



6-1-2012

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Recommended Citation

James G. Dwyer, *The Parental Choice Fallacy in Education Reform Debates*, 87 Notre Dame L. Rev. 1837 (2013).
Available at: <http://scholarship.law.nd.edu/ndlr/vol87/iss5/2>

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THE PARENTAL CHOICE FALLACY IN EDUCATION REFORM DEBATES

*James G. Dwyer**

INTRODUCTION

Some tout parental school choice as a strategy for promoting, among other school-related goods, educational innovation.¹ This Article offers clarifying and skeptical thoughts about that position. It first explains what “educational innovation” and “parental choice” mean. It then considers what limitations on this strategy might arise from existing legal regulations, from market forces, or from ethical obligations to children. Finally, the Article explains why parental choice is also unlikely to improve education for the children most in need of a better academic environment and suggests an alternative approach to student reassignment that is much more likely to do so.

I focus on educational innovation because this Article appears in a symposium entitled “Educational Innovation and the Law.” I suspect the organizers of the symposium did not really have educational innovation in mind, but rather one of the other concepts discussed below—in particular, improvement of educational quality. Nevertheless, it is interesting to talk about educational innovation and its connection or lack thereof with parental choice. I do not have a position on whether innovation is needed. Presumably one would take the

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1 See Richard W. Garnett, *The Right Questions About School Choice: Education, Religious Freedom, and the Common Good*, 23 *CARDOZO L. REV.* 1281, 1283 (2002) (“Many have urged that we respond to this failure [of public schools] by introducing competition, empowering parents to choose from among a diverse array of schools, . . . encouraging experimentation rather than standardization . . .”); Chia-Lin Hsieh & Jianping Shen, *Is School Choice a Mechanism for Sustaining Change? Implications from a National Survey*, 75 *THE CLEARING HOUSE* 88, 88 (2001) (“[P]roponents [of school choice] argue that charter schools make it possible for parents to join with teachers and administrators in creating and managing innovative schools . . .”).

position that it is needed after concluding that existing pedagogies are inadequate. Like most other participants in the school reform debate, I know very little about primary or secondary school curriculum and instructional techniques, so I would not presume to make such a judgment. My own ignorance is part of the reason I am skeptical about relying on parental choice to promote educational innovation, or even to improve schools' delivery of existing curricula and pedagogies. Being a parent has not transformed me into the omniscient being that defenders of parental entitlement sometimes seem to suppose all parents are. Rather than argue that innovation is needed, then, I simply accept that some people think it is and address what obstacles might exist to using expanded parental choice as a means to achieving this aim.

Part I clarifies what I understand educational innovation to be and distinguishes that from other concepts at play in the school choice debate. Part II considers various limitations on innovation in curriculum and instruction and gives reasons for skepticism about reliance on parental choice as a means to any aim other than gratifying parents. Part III offers an alternative, more child-centered approach to student reassignment.

I. WHAT IT MEANS TO PROMOTE EDUCATIONAL INNOVATION THROUGH PARENTAL CHOICE

“Educational” means relating to instruction of students, providing knowledge and information, and fostering skills through a learning process.² “Innovation” is the act or process of inventing or introducing some new thing or way of performing a task.³ Thus, “educational innovation” means creating a new pedagogy, a new way of instructing and training students. This is distinct from several similar concepts.

First, educational innovation is distinct from educational quality, which means success at achieving educational aims, aims that could be as old as the hills and that might be achieved by long-established pedagogical methods. Presumably those who advocate parental choice as a strategy for promoting educational innovation hope that this will improve educational quality, but the two things are distinct. Innovation can actually lower quality, as arguably occurred when schools switched to factory-prepared meals for school cafeterias.⁴ Conversely,

2 See I THE NEW SHORTER OXFORD ENGLISH DICTIONARY 785 (1993).

3 See *id.* at 1373–74.

4 See Kirk Johnson, *School Districts Rediscover Value of Fresh Cooking*, N.Y. TIMES, Aug. 17, 2011, at A16 (describing emerging phenomenon of schools returning to pre-

one might improve educational quality without innovating, simply by making teachers work harder at applying their current approach. One might also improve quality by having teachers switch to a different, but already established, approach. Thus, innovation is also different from change; innovation is a change to something new.

Because “educational” refers to what teachers do in the classroom, “educational innovation” is also not equivalent to innovation in school financing or administration. Parental choice has become almost synonymous with directing taxpayer money in different directions, rather than only to neighborhood-based public schools, but such funding decisions are far different from decisions about how best to teach children math, science, reading, etc. What success some charter schools appear to have had seems to be the result mostly of administering schools in a different way—for example, by firing bad teachers more readily, being more active in recruiting and more selective in hiring new teachers, and making everyone work longer hours (all of which, incidentally, are traditional rather than novel administrative practices).⁵ One could do all these things while expecting teachers to apply only traditional pedagogies.

“Parental choice” in the school reform discourse typically means empowering parents to choose, from at least two options, which school their children attend. The school options can range over a tremendous variety of public, private, and quasi-public offerings. The state and the private market together can make available: neighborhood-based public schools, attendance at any public school in the family’s school district, choice among a subset of all public schools in a district, magnet schools, schools in a different school district, quasi-public charter schools, secular private schools, religious private schools, and home instruction.

We can distinguish parental choice so understood from at least two other ways by which a child’s academic course might be determined. First, there can be choice within a given school. Most public middle and high schools offer parents and students a variety of options internally for specific courses. There are typically core subjects that all must take, but parents and students might be able to choose from among different sections of those courses taught at different levels or with different approaches. And there are elective courses from which parents and students choose a subset. Some

1980s practice of making meals from scratch, because the innovation of purchasing and reheating factory-made meals has contributed to the obesity epidemic).

5 See Sam Dillon, *Troubled Schools Mimicking Charters*, N.Y. TIMES, Sept. 6, 2011, at A16.

schools boast special programs that comprise a cluster of elective courses in a particular field, such as the fine arts or the physical sciences. Such intra-school freedom in course of study is not usually included within the meaning of “parental choice” in school reform debates, even though it too might generate the competitive dynamic that advocates for parental choice think will promote innovation and better quality education.

A second alternative to parental choice from among private and public options is to have someone other than parents choose from among different schools or programs. For example, state legislatures could codify a rule that students in the bottom five percent of any public school must enter into a special program within that school or must move to another school that will better serve them. Another possibility is that state or local officials could delegate to a multi-disciplinary team—including, perhaps, teachers, guidance counselors, and social workers—the task of identifying the students in each public school who are most in need of a different educational program or school. There is curiously little attention given in education reform debates to the question of who is really in the best position to make school assignment decisions in such a way that maximizes overall student well-being. Correspondingly, advocates for parental choice have much to say about how choice spurs competition, but little to say about why it is best to make parents the choosers, given that choices by other decision makers might also spur competition, perhaps even better competition.

II. WHAT LIMITATIONS EXIST ON PARENTAL CHOICE AS A STRATEGY FOR EDUCATIONAL INNOVATION

Most of what has been written about limitations on parental choice programs addresses potential constitutional obstacles. There is a large literature, in particular, debating whether the Establishment Clause precludes states from channeling funds to religious schools, along with other private schools. The U.S. Supreme Court’s decision in *Zelman v. Simmons-Harris*⁶ largely answered that question, in the negative.⁷ I have taken the position that voucher programs that include religious and other private schools are not merely permissible constitutionally, but in fact mandatory—as a right not of parents but of the children in those schools—*so long as* the state attaches sufficient regulation and oversight to ensure that the money is used to provide

6 536 U.S. 639 (2002).

7 *See id.* at 662-63.

secular education.⁸ In this Article, I consider what obstacles to educational innovation might arise from other sources—namely, existing school regulations, market forces, and ethical obligations to children. I conclude that the first of these makes a private school choice policy more likely to produce educational innovation, but that the other two counsel in favor of public or quasi-public school choice as a means to innovative programming. In any event, I find much reason to doubt that parental choice promotes educational innovation or educational improvement.

A. *Regulatory Limitations*

States heavily regulate public schools, dictating in substantial detail both the education provided, including curriculum and assessment, and administrative policies such as hiring standards, disciplinary measures, and safety practices.⁹ As critics of the No Child Left Behind Act¹⁰ have complained, there is little freedom in public schools today for teachers to experiment with new approaches or even to use well-established teaching techniques that would require deviating from the prescribed curriculum or foregoing time for standardized test preparation.¹¹

In sharp contrast, states leave private schools virtually unregulated, giving them complete freedom as to what and how they teach.¹² States typically require only that private schools report their enrollment numbers, profess to teach certain core subjects, and comply with

8 See JAMES G. DWYER, *VOUCHERS WITHIN REASON* 198 (2002).

9 For examples of some states' public school regulations, see MISS. CODE ANN. § 37 (2011); OR. ADMIN. R. 581 (2011); S.C. CODE ANN. § 59 (2011).

10 20 U.S.C. § 6301 (2006).

11 See, e.g., B.A. Birch, *Reading and Math Is Stifling Curriculum, Say Teachers*, EDUC. NEWS (Dec. 10, 2011), <http://www.educationnews.org/education-policy-and-politics/reading-and-math-is-stifling-curriculum-say-teachers/> (discussing how “two-thirds of public school teachers believe that a concentration on English and mathematics . . . has forced focus away from other core academic subjects”); Daniel Denvir, *School: It's Way More Boring Than When You Were There*, SALON (Sept. 14, 2011, 4:18 PM), http://www.salon.com/2011/09/14/denvir_school/ (“Preparation for increasingly high-stakes tests has reduced time for social studies and science.”); Oliver Ortega, *ETHS Teacher, NU Alum Meets With Obama to Discuss Education Reform*, THE DAILY NORTHWESTERN, (Sept. 28, 2011, 2:09 PM), http://www.dailynorthwestern.com/city/eths-teacher-nu-alum-meets-with-obama-to-discuss-education-reform-1.2639891#.TIT_OmOyBg (“No Child Left Behind has created an academic culture fixated on standardized testing . . .”).

12 See James G. Dwyer, *The Children We Abandon: Religious Exemptions to Child Welfare and Education Laws as Denials of Equal Protection to Children of Religious Objectors*, 74 N.C. L. REV. 1321, 1329–53 (1996).

health and safety codes.¹³ How they teach any subject is entirely up to them.¹⁴ In fact, if a private school did not do any teaching of core subjects, state and local education officials likely would not discover it and, even if they did, might have no power to do anything about it.¹⁵ So there is no real regulatory limitation on innovation in the private school sector. Does this change when the state subsidizes private schooling? Existing private school choice programs for the most part add no meaningful instructional requirements or oversight.¹⁶ Thus, in practice, vouchers can be spent at fundamentalist indoctrination camps that provide little or no secular education.¹⁷

13 See, e.g., CAL. EDUC. CODE §§ 51202, 51220 (West 2011) (requiring health education and core subjects including English, mathematics, science, and social science); IND. CODE ANN. § 20-30-5 (2011) (requiring classes in government, health, drug education, career development, and core subjects). Iowa requires that teachers in private schools be “certified,” but certification requirements are quite limited and this requirement does not in any way limit what teachers do in their classrooms. Cf. *Fellowship Baptist Church v. Benton*, 815 F.2d 485, 492 (8th Cir. 1987) (stating that for certification Iowa requires only a bachelor’s degree and having taken a “human relations course”); *id.* at 493 (“Iowa’s certification process does not prevent teachers in plaintiff schools from teaching from a Biblical perspective . . .”). Nebraska requires that private school teachers meet the same certification requirements as public school teachers, but this again does not limit what happens once teachers are in the classroom. See NEB. REV. ST. § 79-1601 (2011).

14 Cf. *Johnson v. Charles City Cmty. Schs. Bd. of Educ.*, 368 N.W.2d 74, 83 (Iowa 1985) (rejecting fundamentalist Christians’ objection to a requirement that their schools teach particular subjects, noting that this requirement left the schools free to teach those subjects in any way they wished).

15 See generally James Forman, Jr., *The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics*, 54 UCLA L. REV. 547 (2007) (arguing for greater state oversight of private, particularly religious, schools).

16 See DWYER, *supra* note 8, at 175–82. For specific examples, see IND. CODE § 20-51-4-1(a)(1) (2011) (“[T]he department or any other state agency may not in any way regulate the educational program of a nonpublic eligible school that accepts a choice scholarship under this chapter, including the regulation of curriculum content, religious instruction or activities, classroom teaching, teacher and staff hiring requirements, and other activities carried out by the eligible school.”); LA. REV. STAT. ANN. § 17:43 (2011) (outlining Louisiana’s Student Scholarships for Educational Excellence Program); OHIO REV. CODE ANN. § 3310.02 (West 2011) (outlining Ohio’s educational choice scholarship pilot program).

17 Even those religious schools that ostensibly teach secular subjects might teach those subjects in a politically and socially skewed manner. See, e.g., JAMES G. DWYER, *RELIGIOUS SCHOOLS v. CHILDREN’S RIGHTS* 7-44 (2001); Frances Patterson, *With God On Their Side . . .*, *RETHINKING SCHOOLS* (2002), available at http://www.rethinking-schools.org/special_reports/voucher_report/v_god162.shtml (describing extreme bias found in religious school social studies text books). For the view that “faith schools” are inherently indoctrinatory, see Michael Hand, *A Philosophical Objection to Faith Schools*, 1 THEORY & RES. EDUC. 89–99 (2003).

In between the heavily regulated public schools and the unregulated private schools are the quasi-public charter schools, schools administrated by private companies but within the public school system. They are subject to close state oversight and to some of the substantive regulations that govern traditional public schools, but they are given greater freedom than public school administrators with respect to some practices, especially hiring, firing, and length of school day and school year.¹⁸ To what extent charter schools are legally free to engage in “educational innovation” varies from state to state. In practice, their freedom must be quite limited because they must, like public schools, subject their students to the all-consuming, state-prescribed standardized tests and stake their reputation mostly on the basis of the results.¹⁹

In sum, the current regulatory environment makes the private school sector much more conducive to educational innovation than the public and quasi-public sectors, simply because there are great regulatory constraints on the public side and generally none on the private side.

B. *Market Limitations*

The real, practical obstacle to *innovation* in the private school sector is that private schools in America today must appeal to parents, the vast majority of whom feel completely free (in a way many did not a half century ago, because of greater pressure then from religious institutions) to choose a public school, any other nearby private schools, or homeschooling for their children. This is an obstacle to innovation because parents generally do not want educational innovation, at least not for their own children. Why anyone would think parental choice would promote educational innovation is therefore quite mysterious. In my fifty years of life and twenty plus years of scholarly interest in education policy, I have never seen any evidence of any parents thinking, “I just want something new for my kids, some way of educating that has not been done before.” There are at least three reasons why parents do not value educational innovation *per se*.

First, parents usually actually want the opposite of innovation when it comes to raising their children; they want child-rearing methods that are tried and true, that have been used on other people’s

18 See Jamie Gottlieb, *Harmonizing No Child Left Behind’s Restructuring Provision and State Charter School Laws: The Need for Autonomy, Flexibility, and Adequate Resources*, 39 SETON HALL L. REV. 191, 192 (2008) (describing the flexibility and oversight of charter schools).

19 See *id.* at 192.

children long and successfully enough to be a safe bet.²⁰ Parents are highly risk averse when it comes to education, medical care, and other important aspects of their children's wellbeing.²¹ As evidenced by the difficulty in getting parental consent to medical experiments on children, parents typically do not want their children used as guinea pigs, do not want people with new ideas experimenting with their children. Often parents want their children's schools to do something different from what they have been doing, because they disapprove of the outcomes they are seeing or hearing about with existing practices. But the alternative they would prefer is typically either some other proven practices or simply executing the same practices in a better way. Parents are concerned with educational *quality*, not with educational innovation, and they would prefer access to well-established educational methods that have been proven to be of high quality. Probably most would like *other people's* children to be subjected to educational, medical, etc., experimentation, in the hope this might yield some new and improved methods, but not their own.

People are typically willing to experiment with important aspects of their own or their children's wellbeing only when existing options are very poor. People agree to experimental surgeries, for example, when there are no existing methods with a decent rate of success, but not when there are long-used methods with a high rate of success. If your child has appendicitis and one surgeon says he would like to try a new technique that no one has tried before, you are likely to look for a different surgeon who will use a well-established technique. In contrast, with advanced cancer, one might grasp at straws because existing procedures offer little hope of survival. Education, at least for children within the normal range of abilities, is more like an appendectomy than like surgery for Stage 4 brain cancer. There are already many very successful schools using well-established pedagogical methods, so a rational and risk-averse parent will prefer a school using such methods to one offering a brand new approach.

20 See Margaret F. Brinig & Nicole Stelle Garnett, *Catholic Schools, Urban Neighborhoods, and Education Reform*, 85 NOTRE DAME L. REV. 887, 901 (2010) ("Parents (including non-Catholic parents) cite a number of reasons for choosing these [Catholic] schools for their children, including a desire for systematic religious instruction, for the inculcation of 'values,' for a 'traditional' curriculum, and for a more structured, disciplined learning environment.").

21 See generally Richard P. Eibach & Steven E. Mock, *The Vigilant Parent: Parental Role Salience Affects Parents' Risk Perceptions, Risk-Aversion, and Trust in Strangers*, 47 J. EXPERIMENTAL SOC. PSYCHOL. 694 (2011) (demonstrating that adults take fewer risks when making decisions in the role of parent).

There is, of course, a variety of educational approaches in the private school sector today, and at some point a significant number of parents would have had to choose a school with a particular approach in order for the school to survive. Whether any of the approaches was truly “new” at the time any school in America adopted it is debatable, however. For example, what many people think of as innovative is the student-directed approach of Montessori-type schools, but this approach did not originate in America and was not the result of parental choice. Montessori schooling originated in Italy around 1900, an experiment Maria Montessori tried on poor children whose parents had no other choice or whose parents were indifferent or absent.²² Montessori schooling became an American phenomenon only in the 1960s, after six decades of experience elsewhere, and at a time when generalized suspicion of tradition and “the establishment” motivated many young adults to experiment with new things in many areas of life.²³ What we have seen in more recent decades in the U.S. are new schools adopting pre-modern approaches, many having the word “Classical” in their names or touting a “back to basics” philosophy,²⁴ and we see a private school sector dominated by religious schools whose methods are for the most part those that prevailed in public schools twenty to a hundred-and-twenty years ago.²⁵

In short, what parents really want is not innovation but better quality. Probably this is also true of advocates for parental choice; they do not simply have a taste for newness, enjoying the thrill of mixing things up. Rather, they mostly want better education for children, and they believe parental choice will produce that. Probably most have in mind that empowering parents to choose something other

22 See Valeria Babini, *Science, Feminism and Education: The Early Work of Maria Montessori*, 49 HIST. WORKSHOP J. 44, 53 (Sarah Morgan & Daniel Pick trans., 2000).

23 See Paul Willcott, *The Initial American Reception of the Montessori Method*, 76 SCH. REV. 147, 161 (1968) (explaining that after initial curiosity, American interest in Montessori pretty much vanished by 1920); see also Patricia McBroom, *Montessori Expands*, 88 SCI. NEWSL. 375, 375 (1965), (chronicling the Montessori boom in the 1960s).

24 See Andrew Lee Havis & Thomas Daniels Yawkey, “Back-to-Basics” in *Early Childhood Education: A Re-Examination of “Good Old ‘Rithmetic,”* 98 EDUC. 135, 135-36 (1977) (discussing an approach of “retaining and using contemporary principles of mathematics education in conjunction with the ‘back-to-basics’ philosophy”); Mitchell Landsberg, *Back to Basics: Why Does High School Fail So Many?*, L.A. TIMES (Jan. 29, 2006), <http://articles.latimes.com/2006/jan/29/local/me-dropout29>.

25 See Samuel G. Freedman, *Lessons From Catholic Schools for Public Educators*, N.Y. TIMES, May 1, 2010, at A17 (explaining that Catholic schools have kept to their tried-and-true teaching methods, and for instance “never conceded their curriculum to progressive trends like whole language, constructivist math and relativistic history”).

than the neighborhood public school will improve education quality by creating pressure for schools to apply established methods better.²⁶ What I am suggesting here is that if they instead think parental choice will improve education by causing more pedagogical experimentation, they face the obstacle that parents do not want anyone experimenting with their children. Surely there are better ways of teaching children yet to be discovered. However, they are more likely to emerge, if at all (the intensified regulatory environment for public schools discussed above makes it less likely), in the public school sector, where (a) there is less need for parental approval, (b) the vast majority of new graduates of education schools go to work, and (c) there is an established practice of funding research and accommodating pilot projects. The most likely site of innovation in the *private* realm is in university laboratory schools, which are few in number and typically already receiving government financial support in the form of grants.²⁷

A second reason why parents do not express a desire for educational innovation is that a substantial percentage of them place greater importance on ideological conformity than on intellectual development. The vast majority of private schools are religious, and some parents who send their children to religious schools—namely, those patronizing certain fundamentalist schools—reject educational attainment in the mainstream sense for their children, especially for their daughters.²⁸ This fact considerably weakens all the common arguments for parental choice. In particular, it makes no sense to speak of parental choice generating competitive pressure that will improve public schools insofar as the alternative schools parents choose have entirely different aims than public schools do. Public school administrators and teachers will not react to the movement of children to fundamentalist religious schools by working harder to lure the children back. Instead they are likely to believe that no amount of effort on their part could change the parents' decision.

26 See Clive R. Belfield & Henry M. Levin, *The Effects of Competition Between Schools on Educational Outcomes: A Review for the United States*, 72 REV. EDUC. RES. 279 (2002) (summarizing dozens of studies finding modest academic gains from school competition).

27 University laboratory schools are founded in a spirit of innovation and educational experimentation. See Anne Durst, 'Venturing in Education': Teaching at the University of Chicago's Laboratory School, 1896–1904, 39 HIST. EDUC. 55, 62 (2010).

28 See DWYER, *supra* note 8, 7-44. The same is true of homeschooling. See J.C. Blokhuis, Review of Robert Kunzman, *Write These Laws on Your Children: Inside the World of Conservative Christian Homeschooling*, 8 THEORY & RES. EDUC. 322, 322–26 (2010).

Even among parents who would choose a private school affiliated with a more moderate faith institution, a school that does emphasize secular education and intellectual development as well as religious instruction, there is not likely to be much taste for educational novelty. As a general matter, religious schools are the least likely site of educational innovation, even though most of them are academically solid.²⁹ Most religious institutions in western, liberal society view themselves as bulwarks of tradition.³⁰ They resist change and modernization, or at least evolve very cautiously, and they worry especially about new developments in society undermining their efforts to perpetuate their faith through schooling of children.³¹ Moreover, they do not conduct research on pedagogical methods in secular subjects. There can be exceptions, of course, but it would be startling to hear of a Catholic parish school, for example, being the first in the nation to offer a new pedagogy in a secular subject. As noted above, parents who patronize Catholic schools express a desire for a traditional curriculum.

A third reason why parents do not desire brand new methods of teaching is that most do not feel capable of evaluating whether new methods are good methods.³² Advocacy of parental choice as a means to innovation *and therefore* to better quality education must presuppose not only that parents are willing to experiment but also that parents are able to identify new ideas for teaching that are good ones. But there is little reason to suppose that parents are any better at evaluating competing approaches to pedagogy than they are at evaluating competing approaches to appendix surgery for their children. And I have never heard of anyone advocating parental choice as a strategy

29 See, e.g., Brinig & Garnett, *supra* note 20, at 901; Freedman, *supra* note 25 (discussing religiously affiliated schools and their reluctance to change).

30 See, e.g., *Johnson v. Charles City Cmty. Schs. Bd. of Educ.*, 368 N.W.2d 74, 76–77 (Iowa 1985) (“[B]eginning in the 19th century, there has been growing concern among Christian ‘fundamentalist’ churches with what they consider to be the calamitous threat of secular humanism. . . . It was to answer this perceived threat that the plaintiffs felt impelled to establish their own school.”).

31 See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding that Amish parents have a constitutional right to deprive their children of an education after eighth grade, in order to avoid attrition from the Amish faith).

32 There are many guides that have been developed in order to help parents to select a school. See, e.g., Jamie Gumbrecht, *How to Choose a School for Your Child*, CNN (Jan. 25, 2011, 10:32 AM), <http://www.cnn.com/2011/LIVING/01/24/parents.school.choice/index.html>; *How to Evaluate and Choose a School*, PROJECT APPLESEED, <http://www.projectappleseed.org/choose.html> (last visited Mar. 13, 2012); Kayla Webley, *7 Things You Need to Know About a School (Before You Enroll Your Kid)*, TIME (Aug. 24, 2011), <http://www.time.com/time/nation/article/0,8599,2089618,00.html>.

for promoting surgical innovation and thereby improving surgical techniques. There is an implicit denigration of education experts in much of the advocacy for parental choice in education, a supposition that the average person on the street is as capable of assessing educational quality as anyone with a Ph.D. in education. I do not think that of myself, even though I think I am above average in my powers of discernment.

Now, one might say that with schools as with medicine, anyone is capable of judging by the results. If a surgeon's new technique saves lives, anyone can judge the value of that, without needing to go to medical school. So, too, anyone can judge an innovative school by the outcomes for its students. One problem with this reasoning is that, again, no one wants to go first; parents want proven methods, precisely because they feel incapable of judging new pedagogies in advance of seeing outcomes. A second problem with this reasoning is that what most parents, like most participants in the school choice debate, rely on to judge outcomes for different schools are standardized test scores.³³ This is a problem for those who would use parental choice to promote educational innovation that leads to better quality education because (1) those scores for the most part reflect success at quite old-fashioned pedagogical methods (i.e., rote learning, "drill and kill"),³⁴ (2) many education experts believe those tests bear little relationship to good education,³⁵ and (3) private schools do not have to administer standardized tests, so parents might not have this information available to assess private schools.³⁶ (This last fact is often ignored by those who maintain on the basis of test scores that private schools in general, Catholic schools in particular, or homeschools are as good as or better than public schools; the self-selection seriously skews the averages. In any event, average performance for a large cat-

33 See Mark Schneider & Jack Buckley, *What Do Parents Want from Schools? Evidence from the Internet*, 24 EDUC. EVALUATION & POL'Y ANALYSIS 133, 136 (2002) (finding that a primary decision factor for parents in school choice is standardized test scores).

34 See Jonathan Kozol, *Confessions of Apartheid Continue in Our Schools*, 71 EDUC. DIG. 6, 17-18 (2006).

35 See Harvey Siegel, *High Stakes Testing, Educational Aims and Ideals, and Responsible Assessment*, 3 THEORY AND RES. EDUC. 219 (2004); Michael Winerip, *Teaching Beyond the Test, to Make Room Again for Current Events*, N.Y. TIMES, May 23, 2011, at A21; Howard Blume, *Focus on Standardized Tests May Be Pushing Some Teachers to Cheat*, L.A. TIMES (Nov. 11, 2011), <http://articles.latimes.com/2011/nov/07/local/la-me-teacher-cheating-20111107>; *How Standardized Testing Damages Education*, FAIRTEST, (Aug. 20, 2007, 1:00 PM), <http://fairtest.org/facts/howharm.htm>.

36 See DWYER, *supra* note 8, at 170 (explaining that "[m]any schools . . . simply refuse to comply, and state education officials do nothing about it").

egory of schools is useless information in policy making and in parental decision making.)

In sum, then, parental choice is quite unlikely to produce educational innovation and even less likely to produce innovative programs that better educate students.

C. *Ethical Limitations*

Educational innovation entails experimentation—that is, trying something new and not knowing in advance whether it will succeed. Similarly, medical innovation entails experimentation. Unlike medical experimentation, though, educational experimentation cannot start with other species; it has to start with human children. And unlike medical experimentation, with educational experimentation in the private sector there is no state-imposed regulatory, supervisory, or compensatory system to guard against bad choices. With new private school programs, there is not the sort of pre-experiment review of a proposal, oversight during the experiment, and rigorous post-intervention assessment that usually characterizes medical trials.³⁷ Medical experiments are carefully controlled, and parents simply may not consent to experiments known to pose a significant risk of substantial harm to their children.³⁸ With private school education, as explained above, there are no boundaries within which experimentation must take place, and no precautions that must be taken. Parents are empowered to consent to any sort of schooling for their children. And with educational blunders, there is no legal recourse for those harmed. Yet educational innovation can go very badly and can have life-altering bad consequences.³⁹

Therefore, one ethical limitation on advocacy for parental choice as a strategy for educational innovation is the duty everyone involved in education policy arguably has to “first, do no harm.” All should take seriously the reality that our legal system tolerates every imaginable sort of private alternative to public schools and the possibility that by advocating for vouchers or tax credits or some form of subsidy for private choice, you will cause some children developmental harm. A

³⁷ See 21 C.F.R. § 50.54–.56 (2011) (stating the rules for clinical trials concerning or involving children).

³⁸ See *id.*

³⁹ In Florida, for example, the system of charter schools has been accused of lacking oversight and of “cherry-picking” students to avoid those with severe disabilities, nearly creating a segregated system. See, e.g., John O’Connor & Sarah Gonzalez, *Florida Charter Schools Failing Disabled Students*, NAT’L PUB. RADIO (Dec. 14, 2011), <http://www.npr.org/2011/12/14/143659449/florida-charter-schools-failing-disabled-students>.

voucher program on a large scale will undoubtedly result, for example, in some girls transferring from a gender-egalitarian public school environment to a religious school in which they are taught that their role in life is to serve men and that they should not plan to go to college.⁴⁰ It will result in some children watching fundamentalist religious videos all day instead of receiving an education.⁴¹ No advocate of state funding for private schooling should be taken seriously until they take seriously the lack of regulation and oversight in the private school sector. Yet one would be hard pressed to find a school voucher proponent who does so.

Most private schools, let us assume, are schools that provide a good education. They might provide religious instruction, but they also teach secular subjects and they do so well.⁴² Many parents send their children to such schools even in the absence of state financial assistance. I have argued in the past that the state *should* give *those* families financial assistance, *if* that assistance would result in improvement to the secular education those schools provide.⁴³ Again, this is not something parents are entitled to; they have chosen not to accept the public schooling offered, and they have no more right to state funding of a private alternative than does someone who prefers a religious library to the public library or a religiously orthodox history museum to the Smithsonian. Rather, it is the children whose parents place them in private schools, and whose secular education suffers from want of funding, who have this right.⁴⁴ In fact, it should not be problematic for the state to give money directly to religious and other private schools, so long as the amount (a) is based on the number of children who attend and (b) on a per-pupil basis does not exceed the

40 See DWYER, *supra* note 8, at 7-44; see also Barbara Miner, *School Vouchers: A Threat to the Rights of Women and Gays*, 6 RETHINKING SCHOOLS, (2002), available at http://www.rethinkingschools.org/special_reports/voucher_report/v_gay.shtml; Patterson, *supra* note 17.

41 See, e.g., Scott Stephens & Mark Vosburgh, *Voucher School Relies on Videos as Teachers*, CLEVELAND PLAIN DEALER, July 7, 1999 (describing a fundamentalist Christian school in Cleveland that had no teachers and instead used state money received through Cleveland's school choice program to purchase religious videos that the children spent most of the school day watching).

42 For instance, Catholic schools have been regularly praised for closing educational gaps between different ethnic groups in urban areas. See Freedman, *supra* note 25. For a discussion on producing students more likely to graduate from college and earn higher wages, see Derek Neal, *The Effects of Catholic Secondary Schooling on Educational Achievement*, 15 J. LAB. ECON. 98, 98 (1997).

43 See DWYER, *supra* note 8, at 148-68.

44 See *id.* at 99-114, 148-68.

school's cost of providing secular instruction.⁴⁵ Under the Cleveland voucher program approved in *Zelman*, the state did send checks directly to religious schools, rather than to parents.⁴⁶ Vouchers issued to parents were simply a means of counting the number of eligible children at a particular school, so that requirement (a) was satisfied. However, the state did nothing to ensure requirement (b) was met, or even that religious schools receiving state money were providing *any* secular education.⁴⁷ The state and the Court therefore failed with respect to this first ethical obligation to children.

There is, additionally, a second relevant ethical obligation that conflicts with reliance on parental choice to produce innovation or educational improvement. Advocates of private school choice would like for the state to offer vouchers to parents whose children now attend public school, or at least to poor parents whose children attend failing public schools, so that they too can send their children instead to private schools. That is commendable. But even if we focus narrowly on the idea of using parental choice to enable poor parents to move their children from the worst public schools to decent private schools, there is a fairness problem. Now the problem is not (just) that reliance on parental choice makes some children vulnerable to bad parental choices—that is, to being moved to a bad private school, but rather that it leaves unaided the children who need it the most—namely, those whose parents are too disengaged or incapable to participate in the program. Existing parental choice programs help the children, within whatever the target population is, who need help the least, and leave behind in the worst schools the children who are in most desperate need.⁴⁸ That is so because the most important factor in the wellbeing and educational success of children in poor communities is competent parental involvement.⁴⁹ Taking advantage of a

45 For a fuller presentation of this argument, see *id.* at 115-47.

46 *Id.* at 148-68.

47 See *id.* at 178-80; James G. Dwyer, *Funding Religion in a Post-Zelman World*, 5 GOV'T, L. & POL'Y J. 11 (2003).

48 See, EDWARD B. FISKE & HELEN F. LADD, WHEN SCHOOLS COMPETE 8-9 (2000); Bruce Fuller et al., *Policy-Making in the Dark: Illuminating the School Choice Debate*, in WHO CHOOSES? WHO LOSES? CULTURE, INSTITUTIONS, AND THE UNEQUAL EFFECTS OF SCHOOL CHOICE 8-11 (Bruce Fuller & Richard F. Elmore eds., 1996). For a similar criticism of merit-based selection for magnet school programs, see Mark C. Vopat, *Magnet Schools, Innate Talent and Social Justice*, 9 THEORY & RES. EDUC. 59 (2011).

49 See generally ANNETTE LAREAU, UNEQUAL CHILDHOODS (2003) (discussing the adverse impacts of absent parents on their children's education); Nancy E. Hill & Lorraine C. Taylor, *Parental School Involvement and Children's Academic Achievement: Pragmatics and Issues*, 13 CURRENT DIRECTIONS PSYCHOL. SCI. 4, 161 (2004) (describing the ways in which parental involvement concretely promotes academic success).

voucher program requires some effort and competence, so those who do it are likely also to be regularly helping their children with school work and making sure their children are safe, well-fed, well-clothed, well-rested, and disciplined.⁵⁰ In contrast, the many parents in blighted urban neighborhoods who are too busy, too indifferent, or too incapacitated to ensure that their children do their homework and have a good breakfast before school are also least likely to apply for a voucher or otherwise advocate for a better school assignment for their child. This concern, too, makes it difficult to understand the enormous emphasis placed on parental choice as a means of moving children from a bad school environment to a better one.

III. AN ALTERNATIVE APPROACH TO SCHOOL CHOICE

As Part I hinted, there are conceivable ways other than parental choice by which students might transfer from one school to another in order to improve their education. I suggest the following alternative approach to addressing the serious problem of bad urban schools: State or local government could establish a practice of having a multi-disciplinary team in each school or in each school district decide which pupils are most in need of moving to a different educational setting and/or most likely to benefit from such a move. Most likely this would be the students whose academic performance is farthest below their potential (and, correspondingly, whose parents are least involved in their children's lives). School officials would then send notice to the parents of those pupils that those children will transfer to another school, public or private, at public expense. Crucially, any alternative school will have been qualified by state education officials, based on its having demonstrated proficiency in secular education, and will be subject to ongoing oversight and accountability. To satisfy parental rights or Establishment Clause concerns, parents could be empowered to opt out of this reassignment program, but it is unlikely that many would do so. Parents might also be given a choice among a few alternative schools, but only among schools which state education officials have approved.

This is a general proposal, not worked out in detail, intended to provoke discussion. On the surface, at least, it seems that a parent opt-out approach of this sort, with careful selection and monitoring of the alternative schools, would do much more good for children and constitute a more effective use of state resources than are the "parent

⁵⁰ Cf. JOSEPH P. VITERRITI, CHOOSING EQUALITY 9 (1999) (stating that "parents who take advantage of school choice tend to be better educated and more astute than those who do not").

opt-in with no oversight of private alternatives” approaches that currently exist and that most advocates of school choice have favored. If that is true, then anyone genuinely concerned about improving the life prospects of children born into poverty should give this proposal serious consideration and try to figure out whether and how it could work in practice.

The following objections might be expected: As to restricting state-funded pupil transfers to state-approved schools, some might object that this improperly interferes with religious freedom, insofar as it requires religious institutions to conform to state standards in order to receive a large financial benefit.⁵¹ The state would skew the market for private schooling by creating a financial incentive for parents to choose some schools rather than others. However, the state routinely purchases goods and services from private suppliers and properly requires that the suppliers meet quality standards, even though some might be unable to satisfy those standards because their religious faith commands them to offer goods or services in a particular, different way. For example, a police department does no wrong by refusing to purchase Amish buggies for their cruisers, even though this discrimination might make it more difficult for Amish communities to survive. Similarly, state programs providing reimbursement for medical care of children are certainly not constitutionally required to pay also for Christian Scientist “spiritual treatment” of sick or injured children, even though refusing to do so creates an incentive for parents to choose a doctor instead of a spiritual treatment practitioner.

A related objection might be that the discrimination among schools that state approval of voucher schools entails infringes parental rights, because it imposes a cost on parents who choose a nonapproved school. However, although the U.S. Supreme Court has required that states empower parents to choose a private school for their children,⁵² it has never required that states fund private schools nor that the state avoid discriminating among schools on legitimate secular grounds in providing assistance. Moreover, the Court has repeatedly stated that states are free to impose regulations on private schools, even in the absence of state assistance, to ensure that they provide an adequate secular education.⁵³ Thus, states are constitutionally free not only to refuse funding for private schools that do not

51 See Paul Finkelman, *School Vouchers, Thomas Jefferson, Roger Williams, and Protecting the Faithful: Warnings from the Eighteenth Century and the Seventeenth Century on the Danger of Establishments to Religious Communities*, 2008 *BYU L. Rev.* 525, 542 (2008).

52 See *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534 (1925).

53 See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972); *Pierce*, 268 U.S. at 510.

meet state educational standards but in fact to shut down such schools. In its 2002 decision approving a voucher program that included religious schools, *Zelman v. Simmons-Harris*, the Court crucially assumed (albeit without basis in the record) that all receiving schools were providing an adequate secular education.⁵⁴ It was implicit that the state may not, consistent with the Establishment Clause, direct state money to private schools that provide only religious instruction. By extension, the state could not pay for ninety percent of a school's budget if only five percent of instruction were secular, or only twenty-five percent; there must be a rough match between the funding the state supplies and the secular component of the school's operations.⁵⁵ But the state cannot ensure this except by a close examination of the school's operations prior to inclusion in the program and regular review of student progress thereafter.

With respect to the parental opt-out aspect, insofar as it departs from the prevailing approach of responding only to parent requests for a transfer rather than to student need per se, some might object that this unwisely transplants the decision as to where children go to school from the best judge of children's welfare (parents) to a worse decision maker (the state). There are numerous problems with this objection. One is that my proposal does retain an element of parental choice; it allows parents to decline an offer of transfer. Arguably the state should require any parents who assert a desire to opt out to provide a good reason for doing so, a reason tied to the developmental needs of their child. This would be consistent with the Supreme Court's statements about parental decision making power.⁵⁶

54 The Court's only mention of what voucher schools are like was a statement that a school could be accepted into the voucher program if it "meets statewide educational standards." See *Zelman v. Simmons-Harris*, 536 U.S. 639, 645 (2002). The Court appeared oblivious to the fact that that Ohio's "statewide standards" for private schools, like those of other states, were quite superficial and did nothing to ensure private schools were providing a sound secular education. See DWYER, *supra* note 8, at 178-80.

55 See DWYER, *supra* note 8, at 198-210.

56 See, e.g., *Troxel v. Granville*, 530 U.S. 57, 57 (2000) (plurality decision) (holding that state adjudicating a nonparent visitation petition must simply apply a presumption that a parent's refusal or restriction of visitation is in the child's best interests, subject to rebuttal by the nonparent); *Yoder*, 406 U.S. at 229-30 (concluding that Amish parents had a right to withdraw their adolescent children from schooling, based in part on an assumption that this would have no adverse impact on the children); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience.")

An additional problem with this objection is that it rests on the “omniscient parent fallacy.” Even the most well educated people are unlikely to be capable of assessing the relative quality of instruction in different schools unless they have received training specifically in the education of children. And the parents whose children attend the worst schools are among the least-educated, lowest-functioning adults in American society.⁵⁷ Other articles in this symposium discuss the great problems of teen dropouts, juvenile delinquents, and non-English-speaking immigrants.⁵⁸ Those very teens about whose capacity even to survive the authors are worried will soon make up a large percentage of parents in the worst urban areas.⁵⁹ Those who insist that parents are the best decision makers need to confront the fact that most of the parents in the context under discussion—that is, state-funded pupil transfers out of the worst schools—themselves dropped out of high school, spent time in jail, suffer from substance abuse problems, and/or speak little English. Those people do not suddenly become omniscient as a consequence of procreating. Even the most capable parents in such communities must feel themselves largely dependent on school officials to tell them whether and how the neighborhood school is failing and which other schools do better; they do not themselves sit in classrooms and compare what they see against prevailing learning theories. Of course, part of what is wrong with some urban public schools and better about urban private schools has to do not with the curriculum or pedagogical approach but rather with such noninstructional phenomena as violence and teachers’ sleeping at their desks. But discriminating among schools

(footnotes omitted)); *Pierce*, 268 U.S. at 534 (acknowledging “the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare”); see also *Fellowship Baptist Church v. Benton*, 815 F.2d 485, 489 (8th Cir. 1987) (upholding a teacher certification requirement for private schools against a parental free exercise challenge).

57 See *supra* note 47 and accompanying text.

58 See ROSEMARY C. SALOMONE, *TRUE AMERICAN* (2010); Peter H. Schuck et al., *What Happens to the ‘Bad Apples’: An Empirical Study of Suspensions in New York City Schools*, 87 *NOTRE DAME L. REV.* 2063 (2012).

59 Consistently, youth from lower-income families and urban areas are less likely to graduate from high school. See, e.g., Sam Dillon, *Large Urban-Suburban Gap Seen in Graduation Rates*, *N.Y. TIMES*, Apr. 22, 2009, at A14 (reporting graduation rates for different socioeconomic classes); *Event Dropout Rates by Family Income, 1971–2001*, *NAT’L CTR. FOR EDUC. STATISTICS* (2004), http://nces.ed.gov/programs/coe/indicator_evl.asp (finding that lower-income youth are more likely to drop out of school).

based on those things does not require the expertise assumed by those who adhere to the omniscient parent hypothesis.

Further, as noted above, the children likely to be in greatest need of transfer to a different school are precisely those whose parents are least involved, those who do not receive help with school work at home and who do not have a parent advocating for them in the school. Teachers and guidance counselors know who these children are, and there might be no one else who does. The state will serve the greatest need and get the most for its limited funds if it targets those children for transfer. The prevailing approach of offering choices to parents and making any transfer depend on parental efforts does the opposite; it directs state funds to the pupils in bad schools who are least in need of transfer precisely because their parents are the most capable and involved in their children's lives in that community. That is not to say that those children would not be better off if transferred, but rather that other children are in greater need yet left behind. And there does not seem any reason for this regressive approach other than to gratify parents and those bewitched by the slogan of parental choice.

Finally, some might worry that state-initiated transfers from public to religious schools conflict with the Establishment Clause. The Supreme Court has placed great emphasis on parental choice of schools in its decisions on state funding of religious schools, suggesting that this avoids the problem of state favoritism for religion.⁶⁰ My proposal retains an element of parental choice, and it is unknown whether the Court would find that the opt-out approach involves parental choice sufficiently to make any choice of a religious school for a child attributable to parents rather than the state. In a subset of cases in which students might transfer to an approved religious school under the approach I recommend—namely, those in which parents are simply absent from their children's lives—the transfer will be the result of a state decision rather than parental choice. Those cases will not be readily identifiable, because from the state's perspective they will look no different from cases in which parents are involved but concur in the decision. That might worry or satisfy the Court; it is impossible to predict. The situation might appear more constitutionally legitimate if one views cases in which parents are absent or indifferent as ones in which the state is serving as a quasi custodian. It would then resemble the situation of children who are in foster care because of parental absence or indifference, as to whom the state must choose a school. The Court has not addressed Establishment

60 See *Zelman v. Simmons-Harris*, 536 U.S. 639, 645 (2002).

Clause constraints on state decision making in the foster care context, but it might well conclude that when the state has custody of a child and so stands *in loco parentis*, it is free to choose a religious school for the child if that is the best available option for secular education. By extension, the Court might deem it permissible for education officials to designate some pupils for transfer to a religious school even when there is no real parental choice involved.

I would go further and maintain that the Court's emphasis on parental choice in Establishment Clause doctrine is a mistake. What is crucial for purposes of state nonestablishment is that the state choose and pay for secular education based on the secular concern that certain children need to be in a better school. As with medical care, parental choice is neither necessary nor sufficient to ensure this. My proposal requires that the state direct money only to schools it has approved on the secular ground that they primarily provide an adequate secular education, and that choice among schools rest solely on the secular concern with the academic needs of the students. Whether chosen schools are operated by religious institutions should be irrelevant. Whether children would incidentally receive religious instruction as a result of the state's choice is not, in my view, a sufficient concern to preclude the choice; the educational needs of the children override that concern. I would also require that the amount of state money directed to any private school be on a per-pupil basis and limited roughly to the percentage of a school's per-pupil costs that reflect provision of secular instruction, based on some reasonable cost-allocation method.⁶¹ As noted above, this limitation should be required even for parent opt-in programs; the concern that the state might end up paying for catechism class is not limited to a voucher program of the sort I recommend.

There is a legitimate concern that a multi-disciplinary team could systematically favor religious schools over secular ones for religious reasons, if all or most team members belong to the same faith as a local religious school. But that seems unlikely to occur in any urban American school district, where there is typically great cultural diversity. It is surely less likely than parents in an opt-in program choosing to transfer their children primarily or even solely for religious reasons. As noted in Part II, in existing parent-choice programs, parents can use state subsidies to transfer their children to a worse academic environment, and some do so because they place greater importance on a religious immersion experience for their children. Even if all schools receiving state subsidies had to receive state approval, it is theoretic-

61 See DWYER *supra* note 8, at 199–204.

cally possible in a parent opt-in approach that some parents could make their children worse off academically by transferring them to a religious school, which they might do for religious reasons, and it is constitutionally problematic for the state to subsidize that parental decision. The best check against the state's financing a religiously based pupil-transfer decision might be the system I suggest, whereby a group of public employees who have devoted their careers to secular education (as evidenced by their employment in a public school) collectively decide the best placement for the neediest children.

Lastly, I note the limited nature of the proposal offered here; it is not a comprehensive plan for state funding of private schooling. It suggests a way for deciding which children currently in the worst public schools should transfer to some other school. A comprehensive plan would also encompass children just entering school at the earliest ages and communities other than poor urban areas. Some different considerations come into play in those other contexts, but my reasons for skepticism regarding parental choice would apply in them as well.⁶²

CONCLUSION

I am a highly educated and politically progressive person, and I am a parent. Yet I have no desire for educational innovation per se, and if my daughters' schools did inform me that they planned to launch an experimental curriculum, I would not feel qualified to assess whether the curriculum is likely to be a good one. If giving *me* a choice as to which school *my* daughters attend and which program they pursue within the school is not likely to induce educational innovation that in turn improves the quality of education, then I cannot imagine how giving such choices to the average parent or to parents in impoverished neighborhoods is going to do so.

As I suggested at the outset, I suspect that those who advocate for parental choice are not really much interested in educational innovation. But even putting aside innovation as a mediating phenomenon, I fail to perceive a clear connection between parental choice and higher quality service in the realm of education (or medicine, nutrition, entertainment, etc.). In thinking about who should make decisions about important aspects of children's lives, it is important to be aware of what sort of expertise is required for each type of decision and who has what sort of expertise. As a general matter, we parents are experts in our children's personalities and histories, but not much

62 For a more comprehensive theory of child-centered school choice, see DWYER, *supra* note 8.

else. Parents per se are not experts in cognitive development, curricular design, learning strategies, or medicine. Advocates for parental choice in education need to address squarely this expertise deficit in parents. And they must also confront the reality that (a) some parents simply are not driven in their schooling choices for their children by a desire to secure for them the best possible education, and so would use the state subsidies offered in a private school choice program to finance oppressive fundamentalist religious indoctrination for their children, and (b) the law currently does little to limit the schooling options that such parents can choose. Unless and until this concern is obviated, public school student reassignment plans must be the preferred way of using competitive pressure and administrative experimentation to improve educational quality. There is also the undeniable fact that a significant percentage of parents are simply indifferent or incapable of advocating for their children, and it does not help those children to make better schooling available on a parental opt-in basis. To address all these reasons for skepticism about parental choice, I suggest as an alternative that choice programs be limited to schools that the state has approved for their demonstrated proficiency in secular education and that school personnel select children for reassignment based on need.

