id.*
54 *Id.* at 9, 11.
55 *Id.* at 11.
56 *Id.*
57 *Id.* at 15.
58 *Id.* at 17.
59 *Id.* at 17–18.

in standardized test scores.[60] Finally, despite the Archbishop's assurances, the "value formation" in the charter schools took the form of replacing religious instruction with a relatively standard-issue version of character-based instruction.[61] The Archdiocese did not follow through on its plans for a voluntary before-and-after-school program of religious education for charter-school students—citing a lack of time to develop and implement the program.[62]

II. WHY CHARTERS ARE *NOT* ENOUGH CHOICE

Debates about education reform policy, and especially about the wisdom and efficacy of school choice devices that enlist private schools, including Catholic schools, take place against this backdrop. Thus, this Part begins by canvassing the school choice debate and relevant "facts on the ground." It then suggests that serious costs of Catholic school closures to urban communities ought to be taken into account in education reform debates.

A. The Charter-Choice Debate

The intellectual roots of the school choice movement are usually traced to a 1955 article by Nobel Laureate Milton Friedman which argued that states should permit students to allocate their public education funds as their parents see fit, including by spending these public funds in a private school because the injection of competition would improve overall academic performance.[63] It was not until over three decades later, however, that Friedman's proposal gained political traction. In 1990, African American activists in Milwaukee—led by former Milwaukee school superintendent Howard Fuller and a firebrand state legislator named Polly Williams—combined forces with Republican Governor Tommy Thompson to secure the passage of the nation's first school "voucher" program. Initially, the program entitled poor public school children in Milwaukee to spend a portion of

60 D.C. PUB. CHARTER SCH. BD., 2009 SCHOOL PERFORMANCE REPORTS (2010), *available at* http://www.dcpubliccharter.com/data/images/pcsb_spr_2009_webfinal.pdf.

61 SMARICK, *supra* note 45, at 16; Michael Birnbaum, *Severed from Faith, but Not from the Past*, WASH. POST, Jan. 28, 2010, at B1.

62 SMARICK, *supra* note 45, at 16.

63 *See* Milton Friedman, *The Role of Government in Education*, *in* ECONOMICS AND THE PUBLIC INTEREST 123, 123–135 (Robert A. Solo ed., 1955); *see also* James Forman, Jr., *The Secret History of School Choice: How Progressives Got There First*, 93 GEO. L.J. 1287, 1309 (2005) ("Milton Friedman in 1955 [proposed] the idea that the state would give families a sum of money that they could use to enroll their child at the public or private school of their choice . . . .").

their public education funds at secular private schools, but the program was expanded to include religious schools in 1995.[64] Ohio followed suit in 1995, enacting a similar program that subsequently sustained an Establishment Clause challenge in the U.S. Supreme Court, clearing the federal constitutional path for the expansion of private school choice.[65]

Today, nine states and the District of Columbia have scholarship or "voucher" programs that enable targeted groups of students to spend public funds to attend private schools, and nine states grant tax credits for charitable donations to nonprofit organizations that provide scholarships to attend private schools. During the 2010–2011 school year, 67,267 children enrolled private schools through school voucher programs and 123,544 received tax-credit-financed scholarships at private schools.[66] For a number of reasons, the total number of students participating in both kinds of programs likely will grow significantly in the near future.[67] That said, it is unlikely that the

64 *See* Jackson v. Benson, 578 N.W.2d 602, 608–10 (Wis. 1998) (summarizing history of Milwaukee Parental Choice Program).

65 Zelman v. Simons-Harris, 536 U.S. 639, 662–63 (2002).

66 *See* ANDREW CAMPANELLA ET AL., HOPE FOR AMERICA'S CHILDREN 24 (2011), *available at* http://s3.amazonaws.com/AFC/scy2011.pdf. Indiana became the seventh state to enact a scholarship tax credit bill on June 30, 2009. *See* Ross Pulliam, Editorial, *They Got It Right on These Issues*, INDIANAPOLIS STAR, July 10, 2009, at 10A.

67 Indiana's new voucher program, which began in the fall of 2011, will eventually extend public funding to *all* income-eligible students in the state who wish to attend qualifying private schools. The program is capped at 7500 scholarships during its first year of operation and 15,000 scholarships during its second. IND. CODE § 20-51-4-2(b) (West Supp. 2011). In June 2011, the Wisconsin legislature lifted the cap on the number of participants in the Milwaukee Parental Choice Program, expanded the program geographically, and increased the family income qualification guidelines. 2011 Wisc. Legis. Serv. 378–84 (West 2011). It is estimated that these changes will increase the number of eligible children from 22,500 (the previously legislated cap) to over 84,000. *Voucher Victory in Wisconsin*, FRIEDMAN FOUND. FOR EDUC. CHOICE (June 26, 2011), http://www.edchoice.org/Newsroom/News/Voucher-Victory-in-Wisconsin.aspx. That same month, Ohio also expanded its school voucher program, quadrupling the cap on the number of eligible recipients to 60,000 and raising the income eligibility for students. *Ohio's Dramatic Expansion of School Choice Praised by Nation's Original Voucher Organization*, FRIEDMAN FOUND. FOR EDUC. CHOICE (June 30, 2011), http://www.edchoice.org/Newsroom/News/Ohio-s-Dramatic-Expansion-of-School-Choice-Praised-by-Nation-s-Original-Voucher-Organization.aspx. Additionally, a number of new states may soon adopt scholarship tax credit programs, and the total amount of funding permitted in the existing scholarship tax credit programs tends to increase each year. Moreover, in many states, the scholarship organizations participating in the existing scholarship tax credit programs could, by law, raise more money than they currently do. Nicole Stelle Garnett, *A* Winn *for Educational Pluralism*, 121 YALE L.J. ONLINE 31 (2011).

number of children participating in these programs will ever approach the number attending charter schools (more than 1.7 million at more than 5400 schools in the fall of 2010).[68]

Since the debate over school choice covers well-trodden ground, I will not rehash it here. For present purposes, it suffices to say that private-school choice is intensely controversial and that charter schools enjoy broad, bi-partisan political support.[69] During the 2008 presidential election cycle, for example, both John McCain and Barack Obama expressed strong support for charter schools. Soon after his election, President Obama made charter schools a centerpiece of his education policy, pledging $5 billion in federal funds to help create new charter schools and urging states without charter school laws to adopt them and states with caps on the number of charter schools to eliminate them.[70] Within debates about educational finance, many cite charter schools as a means of capturing the benefits of school choice without enlisting private schools.[71] Even the teachers' unions have come to grudgingly embrace charter schools, although they routinely represent a stumbling block to charter-school expansion in state education reform debates. For example, the American Federation of Teachers—the nations' second largest teachers' union—states that it "strongly supports" charter schools but condemns school vouchers and tuition tax credits as unwise and dangerous policy.[72] The National Education Association's position on charter schools is more guarded—urging caution about the risk of diverting public school funds to them, demanding local administrative oversight and teacher unionization, and flatly opposing the conversion of private schools to charter schools.[73] But even this tepid support stands in stark contrast to the NEA's vehement opposition to private school choice programs. These programs, the NEA warns, undermine accountability and academic standards, threaten civil rights protections, deprive parents of "authentic" choice, "divert

68 *Students Overview*, NAT'L ALLIANCE FOR PUB. CHARTER SCH., http://dashboard.publiccharters.org/dashboard/students/page/overview/year/2010 (last visited Mar. 9, 2012).

69 Michael Heise, *Law and Policy Entrepreneurs*, 87 NOTRE DAME L. REV. 1917 (2012).

70 Editorial, *Obama's Charter Stimulus*, WALL ST. J., June 12, 2009, at A14.

71 JACK BUCKLEY & MARK SCHNEIDER, CHARTER SCHOOLS 3, 6–8 (2007).

72 *Charter Schools*, AM. FED'N TCHRS., http://www.aft.org/issues/schoolchoice/charters/ (last visited Mar. 9, 2012); *School Vouchers*, AM. FED'N TCHRS., http://www.aft.org/issues/schoolchoice/vouchers/ (last visited Mar. 9, 2012).

73 *See supra* note 42 and accompanying text.

essential resources from public schools to private and religious schools," and do not improve student achievement.[74]

B. School Choice Without Catholic Schools

As a practical matter, policies instantiating the "pro-charter"/ "anti-voucher" position have a significant impact on urban Catholic schools and the students who might attend them if public funds were available to enable them to do so. This is true for a number of reasons: Catholic schools tend to be far more affordable than other private schools (especially secular private schools); experience suggests that they are more likely to accept school choice students than nonsectarian kinds of private schools; they are located in large numbers in urban neighborhoods where many income-qualifying students live; and, absent a dramatic expansion of school choice efforts, they are likely to close in large numbers.[75] All of these reasons also suggest that school choice programs that enlist Catholic schools are more likely to succeed than the "charters only" course.

1. School Choice and the "Catholic School Effect"

Decades of social science research have demonstrated a "Catholic school effect" on student performance. Beginning with the groundbreaking research of James Coleman and Andrew Greeley, numerous scholars have found that Catholic school students—especially poor, minority, students—tend to outperform their public school counterparts. Greeley found, for example, that the achievement of minority students in Catholic schools not only surpassed that of those in public schools but, moreover, that the differences were the greatest for the poorest, most disadvantaged, students.[76] More recently, Derek Neal confirmed Greeley's "Catholic school effect" in research demonstrating that Catholic school attendance increased the likelihood that a minority student would graduate from high school from 62% to 88% and more than doubled the likelihood that a similar student would graduate from college.[77] Catholic schools, in other words, close the

74 *Big Victory: Private School Vouchers Defeated Again!*, NAT'L EDUC. ASS'N, http://www.nea.org/home/16378.htm (last visited Mar. 9, 2012).

75 Brinig & Garnett, *supra* note 5, at 902 (citing Chester E. Finn, Jr. & Michael J. Petrilli, *Foreword* to WHO WILL SAVE AMERICA'S URBAN CATHOLIC SCHOOLS? 7 (Scott W. Hamilton ed., 2008)).

76 JAMES S. COLEMAN ET AL., HIGH SCHOOL ACHIEVEMENT 144 (1982); ANDREW M. GREELEY, CATHOLIC HIGH SCHOOLS AND MINORITY STUDENTS 108 (1982).

77 Derek Neal, *The Effects of Catholic Secondary Schooling on Educational Achievement*, 15 J. LAB. ECON. 98, 100 (1997).

achievement gap. As Nicholas Lemann observed in a 1986 *Atlantic Monthly* article, "[i]n the . . . ghetto today the only institutions with a record of consistently getting people out of the underclass are the parochial schools."[78]

To be sure, scholars debate the reasons for Catholic schools' success. Skeptics point to selection bias—that is, the possibility that Catholic schools attract better students with more highly motivated parents than public schools. But, as Charles Payne recently observed, there is ample evidence that the achievement differential between public and Catholic schools is not attributable to selection bias.[79] A better explanation, in my view, is suggested by the work of Anthony Bryk and his colleagues, who have argued that Catholic schools succeed because they are intentional communities with high levels of trust and social capital and high expectations for achievement for all community members, regardless of race or class.[80]

Perhaps for these same reasons, there is also evidence that Catholic schools outperform public schools at the important task of forming citizens. A common argument against school choice—identified most prominently with Amy Gutman—is that public education is necessary to inculcate democratic values and tolerance of diversity. School choice is dangerous, Gutmann asserts, because most parents are "[unwilling] to resist a strong human impulse: the desire to pass some of their particular prejudices on to their children."[81] The available empirical evidence, however, tends to rebut this concern. A number of social scientists have sought to measure how well private schools in general, and private schools participating in school choice programs in particular, perform as civic educators. Most of these studies find that private schools appear to do a better job at preparing students to be engaged members of a diverse, democratic society.[82] For example,

78 Nicholas Lemann, *The Origins of the Underclass*, ATLANTIC MONTHLY, July 1986, at 67.

79 CHARLES M. PAYNE, SO MUCH REFORM, SO LITTLE CHANGE 117 (2008).

80 ANTHONY S. BRYK ET AL., CATHOLIC SCHOOLS AND THE COMMON GOOD (1993). James Coleman also suggested that social capital helped explained Catholic schools success. *See* James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. S95 (1988).

81 AMY GUTMANN, DEMOCRATIC EDUCATION 34 (1987).

82 *See, e.g.*, TERRY M. MOE, SCHOOLS, VOUCHERS, AND THE AMERICAN PUBLIC 40 (2001) (arguing that private schools are, because of their independence from bureaucracy, better suited to serve as models for democratic education than public schools); Kenneth R. Godwin et al., *Teaching Tolerance in Public and Private Schools*, 82 PHI DELTA KAPPAN 542, 544 & tbl.1 (2001) (finding that private schools do a slightly better job than public schools of encouraging interethnic friendships and developing support for democratic norms); Jay P. Greene, *Civic Values in Public and Private Schools, in*

using data from the 1996 National Household Education Survey (NHES), David Campbell compared students enrolled in each educational setting along four variables—community service, "civic skills" or the ability of students to engage in political activities, political knowledge, and political tolerance. Campbell found that private school students were significantly more likely to engage in community service than public school students, were more likely to learn civic skills in school, were better informed about the political process, and were, on average, more politically tolerant than students in public schools. Interestingly, however, Campbell also found that the distinction between public and private schools disappeared when Catholic schools were excluded from the analysis, leading him to conclude that "students in Catholic schools drive the private school effect."[83] These results mirror other studies comparing public and private school students. In 2007, Patrick Wolf examined twenty-one quantitative studies of the effects of school choice on civic values, and found that the effect of private schooling and school choice was almost always neutral or positive.[84] While not all of these studies control for selection bias, many do, leading Wolf to conclude, "The statistical record suggests that private schooling and school choice often enhance the realization of the civic values that are central to a well-functioning democracy. This seems to be the case particularly . . . when Catholic schools are the schools of choice."[85]

Scholarly opinion about charter schools' performance as educational institutions is mixed. Some studies suggest that traditional public schools outperform charter schools,[86] while others find that

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LEARNING FROM SCHOOL CHOICE 83, 100–01 (Paul E. Peterson ed., 1998) (finding that students in private schools are more likely to participate in public service than public school students); Richard G. Niemi et al., *Community Service by High School Students: A Cure for Civic Ills?*, 22 POL. BEHAV.45, 52, 53 tbl.1 (2000) (same for religiously affiliated schools); Patrick J. Wolf et al., *Private Schooling and Political Tolerance, in* CHARTERS, VOUCHERS, AND PUBLIC EDUCATION, 268, 281, 284 (Paul E. Peterson & David E. Campbell eds., 2001) (finding that college students who attended private schools score more highly on measures of political tolerance).

83 *See* David E. Campbell, *The Civic Side of School Choice: An Empirical Analysis of Civic Education in Public and Private Schools*, 2008 BYU L. REV. 487, 501–10 (2008). *See also* David E. Campbell, *Bowling Together: Private Schools, Public Ends*, EDUC. NEXT, Fall 2001, at 61 ("In short, it seems that strong evidence has accumulated that private—particularly Catholic—schools are a private means to the very public end of facilitating public engagement.").

84 Patrick J. Wolf, *Civics Exam*, EDUC. NEXT, Summer 2007, at 68.

85 *Id.* at 72.

86 *See* CTR FOR RESEARCH ON EDUC. OUTCOMES, MULTIPLE CHOICE (2009), *available at* http://credo.stanford.edu/reports/MULTIPLE_CHOICE_CREDO.pdf ; KARA FINNIGAN ET AL., U.S. DEP'T OF EDUC., EVALUATION OF THE PUBLIC CHARTER SCHOOLS PRO-

charter schools' record surpasses that of public schools, at least after accounting for selection bias.[87] Charter school performance varies significantly across states. For example, the available evidence suggests that students attending charter schools in Chicago outperform their public school counterparts on a range of measures, and the students in charter schools in Washington, D.C. do not.[88] There are clearly some very good charter schools, and some charter schools are rightly celebrated for their remarkable success in educating students who fall behind in public schools—and many of them employ educational strategies that closely approximate the Catholic school formula, including a highly structured school day, traditional curriculum, high levels of parental involvement, and an emphasis on building an educational community between the various school stakeholders.[89] In contrast, there also are some clearly bad charter schools—including some that fail miserably as educational institutions, igniting calls for greater accountability and oversight of charter school operations.[90] Ultimately, it may be too soon to tell how charter schools will perform over the long haul as educational institutions (and as community institutions). Given the relative novelty of most of these schools, and the fact that some of them are being operated by individuals who, while well-meaning and enthusiastic, have little experience as teachers and school administrators, it is reasonable to assume that many charter schools are experiencing, and will continue to experience, growing pains. This is one reason why Catholic-school conversions are so

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GRAM (2004), *available at* http://www2.ed.gov/rschstat/eval/choice/pcsp-final/finalreport.pdf.

87 JULIAN R. BETTS & Y. EMILY TANG, NAT'L CHARTER SCH. RESEARCH PROJECT, VALUE-ADDED AND EXPERIMENTAL STUDIES OF THE EFFECT OF CHARTER SCHOOLS ON STUDENT ACHIEVEMENT (2008), *available at* http://www.crpe.org/cs/crpe/download/csr_files/pub_ncsrp_bettstang_dec08.pdf; CAROLINE M. HOXBY ET AL., THE N.Y.C. CHARTER SCH. EVALUATION PROJECT, HOW NEW YORK CITY'S CHARTER SCHOOLS AFFECT ACHIEVEMENT (2009), *available at* http://www.nber.org/~schools/charterschoolseval/how_NYC_charter_schools_affect_achievement_sept2009.

88 CAROLINE M. HOXBY & JONAH E. ROCKOFF, THE IMPACT OF CHARTER SCHOOLS ON STUDENT ACHIEVEMENT (2004), *available at* http://www.vanderbilt.edu/schoolchoice/downloads/papers/hoxby-rockoff2004.pdf; RON ZIMMER ET AL., NAT'L CTR. ON SCH. CHOICE, DO CHARTER SCHOOLS "CREAM SKIM" STUDENTS AND INCREASE RACIAL-ETHNIC SEGREGATION? (2009), *available at* http://www.vanderbilt.edu/schoolchoice/conference/papers/Zimmer_COMPLETE.pdf.

89 *See generally* GREELEY, *supra* note 76, at 68–69 (stating that non-Catholic African Americans are just as successful academically as their Catholic counterparts); TIMOTHY WALCH, PARISH SCHOOL 44–45 (1996) (noting shared values, code of conduct, and emphasis on academics).

90 *See All About Charter Schools,* CTR. FOR EDUC. REFORM, http://www.edreform.com/issues/choice-charter-schools/facts/ (last visited Mar. 9, 2012).

attractive to many urban leaders—they introduce established schools with long and successful educational track records into the charter school pool.

There is no guarantee, of course, that the academic record of "converted" Catholic schools will mimic that of the "real" Catholic schools that preceded them. Nor is there any guarantee that school choice programs that include Catholic schools will necessarily capture the Catholic school effect on academic performance. In fact, as with charter schools, scholars debate the extent to which school choice programs have improved educational outcomes among participating students. The weight of evidence seems to suggest that students participating in school choice programs achieve modest gains over their public-school colleagues on a range of measures, with the improvements increasing over time—although no scholar has found dramatic improvement and a few have found little to none.[91] At the very least, the literature documenting the "Catholic school effect" suggests that school choice is more likely to succeed as a intervention to improve educational performance if Catholic schools are included than if they are excluded.

2. School Choice and Neighborhood Social Capital

In my view, however, the case for school choice should not stand on test results alone. Importantly, my recent work with Margaret Brinig has begun to build an independent case for school choice based upon the community (rather than educational) benefits of Catholic schools. In a series of papers, we have sought to measure the effects of Catholic school closures on perceived disorder, perceived social cohesion, and crime in Chicago neighborhoods. In our initial study, we relied upon survey data collected for the Project on Human Development in Chicago Neighborhoods (PHDCN) to measure the effects of Catholic school closures on perceived disorder and perceived social cohesion in Chicago neighborhoods. In 1994 and 1995, the PHDCN surveyed approximately 4000 Chicago residents about perceived levels of neighborhood crime, disorder, and social cohe-

91 *See, e.g.*, CLIVE BELFIELD, NAT'L CTR FOR THE STUDY OF PRIVATIZATION IN EDUC., THE EVIDENCE ON EDUCATION VOUCHERS (2006), *available at* http://www.ncspe.org/publications_files/OP112.pdf; Paul Peterson et al., *School Vouchers: Results from Randomized Experiments*, *in* THE ECONOMICS OF SCHOOL CHOICE (Caroline Hoxby ed., 2003); Cecilia Elena Rouse, *Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program*, 133 Q.J. OF ECON. 553, 594 (1998).

sion.[92] After matching each of the 130 Catholic elementary schools that closed in the City of Chicago between 1984 and 1994 to the PHDCN data, we estimated the effects of a Catholic school closures using Two-Stage Least-Squares (2SLS) regression analysis, a method that enabled us both to control for numerous demographic variables and to employ variables predicting school closures unrelated to demographics. Our analysis linked school closures to neighborhood social cohesion and increased neighborhood disorder.[93]

In our second study, we conducted a latent growth analysis of effects of Catholic-school-closures between 1990 and 1996 on the rate of serious crime in police beats between 1999 and 2005. While crime decreased across the city of Chicago during this period, our analysis suggested that Catholic school closures affected the *slope of the decline.* That is, as depicted in Figure 1, crime decreased more slowly between 1999 and 2005 in police beats where Catholic schools closed between 1990 and 1996. On average, our analysis suggested that crime declined by approximately 25% in beats with Catholic schools and 17% in beats that experienced a Catholic school closure. As in our initial study, we incorporated a variable to disaggregate school-closure decisions from neighborhood demographics.[94]

Most recently, we again relied on police-beat-level data to compare the effects of *open* Catholic schools and *open* charter schools on serious crime in Chicago neighborhoods. As Figure 2 below indicates, we found that an open Catholic school appeared to suppress crime in a police beat. In fact, our regression analysis suggested that crime in police beats with open Catholic schools was, on average, at least 33% lower than police beats without them.

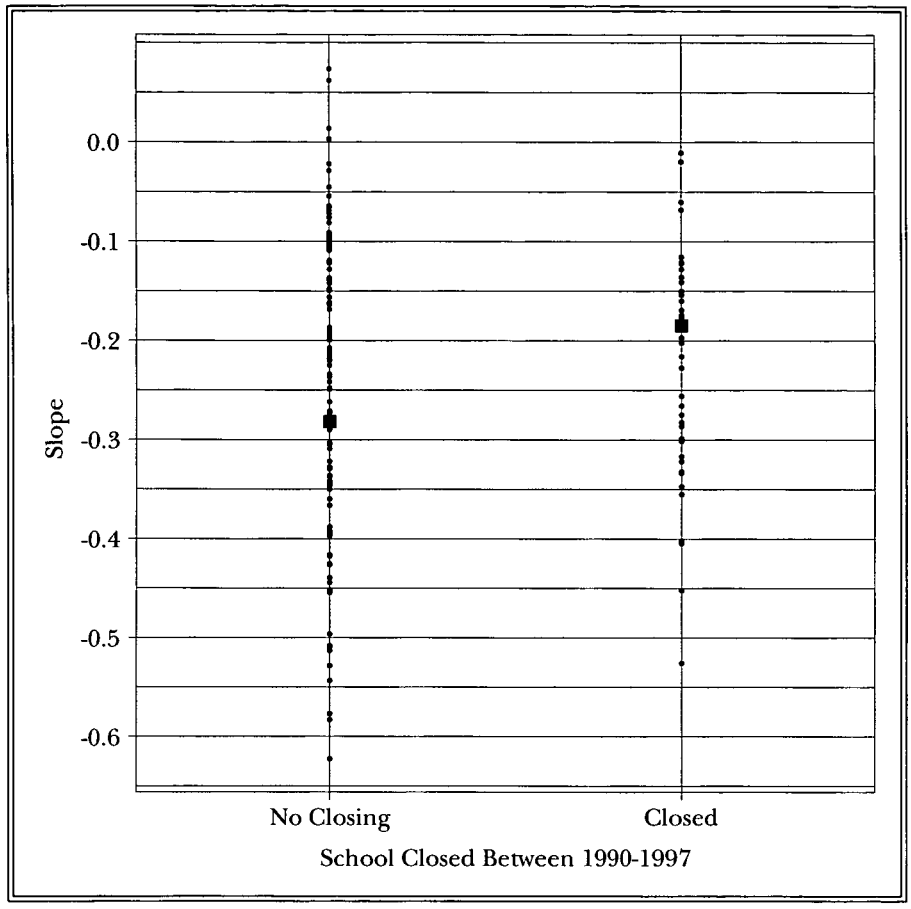
In contrast, we found that charter schools appeared to have no statistically significant effect on overall crime rates although, in a few years, they were correlated with a statistically significant increase in aggravated assault and aggravated battery. Interestingly, we found that charter schools operating in closed Catholic schools were associated with increased overall crime in a police beat, although not in a statistically significant way. In contrast to the previous two studies, however, we were unfortunately unable to demonstrate causation since we could not identify a variable predicting the locations of charter schools, as we can with respect to Catholic schools. We therefore

92 Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 AM. J. SOC. 603, 619–20 (1999).

93 Brinig & Garnett, *supra* note 5, at 921–28.

94 *Id.*

FIGURE 1
SLOPE-CLOSING RELATIONSHIP

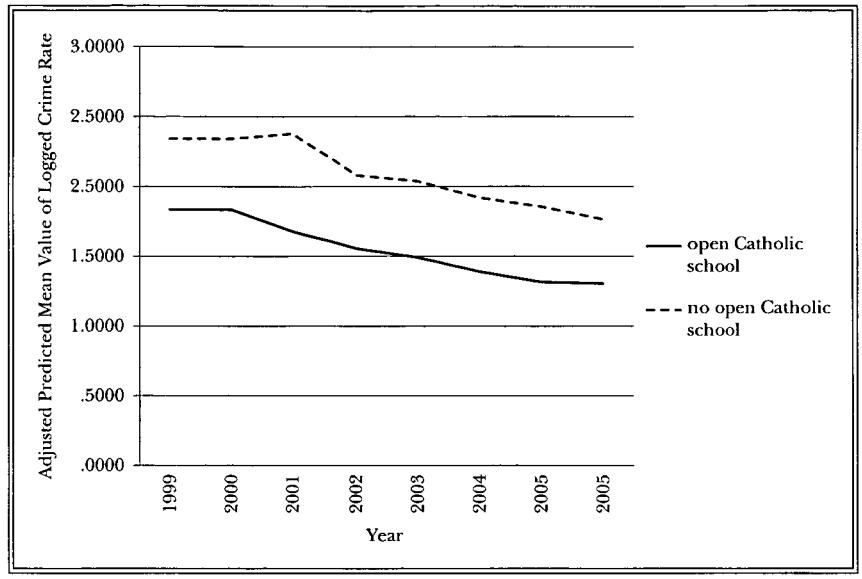


were unable to disentangle the locations of charter schools from neighborhood demographic factors that might predict more crime, although we did control for these factors in our analysis.[95]

We do not purport to know definitively *why* Catholic schools are good for urban neighborhoods, although we suspect that these effects are explained by the fact that Catholic schools generate social capital, which in turns helps residents to organize and address neighborhood problems. Our analysis leads us to suspect that, at least thus far, charter schools do not work the same way as Catholic schools—that is, they are not as successful as neighborhood citizens. It is too soon to say whether, over time, charter schools—and perhaps especially charter

95 Margaret F. Brinig & Nicole Stelle Garnett, *Catholic Schools, Charter Schools, and Urban Neighborhoods*, 79 U. CHI. L. REV. (forthcoming 2012).

FIGURE 2
COMPARISON OF POLICE BEATS WITH AND WITHOUT OPEN CATHOLIC SCHOOLS



schools created as a result of a "conversion" of a Catholic school—will come to generate neighborhood social capital in the same way that Catholic schools do. I hope that they do. But, thus far, our research suggests that one of the most effective ways to maintain social capital in an urban community with an open Catholic school is to keep the school open. Expanding school choice beyond charter schools will help to accomplish that goal by making Catholic schools an option for students who might otherwise lack the resources to attend them—thereby increasing their competitiveness with charter schools. For example, a 2006 RAND Corporation study of Michigan found that "[p]rivate schools will lose one student for every three students gained in charter schools."[96] In contrast, a more recent study in Arizona—a state with a third more students enrolled in charter schools that also operates two tuition-tax-credit programs and two voucher programs—found that charter-school competition had not negatively affected Catholic school enrollment. The author concluded that the private school choice programs in Arizona increased Catholic schools' competitiveness.[97]

96 Eugenia F. Toma et al., *Beyond Achievement: Enrollment Consequences of Charter Schools in Michigan*, 14 ADVANCES APPLIED MICROECONOMICS 241, 250 (2006).

97 Matthew Ladner, *The Impact of Charter Schools on Catholic Schools: A Comparison of Programs in Arizona and Michigan*, 11 CATH. EDUC. 102, 110–11 (2007).

3. School Choice and the Rule of Law

It is also worth noting that robust school choice arguably fosters respect for the rule of law by removing the temptation of religious actors to operate closet religious schools as charter schools. I take it as given that the Constitution permits school choice programs to include religious schools and prohibits authentically religious charter schools, at least as charter laws are currently structured.[98] But, the *status quo* favoring charters schools encourages religious actors to push the line between religious and secular. "Religious" charter schools have been involved in a number of legal disputes, including litigation in Minnesota against an Arabic-themed charter school, the Tariq ibn Ziyad Academy ("TiZA").[99] I do not purport to know what goes on behind closed doors at schools like TiZA, although I do assume that religiously motivated actors will obey the law. Still, the temptation to cheat and hope nobody is looking is real, as is the concomitant incentive for government to intervene and carefully monitor the church-state line. The rule of law, including an appropriate respect for the dangers attendant to government actors deciding what is "too religious" would be better served if schools like TiZA and Padua and Andrew Academies were not forced to be only "quasi-religious" in order to participate in school choice efforts.[100]

4. School Choice and Educational Pluralism

Finally, school choice promises to prevent the further dissipation of pluralism in the American educational sector that results from Catholic school closures. Catholic schools were formed, as Professor Joseph Viteritti has observed, in a "spirit of protest" against fledgling public schools' refusal to accommodate religious pluralism.[101] Somewhat ironically, this "protest" resulted in the creation of the world's largest system of private schools, which injected a remarkable degree of institutional pluralism into the American educational sector. As public schools increasingly secularized, Catholic schools provided a

98 I am open to the argument that it might be possible to structure a charter law to permit religious charter schools by ensuring that public funds flow to them only as a result of true private choice, but the doctrinal evolution needed to embrace authentic religious schools likely will come too late for many urban Catholic schools.

99 *See supra* note 39.

100 *See* Benjamin Siracusa Hillman, Note, *Is There a Place for Religious Charter Schools?*, 118 YALE L.J. 554, 593–99 (2008) (describing necessary restrictions on "religious" charter schools to ensure that they do not become too religious).

101 THE WHITE HOUSE DOMESTIC POLICY COUNCIL, PRESERVING A CRITICAL NATIONAL ASSET 76 (2008), *available at* http://www2.ed.gov/admins/comm/choice/faithbased/report.pdf.

high-quality alternative model of education that melded authentic religiosity with academic quality. Catholic schools' disappearance therefore diminishes educational pluralism. To be sure, charter schools fill the resulting gap to some degree with a different kind of institutional pluralism (based on new instructional models, cultural themes, character education, etc.). In fact, a core purpose of charter school laws is to foster educational diversity. But, by asking Catholic schools to secularize to secure public funds, the "charters are enough" compromise encourages a dramatic convergence between religious schools and secular ones, which is, in my view, unfortunate.

CONCLUSION

In a speech to the National Catholic Education Association in 1991, Father Andrew Greeley—a renowned sociologist and the author of some of the most important studies of Catholic schools' academic performance—predicted that the first voucher would arrive on the day that the last Catholic school closed. As Diane Ravitch recently observed, Greeley knew that, despite their educational successes, Catholic schools were struggling, and "[h]e knew that help was not on the way."[102] What he did not—and indeed, could not—have known was that charter schools would soon explode onto the educational scene, offering a free alternative to failing public schools to poor students and the promise of public funding to Catholic leaders willing to secularize their schools.[103] Padua and Andrew Academies are a case in point: a year after the Archdiocese announced its decision to close St. Anthony and St. Andrew/St. Rita, Indiana enacted the most comprehensive school choice program in the United States. The legislation enables low income children to spend up to $4500 of public funds at a private school of their choice. During the first year of the program, over 4000 students transferred to a private school as a result of the program, and more than thirty Catholic schools in the Archdiocese of Indianapolis are currently participating in the program. Had the state legislature acted a year earlier, or had the Archdiocese known that help was, in fact, on the way, St. Anthony and St. Andrew/St. Rita likely would have been among them.

102 DIANE RAVITCH, THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM 128 (2010).

103 *Id.* at 206.