

# CHARTER SCHOOLS: A MISSED OPPORTUNITY TO IMPROVE EDUCATION THROUGH INNOVATION

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*The U.S. education system, unlike other fields, has failed to encourage and learn from innovation. Charter schools—publicly-funded schools with the freedom to develop innovative practices—offered an opportunity to address the education system’s resistance to change. The hope was that charter schools could serve as laboratories of innovation for new school models that traditional public schools across the country could later adopt.*

*Despite these good intentions, the charter school movement has not resulted in the change early advocates hoped for. Charter schools often recycle old practices instead of experimenting with new ones. And when a charter school does develop a successful innovation, traditional schools seldom replicate it. To effectuate the promise of the charter school movement, this Article proposes that three new requirements be added to charter school accountability and authorization frameworks: (1) charter school applicants must demonstrate a commitment to implementing innovative practices; (2) charter school authorizers must evaluate innovative practices to measure their impacts; and (3) charter school authorizers must disseminate their findings in public databases of evidence-based practices for education.*

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INTRODUCTION

The last time the U.S. education system took on major change was in the early 1800s. Before then, education was confined to homes, where private tutors gave lessons in exchange for payment or labor.<sup>1</sup> In the early nineteenth century, politicians like Thomas Jefferson successfully advocated for a shift to taxpayer-funded public schools that were accessible to all children.<sup>2</sup> Soon after, Horace Mann, the Secretary of the newly-established Massachusetts State Board of Education, encouraged a “common school” system where students were assigned to age-based grades with standardized instructor qualifications and pedagogical methods.<sup>3</sup> The schools of this era focused on subjects like reading, writing, history, geography, and math.<sup>4</sup>

Two centuries later, our education system has largely remained the same, although we have seen some advances. For example, education is now extended to children of all races<sup>5</sup> and citizenship statuses.<sup>6</sup> Schools have also broadened their curricula to include more subjects, such as foreign languages and computer science.<sup>7</sup> And we have layered on new programs, such as after school and community school.<sup>8</sup> But, for the most part, our education system has not experienced radical transformation.<sup>9</sup>

1. PAUL E. PETERSON, SAVING SCHOOLS: FROM HORACE MANN TO VIRTUAL LEARNING 23 (2010).

2. See ELLWOOD P. CUBBERLEY, PUBLIC EDUCATION IN THE UNITED STATES: A STUDY AND INTERPRETATION OF AMERICAN EDUCATIONAL HISTORY 61–81 (1919); see also Thomas Jefferson, Bill for Establishing a System of Public Education (Oct. 24, 1817), in 12 THE PAPERS OF THOMAS JEFFERSON: RETIREMENT SERIES 114 (J. Jefferson Looney ed., 2015).

3. See PETERSON, *supra* note 1, at 26–30.

4. JOHN A. NEITZ, OLD TEXTBOOKS: SPELLING, GRAMMAR, READING, ARITHMETIC, GEOGRAPHY, AMERICAN HISTORY, CIVIL GOVERNMENT, PHYSIOLOGY, PENMANSHIP, ART, MUSIC, AS TAUGHT IN THE COMMON SCHOOLS FROM COLONIAL DAYS TO 1900 (1961).

5. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

6. *Plyler v. Doe*, 457 U.S. 202 (1982).

7. Judith Gal-Ezer & Chris Stephenson, *The Current State of Computer Science in US High Schools: A Report from Two National Surveys*, J. FOR COMPUTING TCHRS. (2009), [https://web.archive.org/web/20091128064325/http://www.iste.org/Content/NavigationMenu/Membership/SIGs/SIGCS\\_Computer\\_Science\\_/JCTJournalforComputingTeachers/PastIssues/2009/Spring/gal\\_ezer\\_current.pdf](https://web.archive.org/web/20091128064325/http://www.iste.org/Content/NavigationMenu/Membership/SIGs/SIGCS_Computer_Science_/JCTJournalforComputingTeachers/PastIssues/2009/Spring/gal_ezer_current.pdf); Ingrid Pufahl & Nancy C. Rhodes, *Foreign Language Instruction in U.S. Schools: Results of a National Survey of Elementary and Secondary Schools*, 44 FOREIGN LANGUAGE ANNALS 258 (2011).

8. ROB HOLLISTER, THE GROWTH IN AFTER-SCHOOL PROGRAMS AND THEIR IMPACT (2003), <https://www.brookings.edu/wp-content/uploads/2016/06/20030225.pdf> [<https://perma.cc/S2VX-2USQ>]; U.S. Dep’t of Educ., *Full Service Community Schools Program (FSCS)*, THE OFFICE OF ELEMENTARY & SECONDARY EDUC., <https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/school-choice-improvement-programs/full-service-community-schools-program-fscs/> [<https://perma.cc/TS8F-VRFH>] (Jan. 20, 2023).

9. See BRYAN C. HASSEL ET AL., PUB. IMPACT & THE MIND TRUST, RAISING THE BAR: WHY CHARTER SCHOOLS MUST BECOME EVEN MORE INNOVATIVE 14 (2015), <https://www.themindtrust.org/wp-content/uploads/themindtrust-raisingthebar-final-1.pdf> [<https://perma.cc/967L-53A3>].

This is in stark contrast to the advances the United States has made in other fields. Since the early 1800s, transportation has gone from horse and buggy to cars, airplanes, and spaceships. We have transitioned from communicating through morse code on telegraphs to using smartphones that fit in our palms. Our entertainment has gone from live plays to Netflix. And illnesses that were once a death sentence are now easily cured through modern medicine. Meanwhile, the U.S. education system has stuck to the same teaching strategies for the same subjects in the same classrooms.<sup>10</sup>

This lack of progress in education has impacted our national academic performance. The United States is one of the richest countries in the world, yet, compared to other advanced industrial nations, the Programme for International Student Assessment placed us in the middle of the pack among the developed economies.<sup>11</sup> Even more importantly, our education system fails disadvantaged and vulnerable students; achievement gaps persist in most areas of education, including standardized testing, school discipline, and college admissions.<sup>12</sup> Though many factors contribute to these statistics, among them is a lack of change in our education system.

Why, in a country that has experienced so much transformation, has the education system remained so stagnant? Perhaps it is nostalgia for traditional schooling; its customs have their charm. Considering the importance of a child's education, fear of failure might also be holding the education field back from taking on too great of risks. But we also have not done much to incentivize innovation; federal and state laws have historically prioritized the conventional over the experimental.

Charter schools have been posited by many as the solution to the education field's lack of innovation.<sup>13</sup> Charter schools are publicly funded schools with the freedom to experiment with new school models.<sup>14</sup> Unlike traditional schools, charter schools are not tied to the strict protocols and practices of other schools in their districts.<sup>15</sup> The hope of the originators of the charter school movement was that charter schools could serve as laboratories of innovation for new school models.<sup>16</sup>

10. ROLAND G. FRYER, JR., *THE HAMILTON PROJECT, LEARNING FROM THE SUCCESSES AND FAILURES OF CHARTER SCHOOLS* 6 (2012), [https://www.brookings.edu/wp-content/uploads/2016/06/THP\\_Fryer\\_Charter\\_s\\_DiscPaper.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/THP_Fryer_Charter_s_DiscPaper.pdf) [<https://perma.cc/5ETF-683N>]; cf. HASSEL ET AL., *supra* note 9, at 15.

11. ANDREAS SCHLEICHER, OECD, *PISA 2018: INSIGHTS AND INTERPRETATIONS* 6 fig.1, 7 fig.2, 8 fig.3 (2019), <https://www.oecd.org/pisa/PISA%202018%20Insights%20and%20Interpretations%20FINAL%20PDF.pdf> [<https://perma.cc/S7K6-NZG6>]; see also Drew Desilver, *U.S. Students' Academic Achievement Still Lags that of Their Peers in Many Other Countries*, PEW RSCH CTR. (Feb. 15, 2017), <https://www.pewresearch.org/fact-tank/2017/02/15/u-s-students-internationally-math-science/> [<https://perma.cc/JDL8-TYCN>].

12. PATTE BARTH, CTR FOR PUB. EDUC., *EDUCATIONAL EQUITY: WHAT DOES IT MEAN? HOW DO WE KNOW WHEN WE REACH IT?* (2016), <https://www.nsba.org/-/media/NSBA/File/cpe-educational-equity-research-brief-january-2016.pdf> [<https://perma.cc/3642-WCV6>].

13. See *infra* Section I.A.

14. See *infra* Section I.A.

15. Elaine Liu, Note, *Solving the Puzzle of Charter Schools: A New Framework for Understanding and Improving Charter School Legislation and Performance*, 2015 COLUM. BUS. L. REV. 273, 279.

16. See *infra* Section I.A.

Traditional schools across the country could then replicate the most successful models and improve the education system as a whole.

Despite good intentions, the charter school movement has not resulted in the change early advocates hoped for. Notwithstanding their freedom to innovate, thousands of charter schools throughout the country chose to stick to the familiar.<sup>17</sup> Instead of experimenting with new school models, many have used their regulatory freedom to recycle practices that have been around for decades—or centuries.<sup>18</sup> And when a charter school does develop a successful innovation, the new practice tends to remain within the school's walls.<sup>19</sup> Traditional schools have not replicated the successful experiments of charter schools as the charter school movement envisioned.

The promise of charter schools—that they would serve as laboratories of innovation to improve the traditional education system—has yet to be realized. And over time, new rationales for the creation of charter schools have emerged, further distancing charter schools from their original promise.<sup>20</sup> With no clear purpose, charter schools are facing increasing political backlash from the traditional school system, which has left their fate in question.<sup>21</sup> To survive these polarized times and meaningfully contribute to our education system, reform is needed to refocus the charter school movement.

This Article proceeds as follows: Part I explores the origins and original promise of charter schools and discusses the common political arguments used against charter schools and their validity. Part II outlines the ways in which charter school laws have not fulfilled their original promise by looking at their minimal efforts to encourage innovation and infuse successful innovations into the traditional school system. Part II also discusses the new rationales for the creation of charter schools and why these rationales are not the right fit for the charter school movement.

To fulfill the original promise of charter schools, Part III proposes three new requirements for charter school accountability and authorization frameworks. First, federal, state, and local frameworks should require charter school applicants to demonstrate a commitment to implementing an innovative practice. Second, charter school authorizers must evaluate the innovative practice to measure its impact and build an evidence base around it. Third, charter school authorizers must disseminate their findings to databases of evidence-based practices for education so that traditional schools can replicate the most successful innovations of charter schools. This Article concludes that by adding these three requirements to charter school programs,

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17. See *infra* note 68–71 and accompanying text.

18. See *infra* note 68–71 and accompanying text.

19. See Section II.A.2 (discussing the general lack of programs or laws aimed at transferring the innovations of charter schools into the traditional school system).

20. See *infra* notes 38–39 and accompanying text.

21. See *infra* Section I.B.

the U.S. education system can finally evolve past the vision of its founders and increase educational excellence and equity along the way.

## I. THE ORIGINS AND POLITICS OF CHARTER SCHOOLS

The originators of the charter school movement had high hopes for how charter schools could improve education. When first introduced, the concept of charter schools was not particularly controversial and benefitted from broad bipartisan support. In current times, charter schools have become one of the most politically contentious topics in education reform. Section I.A explores the origins and purpose of charter schools and how their purpose has evolved over time. Section I.B then discusses the current political debates around charter schools and details the most common arguments used against charters and their validity.

### A. *The Origins and Purpose of Charter Schools*

In 1988, education scholar Ray Budde first introduced the idea of charter schools as a strategy for increasing innovation.<sup>22</sup> He suggested that teachers within a school could be given the autonomy to teach a particular discipline in new ways, without interference from the district or school administration.<sup>23</sup> The idea evolved with Albert Shanker, the former president of the American Federation of Teachers.<sup>24</sup> Shanker proposed that instead of just allowing creativity for a certain discipline within a school, school districts should instead allow for the creation of entire schools with autonomy over curricula, teaching practices, and other aspects of a school.<sup>25</sup> The charter school concept was then further refined by Ted Kolderie and Joe Nathan, who suggested that people from outside of the education system could create charter schools.<sup>26</sup> They also added that, like traditional schools, charter schools should serve all students and not make selections based on academic performance.<sup>27</sup>

In 1991, Minnesota drew from these concepts and became the first state to pass a charter school law.<sup>28</sup> Shortly after, Bill Clinton campaigned for president and

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22. Judith Johnson & Alex Medler, *The Conceptual and Practical Development of Charter Schools*, 11 STAN. L. & POL'Y REV. 291, 292 (2000).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. Sarah R. Cohodes & Katharine S. Parham, *Charter Schools' Effectiveness, Mechanisms, and Competitive Influence 2* (Nat'l Bureau of Econ. Rsch., Working Paper No. 28477, 2021); Act of June 4, 1991, art. IX, § 3, 1991 Minn. Laws 943, 1123–29 (codified as amended at MINN. STAT. ANN. §§ 124E.01–124E.17 (West 2023)).

included charter schools in his education improvement platform.<sup>29</sup> Once he was in office, the U.S. Department of Education developed federal guidelines for charter schools and charters soon increased in popularity throughout the country through federal, state, and local programs.<sup>30</sup>

Today, there are more than 7,000 charter schools in forty-four states serving roughly three million students.<sup>31</sup> The demand for quality charter schools continues to grow; over one million students are currently sitting on waitlists.<sup>32</sup> Generally, charters are granted autonomy over areas like curricula, staffing, and resource allocation, but still need to comply with other regulations concerning graduation, bilingual education, special education, and civil rights.<sup>33</sup> In exchange for the freedom to experiment with certain schooling aspects, charters are required to explain their visions and how they will measure performance.<sup>34</sup> Whether to attend a charter school or not is a decision left to families, and when charters have a higher demand than seats available, most states enforce a lottery system to ensure fair access.<sup>35</sup> Charters are present in rural, suburban, and urban settings,<sup>36</sup> and while some are single institutions, others are part of larger networks of charter schools.<sup>37</sup>

Though charter schools were originally created as a method to improve the education system through innovation, over time, new rationales for the creation of charter schools emerged. As states enacted their own charter school laws, these new rationales were layered onto, or even replaced, the original purpose of charter schools, which created a confused set of policies for the charter school movement.<sup>38</sup> In addition to the original rationale, the following rationales for the creation of charter schools have permeated charter school frameworks: (1) charter schools create market theory based competition; when families choose to attend charters, nearby traditional schools are incentivized to improve to compete for students; (2) charter schools improve outcomes for disadvantaged students; and (3) charter schools allow parents and children to have greater control over education.<sup>39</sup>

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29. Raymond Pierce, *Charter Schools: An Experiment In Education Worth Reviewing*, FORBES (Mar. 4, 2021, 3:09 PM), <https://www.forbes.com/sites/raymondperce/2021/03/04/charter-schools-an-experiment-in-education-worth-reviewing/?sh=26577c683f16> [<https://perma.cc/JP4W-6MDU>].

30. *Id.*; Memorandum on Additional Guidelines for Charter Schools, 1 PUB. PAPERS 832 (May 4, 2000).

31. Cohodes & Parham, *supra* note 28, at 2.

32. NAT'L ALL. FOR PUB. CHARTER SCHS., THE NUMBERS ADD UP: 2014 ANNUAL REPORT 10 (2014), [https://www.publiccharters.org/sites/default/files/migrated/wp-content/uploads/2015/05/annual\\_report\\_2014\\_web.pdf](https://www.publiccharters.org/sites/default/files/migrated/wp-content/uploads/2015/05/annual_report_2014_web.pdf) [<https://perma.cc/8ZDC-CFS6>].

33. Liu, *supra* note 15, at 279.

34. *Id.*; Johnson & Medler, *supra* note 22, at 291.

35. Liu, *supra* note 15, at 280; Johnson & Medler, *supra* note 22, at 300.

36. FRYER, *supra* note 10, at 7.

37. *Id.*

38. Liu, *supra* note 15, at 293, 295–96.

39. Liu, *supra* note 15, at 277–78; Nicole S. Garnett, *Post-Accountability Accountability*, 52 U. MICH. J.L. REFORM 157, 165 (2018); Remarks on Signing an Executive Order on Safe Policing for Safe Communities, 2020 DAILY COMP. PRES. DOC. 448, at 4 (June 16, 2020).

### B. *The Political Backlash Against Charter Schools*

While the charter school movement was initially welcomed by the education community, it is now a political target of the traditional school system. A rise in polarization and misinformation has prevented well-reasoned debates and many have felt pressure to take a stance either for or against charter schools. Absent from the debates are discussions of whether charter schools are effectuating their purpose as labs of innovation. Instead, discourse focuses on tangential issues that highlight the alleged drawbacks of charter schools.

The most common argument against charter schools is that they drain traditional schools of necessary funding. Both charter and traditional schools receive money for every student who enrolls.<sup>40</sup> So, when a student leaves a traditional school to transfer to a charter school, the money allocated to that student transfers with them.<sup>41</sup> Though traditional schools no longer have to educate that student, scale economies are lost and schools struggle to reduce expenses by the same degree.<sup>42</sup> (For example, a school cannot cut the cost of one thirtieth of a teacher or school lunch staff.)

But studies show that the magnitude of the financial impact can vary depending on the context, with some research showing a negative impact and other research showing none.<sup>43</sup> When a negative impact is shown, it never results in severe financial distress.<sup>44</sup> And the negative financial impact has never translated into a negative

40. Sarah Cohodes, *Charter Schools and the Achievement Gap*, FUTURE CHILD., Winter 2018, at 12.

41. *Id.*

42. *Id.*; *Charter School Accountability*, NAT'L EDUC. ASS'N (Dec. 6, 2021), <https://www.nea.org/advocati-ng-for-change/action-center/our-issues/charter-school-accountability> [<https://perma.cc/N3M8-92N9>].

43. Paul Bruno, *Charter Competition and District Finances: Evidence from California*, 44 J. EDUC. FIN. 361 (2019); CARA STILLINGS CANDAL & KEN ARDON, PIONEER INST., *CHARTER PUBLIC SCHOOL FUNDING IN MASSACHUSETTS: A PRIMER* (2019), <https://pioneerinstitute.org/download/charter-school-funding-in-massach-usetts-a-primer/> [<https://perma.cc/82WQ-7Z4M>]; John M.W. Moorlach, Opinion, *Moorlach: Data Shows Charters Do Not Hurt School District Finances*, VOICE OF OC, <https://voiceofoc.org/2019/12/moorlach-data-s-hows-charters-do-not-hurt-school-district-finances/> [<https://perma.cc/TKX7-SGDJ>] (Dec. 8, 2020); RPP INT'L ET AL., U.S. DEP'T OF EDUC., *ED 455578, CHALLENGE AND OPPORTUNITY: THE IMPACT OF CHARTER SCHOOLS ON SCHOOL DISTRICTS* (2001), <https://files.eric.ed.gov/fulltext/ED455578.pdf> [<https://perma.cc/BV8W-ESUV>]; KAI A. SCHAFFT ET AL., CTR. FOR RURAL PA., *ASSESSING THE ENROLLMENT TRENDS AND FINANCIAL IMPACTS OF CHARTER SCHOOLS ON RURAL AND NON-RURAL SCHOOL DISTRICTS IN PENNSYLVANIA*, Gen. Ass. 198, Gen. Sess. (Pa. 2014), [https://www.rural.pa.gov/download.cfm?file=Resources/PDFs/research-report/Charter\\_School\\_2014.pdf](https://www.rural.pa.gov/download.cfm?file=Resources/PDFs/research-report/Charter_School_2014.pdf) [<https://perma.cc/38KC-YYE7>]; CTR. ON REINVENTING PUB. EDUC., UNIV. OF WASH. BOTHELL, *DO CHARTER SCHOOLS CAUSE FISCAL DISTRESS IN SCHOOL DISTRICTS?* (2019), <https://files.eric.ed.gov/fulltext/ED595169.pdf> [<https://perma.cc/WJ4T-DAUR>]; Helen F. Ladd & John D. Singleton, *The Fiscal Externalities of Charter Schools: Evidence from North Carolina*, 15 EDUC. FIN. & PUB. POL'Y 191 (2020).

44. Bruno, *supra* note 43; Paul T. Hill, *Charter Schools: Good or Bad for Students in District Schools?*, BROOKINGS (June 7, 2019), <https://www.brookings.edu/blog/brown-center-chalkboard/2019/06/07/charter-schools-good-or-bad-for-students-in-district-schools/> [<https://perma.cc/UEK8-CVWG>]; Matthew Ridley & Camille Terrier, *Fiscal and Education Spillovers from Charter School Expansion* (Nat'l Bureau of Econ. Rsch., Working Paper No. 25070, 2018), [https://www.nber.org/system/files/working\\_papers/w25070/w25070.pdf](https://www.nber.org/system/files/working_papers/w25070/w25070.pdf) [<https://perma.cc/NT2P-QQNX>].

impact on student achievement.<sup>45</sup> Further, while the lost economies of scale argument is primarily used against charter schools, the same issue arises with the opening of a new traditional or private school and with school district resizing. Instead of using this argument as a reason to stifle the creation of charter schools, we should encourage policies and practices aimed at addressing the important, but independent, issue of economies of scale in the education system.

It is charter schools, in fact, that bear the brunt of financial inequity. In many states, charter schools receive less per-pupil funding than traditional schools because of skewed funding formulas and a lack of funding for facilities.<sup>46</sup> A study found that charter schools received an average of twenty-eight percent less in per-pupil funding than traditional schools—\$3,814 less per student.<sup>47</sup> Additionally, charter schools receive, on average, nineteen dollars less in per-pupil funding from non-public sources like fees and philanthropy.<sup>48</sup>

Another common argument used against charter schools is that they cause an increase in racial and ethnic segregation,<sup>49</sup> but there is conflicting evidence as to whether this is true.<sup>50</sup> State-level studies on segregation and charter schools have shown that charters increase segregation overall, with the presence of charters in

45. Cohodes, *supra* note 40, at 12; Hill, *supra* note 44; Ridley & Terrier, *supra* note 44; Camille Terrier et al., *How Does Charter Expansion Affect School District Finances and Student Achievement? New Evidence from Massachusetts*, EDUC. NEXT, <https://www.educationnext.org/charter-expansion-affect-school-district-finances-student-achievement-new-evidence-massachusetts/> [https://perma.cc/3HPE-S2QS] (Sept. 24, 2018); Brian Gill, *The Effect of Charter Schools on Students in Traditional Public Schools: A Review of the Evidence*, EDUC. NEXT, <https://www.educationnext.org/the-effect-of-charter-schools-on-students-in-traditional-public-schools-a-review-of-the-evidence/> [https://perma.cc/84JQ-2WNG] (Nov. 2, 2016); D. Epple et al., *Charter Schools: A Survey of Research on Their Characteristics and Effectiveness*, in 5 HANDBOOK ON THE ECONOMICS OF EDUCATION (Eric A. Hanushek et al. eds., 2016); Dick M. Carpenter II & Paul M. Medina, *Exploring the Competitive Effects of Charter Schools*, 20 INT'L J. EDUC. REFORM 33 (2011).

While studies exploring this question have been generally inconclusive, if there is any impact on academic achievement, it is a small positive one.

46. MEAGAN BATDORFF ET AL., UNIV. OF ARK., *CHARTER SCHOOL FUNDING: INEQUALITY EXPANDS 5* (2014), <https://scdp.uark.edu/files/2018/10/charter-funding-inequity-expands-qyky92.pdf> [https://perma.cc/TV9D-BFS6].

47. *Id.*

48. *Id.* at 33 fig.M22.

49. Cohodes & Parham, *supra* note 28, at 25.

50. Myron Orfield & Thomas Luce, *Charters, Choice, and the Constitution*, 2014 U. CHI. LEGAL F. 377, 389–90; Brian Gill, *Commentary, Annotation: Charter Schools and Segregation: What the Research Says*, FUTUREED (Aug. 4, 2020), <https://www.future-ed.org/work/school-choice-social-justice-what-the-research-shows/> [https://perma.cc/5DED-CTRQ]; Gary Ritter et al., *A Closer Look at Charter Schools and Segregation*, EDUC. NEXT, Summer 2010, at 69. And researchers Sarah Cohodes and Katharine Parham noted the following:

Some charters have been founded for the express purpose of reducing segregation, establishing schools that are “diverse by design”—a relatively new and understudied charter school model. The share of charters with intentionally racially- and socioeconomically-integrated populations is on the rise, though they represent just two percent of all U.S. charters.

Cohodes & Parham, *supra* note 28, at 25–26.



California,<sup>51</sup> Texas,<sup>52</sup> Florida,<sup>53</sup> New York,<sup>54</sup> Illinois,<sup>55</sup> Minnesota,<sup>56</sup> and Pennsylvania<sup>57</sup> increasing segregation and charters in Arkansas reducing it.<sup>58</sup>

However, Brian Gill, a senior researcher on charter schools, finds flaws in these statistical findings.<sup>59</sup> Charter schools tend to be located in low-income, high-minority neighborhoods and large-scale state comparisons of racial segregation in charter schools undermine this.<sup>60</sup> In his view, more accurate studies comparing charter and traditional schools at the local level show the effects on segregation to be minimal.<sup>61</sup> Specifically, the studies found that black and white students tended to transfer to charter schools with slightly higher concentrations of their own race, while Latino students transferred to charter schools with slightly lower concentrations of their own race.<sup>62</sup> Another study found that increases in intra-district segregation were offset by decreases in inter-district segregation.<sup>63</sup> Nonetheless, at least at the federal level, new guardrails have been introduced to prevent grants from going to charter schools that further racial and socio-economic segregation.<sup>64</sup> The same could be done for local and state charter programs.

The last argument against charter schools is that they are being used to undermine the traditional public school system and expand the privatization of schools. Anti-charter advocates argue that, under the guise of quality “school choice” reform, charter school expansion initiatives are being used to place more children into private

51. Kevin Booker et al., *The Effect of Charter Schools on School Peer Composition* (RAND Corp., Working Paper No. WR-306-EDU, 2005), [https://www.rand.org/pubs/working\\_papers/WR306.html](https://www.rand.org/pubs/working_papers/WR306.html) [<https://perma.cc/26CF-QR9J>].

52. *Id.*

53. WAGMA MOMMANDI & KEVIN WELNER, *SCHOOL’S CHOICE: HOW CHARTER SCHOOLS CONTROL ACCESS AND SHAPE ENROLLMENT 3* (2021).

54. *Id.*

55. *Id.*

56. Myron Orfield et al., *Failed Promises: Assessing Charter Schools in the Twin Cities, in EDUCATIONAL DELUSIONS?: WHY CHOICE CAN DEEPEN INEQUALITY AND HOW TO MAKE SCHOOLS FAIR 145* (Erica Frankenberg ed., 2013).

57. Stephen Kotok et al., *School Choice, Racial Segregation, and Poverty Concentration: Evidence from Pennsylvania Charter School Transfers*, 31 *EDUC. POL’Y* 415 (2017).

58. Gary W. Ritter et al., *Urban School Choice and Integration: The Effect of Charter Schools in Little Rock*, 46 *EDUC. & URBAN SOC’Y* 535 (2014).

59. Gill, *supra* note 50.

60. *Id.*

61. *Id.*

62. RON ZIMMER ET AL., *CHARTER SCHOOLS IN EIGHT STATES: EFFECTS ON ACHIEVEMENT, ATTAINMENT, INTEGRATION, AND COMPETITION* (2009), <https://www.rand.org/pubs/monographs/MG869.html> [<https://perma.cc/TA6U-C3DM>].

63. Tomás Monarrez et al., *The Effect of Charter Schools on School Segregation*, 14 *AM. ECON. J.: ECON. POL’Y* 301 (2022).

64. Anna Hinton, *Supporting High Quality Charter Schools and Their Success*, HOMEROOM: THE OFFICIAL BLOG OF THE U.S. DEP’T OF EDUC. (July 1, 2022), <https://blog.ed.gov/2022/07/supporting-high-quality-charter-schools-and-their-success/> [<https://perma.cc/5JZ2-KYXE>].

education, where the government has less oversight and children have less protections.<sup>65</sup>

These concerns are both warranted and unwarranted. First, anti-charter advocates mistakenly conflate private schools with charter schools. While it is true that charters have some similarities to private schools, like freedom over curricula and parent choice in whether to enroll,<sup>66</sup> charters also resemble traditional schools, with features like public funding, open enrollment, and compliance with bilingual-education, special-education, and civil-rights protections.<sup>67</sup>

That said, some level of skepticism towards those pushing for the mass expansion of charter school programs is reasonable. Those with libertarian views—and no interest in innovation or the improvement of traditional schools—can easily appropriate the charter school movement in the hopes of decentralizing public education. But instead of ending charter school programs altogether, the new requirements and restrictions for charter schools proposed in Part III can prevent these concerns from coming to fruition.

## II. THE UNFULFILLED PROMISES OF THE CHARTER SCHOOL MOVEMENT

As discussed in Part I, it was the hope of charter school originators that charter would create bold new practices that, when successful, could be implemented by traditional schools across the country. But, for the most part, those promises are yet to be fulfilled and, over time, the charter school movement has become increasingly disconnected from its original purpose. Section II.A.1 discusses to what extent charter schools have used their regulatory freedom to develop innovative practices. Section II.A.2 outlines the minimal efforts that have been made to identify the successful innovations of charter schools and replicate them in the traditional school system. Section II.B discusses the new promises, or rationales, for the creation of charters that have emerged across the country and why they are not the right fit for the charter school movement.

### A. *The Original Promises of Charter Schools*

#### 1. Charter Schools as Labs of Innovation

Policies establishing charter school programs do not mandate that charter schools be innovative. Instead, policies assume that given their freedom, charter schools will *choose* to innovate. So, do they?

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65. Remarks on Signing an Executive Order on Safe Policing for Safe Communities, *supra* note 39, at 4.

66. Amy Stuart Wells & Janelle Scott, *Privatization and Charter School Reform: Economic, Political and Social Dimensions*, in PRIVATIZING EDUCATION: CAN THE MARKETPLACE DELIVER CHOICE, EFFICIENCY, EQUITY, AND SOCIAL COHESION? 241–42 (Henry M. Levin ed., 2001).

67. Liu, *supra* note 15, at 279.

The research is mixed as to whether charter schools have used their regulatory freedom to develop innovative school models. Several studies on charter schools found that charters are sticking to traditional practices more often than they are experimenting with new ideas.<sup>68</sup> Other studies found that charter schools are more likely to produce innovations in school governance than traditional schools, experimenting with staffing, scheduling, and compensation, but less likely to produce innovations in curricula and instructional models.<sup>69</sup> Further, while charters often implement practices that are new to a district, they are less likely to implement practices that are new to the education system as a whole.<sup>70</sup> Charter school innovation can also vary depending on whether the charter is an elementary or middle school.<sup>71</sup>

Though charter schools are generally not innovating to the extent the originators had envisioned, there are still great examples of charter schools that have experimented with new models. For example, the BASIS Charter Schools, Inc. network in Arizona offers seminar classes, hosts off campus projects, and requires its students to start taking Advanced Placement classes and exams in ninth grade.<sup>72</sup> The Bronx Charter School for the Arts integrates art into all of their school curricula.<sup>73</sup> The KIPP Foundation charter school network employs practices like frequent student assessments and increased instructional time.<sup>74</sup> Match Schools in Boston hire recent college graduates to tutor and mentor small groups of their students.<sup>75</sup> STAR School, a charter school in Arizona, is centered on Navajo culture, has students grow their

68. Robin J. Lake, *In the Eye of the Beholder: Charter Schools and Innovation*, 2 J. SCH. CHOICE 115, 119–20 (2008); Courtney Preston et al., *School Innovation in District Context: Comparing Traditional Public Schools and Charter Schools*, 31 ECON. EDUC. REV. 318 (2012); MICHAEL Q. MCSHANE & JENN HATFIELD, MEASURING DIVERSITY IN CHARTER SCHOOL OFFERINGS (2015), <https://www.aei.org/wp-content/uploads/2015/07/Measuring-Diversity-in-Charter-School-Offerings.pdf?x91208> [<https://perma.cc/PN38-7J9X>]; LARRY MILLER ET AL., CTR. ON REINVENTING PUB. EDUC., IS PERSONALIZED LEARNING MEETING ITS PRODUCTIVITY PROMISE? EARLY LESSONS FROM PIONEERING SCHOOLS (2014), [https://crpe.org/wp-content/uploads/CRPE\\_personalized-learning-productivity-promise201405.pdf](https://crpe.org/wp-content/uploads/CRPE_personalized-learning-productivity-promise201405.pdf) [<https://perma.cc/UG98-JKWS>]; Christopher Lubienski, *Innovation in Education Markets: Theory and Evidence on the Impact of Competition and Choice in Charter Schools*, 40 AM. EDUC. RSCH. J. 395 (2003); see also HASSEL ET AL., *supra* note 9, at 3, 13; STEVE THOMAS, MAXIM INST., UNDERSTANDING CHARTER SCHOOLS 4 (2012), [https://researchspace.auckland.ac.nz/bitstream/handle/2292/35432/RN\\_2\\_Effects%20on%20State%20Schools%20System%20-%20Published%20Nov12.pdf?sequence=7](https://researchspace.auckland.ac.nz/bitstream/handle/2292/35432/RN_2_Effects%20on%20State%20Schools%20System%20-%20Published%20Nov12.pdf?sequence=7) [<https://perma.cc/6NM6-WTWZ>]; SPENCER FOUND. & PUB. AGENDA, CHARTER SCHOOLS IN PERSPECTIVE: A GUIDE TO RESEARCH 66–78 (2018), [http://www.in-perspective.org/files/CharterSchoolsInPerspective\\_GuidetoResearch.pdf](http://www.in-perspective.org/files/CharterSchoolsInPerspective_GuidetoResearch.pdf) [<https://perma.cc/AZ8E-HUXN>].

69. THOMAS, *supra* note 68, at 4; Lubienski, *supra* note 68, at 419; Lake, *supra* note 68, at 119–20.

70. Lubienski, *supra* note 68; see also SPENCER FOUND. & PUB. AGENDA, *supra* note 68, at 69–70.

71. Preston et al., *supra* note 68; see also SPENCER FOUND. & PUB. AGENDA, *supra* note 68, at 68.

72. BASIS Chandler, <https://www.usnews.com/education/best-high-schools/arizona/districts/basis-charter-schools-inc/basis-chandler-147202> (last visited May 3, 2023).

73. FRYER, *supra* note 10, at 8.

74. *Id.*

75. See *Join*, MATCH EDUC., <https://www.matcheducation.org/join/match-corps> [<https://perma.cc/XT9J-898R>] (“Recent college graduates from universities across the country commit a year of service to closing the achievement gap in Boston, one student at a time.”).

own food, and develops solutions for the local problem of unclean drinking water.<sup>76</sup> E3 Civic High School in San Diego houses their school in a library with moveable walls and modular furniture, giving their students access to research facilities, study abroad opportunities, and project based learning.<sup>77</sup> The Magic City Acceptance Academy in Alabama designed their school to feel like a safe haven for LGBTQ students.<sup>78</sup> And YES Prep in Houston, Texas, promotes community service by integrating service learning opportunities into their curriculum.<sup>79</sup>

Academically, traditional and charter schools perform at the same level on average.<sup>80</sup> While the innovations of some charters have produced excellent results in academic achievement for their students, the innovations of others have resulted in dismal learning outcomes. For example, eight out of the top ten schools in Arizona are BASIS charter schools<sup>81</sup> and Benjamin Franklin High School in New Orleans boasts a ninety-nine percent reading proficiency rate and a ninety-five percent graduation rate.<sup>82</sup> On the other hand, a national study on students who attend online charter schools showed that their performance in math and reading was significantly lower than that of similar students in traditional schools.<sup>83</sup>

Charter schools have proven most impactful in urban areas serving primarily low-income, black, and Latino students.<sup>84</sup> KIPP charters, where more than eighty-

76. Chris Weller, *The 14 Most Innovative Schools In America*, INSIDER (May 28, 2016, 2:02 AM), <https://www.businessinsider.com/the-most-innovative-schools-in-america-2016-4#star-school-flagstaff-az-the-school-thats-off-the-grid-1> [https://perma.cc/MWY2-S7GD].

77. *Id.*

78. Jacey Fortin, *A Haven for L.G.B.T.Q. Students in the Heart of Alabama*, N.Y. TIMES, <https://www.nytimes.com/2022/05/08/us/lgbtq-alabama-charter-school.html> [https://web.archive.org/web/20220711051256/https://www.nytimes.com/2022/05/08/us/lgbtq-alabama-charter-school.html] (May 12, 2022).

79. FRYER, *supra* note 10, at 8.

80. Cohodes & Parham, *supra* note 28, at 1, 8; MOMMANDI & WELNER, *supra* note 53, at 19. Studies evaluating the outcomes of charter schools, though in many ways well-grounded, also lack full validity as they cannot control for unmeasured, omitted variables such as systematic enrollment biases linked to school choice.

81. *2023 Best Public High Schools in Arizona*, NICHE, <https://www.niche.com/k12/search/best-public-high-schools/s/arizona/> (last visited May 3, 2023).

82. *Benjamin Franklin High School*, U.S. NEWS & WORLD REP., <https://www.usnews.com/education/best-high-schools/louisiana/districts/benjamin-franklin-high-school/benjamin-franklin-high-school-8688> [https://web.archive.org/web/20221116044250/https://www.usnews.com/education/best-high-schools/louisiana/districts/benjamin-franklin-high-school/benjamin-franklin-high-school-8688].

83. CTR. FOR RSCH. ON EDUC. OUTCOMES, STAN. UNIV., ONLINE CHARTER SCHOOL STUDY (2015), [https://credo.stanford.edu/wp-content/uploads/2021/08/online\\_charter\\_study\\_final.pdf](https://credo.stanford.edu/wp-content/uploads/2021/08/online_charter_study_final.pdf) [https://perma.cc/D3N5-EAQ5].

84. Cohodes & Parham, *supra* note 28, at 1, 9; Roland G. Fryer, Jr., *Injecting Charter School Best Practices into Traditional Public Schools: Evidence from Field Experiments*, 129 Q. J. ECON. 1355, 1355–56 (2014); Julie R. Betts & Y. Emily Tang, *A Meta-Analysis of the Literature on the Effect of Charter Schools on Student Achievement* (San Diego Educ. Rsch. Alliance, Discussion Paper No. 2018-1, 2018), <https://sanderu.ucsd.edu/publications/DISC%20PAPER%20Betts%20Tang%20Charter%20Lit%20Review%202018%2001.pdf> [https://perma.cc/7XWV-PP96]; CAROLINE M. HOXYBY ET AL., HOW NEW YORK CITY'S CHARTER SCHOOLS AFFECT ACHIEVEMENT (2009), [http://users.nber.org/~schools/charterschoolseval/how\\_NYC\\_charter\\_schools\\_affect\\_achievement\\_sept2009.pdf](http://users.nber.org/~schools/charterschoolseval/how_NYC_charter_schools_affect_achievement_sept2009.pdf) [https://perma.cc/6G4C-RGGP]; CTR. FOR RSCH. ON EDUC. OUTCOMES, STAN. UNIV., NATIONAL CHARTER SCHOOL STUDY (2013), <https://credo.stanford.edu/wp-content/uploads/2021/08/nc>

eight percent of students qualify for federally subsidized meals,<sup>85</sup> send four times as many students to college than the rate of disadvantaged students nationally.<sup>86</sup> Similarly, 100% of seniors in a Texas IDEA charter school, with a primarily Latino student body, get accepted into college.<sup>87</sup> A study on successful charter schools in urban districts shows that students learn between one to four months more than similar peers in traditional schools every year.<sup>88</sup>

## 2. Replicating the Innovations of Charter Schools in Traditional Schools

In the original vision of the charter school movement, once a charter school developed a successful innovation, traditional schools would jump at the opportunity to implement it.<sup>89</sup> The gradual infusion of the successful innovations of charter schools would transform public education for the better.<sup>90</sup> But unfortunately, charter school best practices have, for the most part, stayed within their school's walls.

Recognizing the disconnect between traditional and charter schools, a few initiatives have tried to foster partnerships between the two. The earliest version of this type of initiative was the Charter School Expansion Act of 1998,<sup>91</sup> where federal grants were given out to, among other things, encourage partnerships between charter and traditional schools.<sup>92</sup> In his statement during the signing of the Act, President Clinton said that it would “provide new authority for successful charter schools to

ss\_2013\_final\_draft.pdf [https://perma.cc/W92E-SQU6]; PHILLIP GLEASON ET AL., NAT'L CTR. FOR RSCH ON EDUC. EVALUATION AND REG'L ASSISTANCE, INST. OF EDUC. SCIS., U.S. DEP'T OF EDUC., NCEE 2010-4029, THE EVALUATION OF CHARTER SCHOOL IMPACTS: FINAL REPORT (2010), <http://files.eric.ed.gov/fulltext/ED510573.pdf> [https://perma.cc/QDB2-BVRE]; JOSHUA D. ANGRIST ET AL., CTR. FOR EDUC. POL'Y RSCH., HARV. UNIV., STUDENT ACHIEVEMENT IN MASSACHUSETTS' CHARTER SCHOOLS (2011), [https://cepr.harvard.edu/sites/hwpi.harvard.edu/files/cepr/files/cepr-ma-charter-schools\\_0.pdf?m=1429730345](https://cepr.harvard.edu/sites/hwpi.harvard.edu/files/cepr/files/cepr-ma-charter-schools_0.pdf?m=1429730345) [https://perma.cc/Y6B5-TXYN]; CTR. FOR RSCH. ON EDUC. OUTCOMES, STAN. UNIV., URBAN CHARTER SCHOOL STUDY: REPORT ON 41 REGIONS (2015), <https://urbancharters.stanford.edu/download/Urban%20Charter%20School%20Study%20Report%20on%2041%20Regions.pdf> [https://perma.cc/S2P7-D23W] [hereinafter REPORT ON 41 REGIONS]; see also HASSEL ET AL., *supra* note 9, at 6; Garnett, *supra* note 39, at 172.

85. KIPP Found., *Thirty Thousand High-Quality Seats: Replicating and Expanding the KIPP Model to 65 Additional Schools*, U.S. DEP'T OF EDUC. (2016), <https://oese.ed.gov/files/2019/11/kippfoundationPN.pdf> [https://perma.cc/5C43-8ANV].

86. Nina Rees & Catherine Brown, Opinion, *As Charter Schools Turn 25, Five Ways to Share Their Success With Traditional Schools*, THE74 (June 1, 2016), <https://www.the74million.org/article/as-charter-schools-turn-25-five-ways-to-share-their-success-with-traditional-schools/> [https://perma.cc/Q69D-595T].

87. *Idea Frontier College Preparatory*, U.S. NEWS & WORLD REP., <https://www.usnews.com/education/best-high-schools/texas/districts/idea—public-schools/idea-frontier-college-preparatory-18466> [https://web.archive.org/web/20230201145756/https://www.usnews.com/education/best-high-schools/texas/districts/idea—public-schools/idea-frontier-college-preparatory-18466].

88. REPORT ON 41 REGIONS, *supra* note 84; see also Ctr. for Rsch. on Educ. outcomes, *CREDO Study Finds Urban Charter Schools Outperform Traditional School Peers*, URBAN CHARTER SCH. STUDY, (March 18, 2015), <http://urbancharters.stanford.edu/news.php> [https://perma.cc/2CTL-6PHU].

89. See *supra* Section I.A.

90. See *supra* Section I.A.

91. Charter School Expansion Act of 1998, Pub. L. No. 105-278, 112 Stat. 2682 (repealed 2002).

92. Johnson & Medler, *supra* note 22, at 302.

serve as models, not just for other charter schools, but for public schools generally,” and would help bring the benefits of innovation and creativity to hundreds of thousands of additional children.”<sup>93</sup> Several years later, in 2012, the Department of Education awarded Charter School Exemplary Collaboration awards to encourage partnerships between traditional and high quality charter schools.<sup>94</sup>

Today, the federal government continues to encourage relationships between charter and traditional schools through local grant programs. The Department of Education’s Charter School Programs Office gives out grants for the creation of charter schools and prioritizes applicants that demonstrate a commitment to partnering with the traditional schools in their district.<sup>95</sup> Also, National Dissemination Grants support efforts to, among other things, share best practices between charter schools and traditional schools.<sup>96</sup> But these federally-funded grant programs have not led to widespread dissemination of charter practices that could transform the education system at scale.

At the state level, a couple of states have started databases on charter school practices for traditional schools to access. The Commonwealth of Massachusetts Department of Education, for example, created a website that archives the best practices that have been documented from charter schools around the Commonwealth.<sup>97</sup>

93. Presidential Statement on Signing the Charter School Expansion Act of 1998, 2 PUB. PAPERS 1834, 1835 (Oct. 22, 1998).

94. Final Definitions, and Selection Criteria; Charter Schools Program (CSP)—Charter School Exemplary Collaboration Awards, 77 Fed. Reg. 44475 (July 30, 2012); *see also Programs: Charter School Exemplary Collaboration Awards*, U.S. DEP’T OF EDUC. <https://www2.ed.gov/programs/charter-collaboration/index.html> [<https://perma.cc/W7T3-AFJD>].

95. Final Priorities, Requirements, Definitions, and Selection Criteria— Expanding Opportunity Through Quality Charter Schools Program (CSP), 87 Fed. Reg. 40406 (July 6, 2022); *see also Charter Schools Program Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants)*, OFF. OF ELEMENTARY & SECONDARY EDUC., <https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/charter-schools-program-grants-for-replications-and-expansion-of-high-quality-charter-schools/> [<https://perma.cc/ZAW9-D54T>] (Apr. 26, 2023). *See generally Charter School Programs*, OFF. OF ELEMENTARY & SECONDARY EDUC., <https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/> [<https://perma.cc/YC6R-CKHD>] (Apr. 26, 2023).

96. *Expanding Opportunity Through Quality Charter School Programs (CSP)—National Dissemination Grants*, OFF. OF ELEMENTARY & SECONDARY EDUC., <https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/expanding-opportunity-through-quality-charter-schools-program-csp-national-dissemination-grants/> [<https://perma.cc/47HQ-XMWG>] (Apr. 26, 2023).

97. *Massachusetts Charter Schools: Accountability*, MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., <https://www.doe.mass.edu/charter/acct.html?section=criteria> [<https://perma.cc/6QFS-EA9F>]; *Massachusetts Charter Schools: Charter Schools: A Guide to the Dissemination of Best Practices*, MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., <https://www.doe.mass.edu/charter/bestpractices/default.html> [<https://perma.cc/M84F-DG4N>]; *Massachusetts Charter Schools: Best Practices Archives*, MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., <https://www.doe.mass.edu/charter/bestpractices/archives.aspx> [<https://perma.cc/2SLM-SVDJ>].

Similarly, New Jersey has made some effort to collect the State's charter school practices and make them accessible to all schools.<sup>98</sup>

However, the most prominent interactions between traditional and charter schools today are partnerships that have sprouted at the local level. Formal partnerships can vary in form and name, such as portfolio school districts and district-charter collaboration compacts. There are also roughly a dozen cities that do not have formal partnerships but are pursuing cooperation between charters and traditional schools.<sup>99</sup>

Portfolio school districts manage an array of different school types, including traditional and charter schools, but allow all schools to have the freedom typically associated only with charter schools.<sup>100</sup> Portfolio district leaders often employ charter schools in the district to help turn around or replace under-performing traditional schools.<sup>101</sup> We have only seen a handful of portfolio school districts throughout the country.<sup>102</sup> For example, following Hurricane Katrina, when 112 out of 128 schools in New Orleans were failing, the district undertook a large-scale portfolio effort to partner failing schools with successful charter school operators.<sup>103</sup> Similarly, in Boston, several schools closing due to low performance were taken over by charter schools.<sup>104</sup>

In district-charter collaboration compacts, on the other hand, traditional schools are not taken over by charter schools, but instead form partnerships with charter school leaders.<sup>105</sup> District-charter compacts were born from a Bill & Melinda Gates Foundation initiative and have now been funded in over sixteen cities.<sup>106</sup> Though

98. N.J. Dep't of Educ., *Best Practices Collection*, OFFICIAL SITE OF THE STATE OF N.J., <https://www.nj.gov/education/chartsch/about/bp/> [<https://perma.cc/UXS2-VF2X>].

99. ROBIN LAKE ET AL., CTR. ON REINVENTING PUB. EDUC., BRIDGING THE DISTRICT-CHARTER DIVIDE TO HELP MORE STUDENTS SUCCEED 14 (2017), <https://crpe.org/wp-content/uploads/crpe-bridging-district-charter-divide.pdf> [<https://perma.cc/6WWW-9HPS>].

100. *Id.* at 13; Parker Baxter & Elizabeth Cooley Nelson, *Mastering Change: When Charter Schools and School Districts Embrace Strategic Partnership*, in HOPES, FEARS, & REALITY: A BALANCED LOOK AT AMERICAN CHARTER SCHOOLS IN 2011 (Robin J. Lake & Bethany Gross eds., 2012), [https://crpe.org/wp-content/uploads/pub\\_crpe\\_HFR11\\_Jan12\\_0.pdf](https://crpe.org/wp-content/uploads/pub_crpe_HFR11_Jan12_0.pdf) [<https://perma.cc/PYG4-LQVB>].

101. THOMAS, *supra* note 68, at 6; Baxter & Nelson, *supra* note 100, at 24; *Evaluation of Scaling the New Orleans Charter Restart Model: Evaluation Findings*, CTR. ON RSCH. EDUC. OUTCOMES, <http://nolai3eval.stanford.edu/sites/default/files/documents/CRM%20Research%20Questions.pdf> [<https://perma.cc/SKP2-RUD2>].

In terms of academic achievement, portfolio school districts have seen success in improving academic outcomes. In New Orleans and Tennessee, thirteen out of the nineteen schools that were taken over by charters academically outperformed the closing schools they replaced. Atila Abdulkadiroğlu et al., *Charters Without Lotteries: Testing Takeovers in New Orleans and Boston*, 106 AM. ECON. REV. 1878 (2016).

102. MARY WELLS & TRESHA WARD, BELLWETHER EDUC. PARTNERS, AUTONOMOUS DISTRICT SCHOOLS: LESSONS FROM THE FIELD ON A PROMISING STRATEGY (2019), <http://files.eric.ed.gov/fulltext/ED602591.pdf> [<https://perma.cc/V4CG-5MXS>].

103. Abdulkadiroğlu et al., *supra* note 101, at 1879.

104. *Id.* at 1880.

105. Baxter & Nelson, *supra* note 100, at 25.

106. SARAH YATSKO ET AL., CTR. ON REINVENTING PUB. EDUC., DISTRICT-CHARTER COLLABORATION COMPACT: INTERIM REPORT 1–2 (2013), [https://crpe.org/wp-content/uploads/compact\\_interim\\_report\\_6\\_2013\\_0.pdf](https://crpe.org/wp-content/uploads/compact_interim_report_6_2013_0.pdf) [<https://perma.cc/M88N-G7PH>]. Cities with district-charter collaboration compacts

there are great intentions behind the initiative, a study conducted by Arizona State University's Center on Reinventing Public Education highlights the shortcomings of the project as a way to infuse the traditional school system with the innovations of charters.<sup>107</sup> To begin, district-charter compacts are highly contingent on favorable politics, which is a rare occurrence between traditional and charter schools.<sup>108</sup> District leaders fear that forming compacts with charter schools will result in backlash and a loss of political capital.<sup>109</sup>

Even when a district is able to move past political hurdles and form a district-charter compact, in most circumstances, the partnerships have not been used to replicate charter practices in traditional schools.<sup>110</sup> Instead, some cities have used the partnerships to build trust among charter and traditional schools, dispel myths and build relationships.<sup>111</sup> In those cities, paradigms have shifted from ones of tension and opposition, to respect and trust.<sup>112</sup> Though this is certainly positive for the educational political climate, it falls short of transferring the best practices of charters into traditional schools.

Other districts have created more of a quid pro quo relationship, where each side gains benefits from the other.<sup>113</sup> For example, in some partnerships, traditional schools share their facilities in exchange for a charter school's increased intake of special education students.<sup>114</sup> In other districts, traditional schools share their school funding for the ability to include charter school test scores in the district's average for accountability purposes.<sup>115</sup> Again, this does not help traditional schools evolve through the innovations of charters.

Some district-charter compacts have been used to start joint efforts to develop new solutions to pressing educational issues. In New Orleans and Washington, D.C., compacts were used to create new guidelines on school discipline practices, which resulted in increased equity and transparency.<sup>116</sup> In New York, compacts identify a problem area and utilize an inquiry process, school visits, and meetings to learn

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include Austin and Spring Branch, Texas; Baltimore, Maryland; Boston, Massachusetts; Central Falls, Rhode Island; Chicago, Illinois; Denver, Colorado; Los Angeles and Sacramento, California; Hartford, Connecticut; Nashville, Tennessee; New York City and Rochester, New York; Minneapolis, Minnesota; Philadelphia, Pennsylvania; and New Orleans, Louisiana. *Id.*

107. ASHLEY JOCHIM ET AL., *CTR. ON REINVENTING PUB. EDUC., COLLISION COURSE: EMBRACING POLITICS TO SUCCEED IN DISTRICT-CHARTER COLLABORATION 9* (2018), <https://crpe.org/wp-content/uploads/crpe-collision-course.pdf> [<https://perma.cc/RVV3-VC3V>].

108. *Id.*

109. *Id.* at 5.

110. *See* THOMAS, *supra* note 68, at 6.

111. LAKE ET AL., *supra* note 99, at 14.

112. *Id.*

113. *Id.* at 4–5.

114. *Id.* at 14.

115. *Id.*

116. *Id.* at 20.



collectively and improve the issue.<sup>117</sup> Yet again, this tinkers around the edges of what should be the core purpose of collaboration and fails to transfer the practices of charter schools to traditional schools.

District-charter compacts have also led to efforts to tackle administrative issues. In cities like Denver, Colorado; Newark and Camden, New Jersey; and New Orleans, Louisiana, traditional and charter schools created a common enrollment system to reduce the burdens of navigating multiple disconnected platforms.<sup>118</sup> In New Orleans, the compact was used to develop a centralized school expulsion system and a coordinated cost-sharing system for students with special needs.<sup>119</sup> Once more, these examples of collaboration, though beneficial for education, are not what the originators of the charter school movement pictured.

Though the forms of collaboration above represent the majority, we have also seen a handful of examples of traditional schools that have chosen to use the compacts to replicate the innovations of charters. Typically, charters will host a workshop or professional development program within a traditional school to share a charter school practice,<sup>120</sup> which often results in improved academic achievement for students in the traditional school.<sup>121</sup> For example, in the Aldine and Spring Branch districts of Texas, the compact is used to tap into YES Prep's college preparatory program to make it available to all high school students in the district.<sup>122</sup> In Rhode

117. *The District-Charter Collaborative*, NYC PUB. SCHS. INFOHUB, <https://infohub.nyced.org/working-with-the-doe/charter-schools/district-charter-partnerships/dcc> [https://perma.cc/6XL7-RMN8].

118. LAKE ET AL., *supra* note 99, at 5.

119. *Id.*

120. TRICIA MAAS & ROBIN LAKE, CTR. FOR REINVENTING PUB. EDUC., STAN. UNIV., *PASSING NOTES: LEARNING FROM EFFORTS TO SHARE INSTRUCTIONAL PRACTICES ACROSS DISTRICT-CHARTER LINES 3–5* (2018), <https://crpe.org/wp-content/uploads/crpe-passing-notes-share-instructional-practices-across-lines.pdf> [https://perma.cc/UT2F-XEJP].

121. LAKE ET AL., *supra* note 99, at 19. In New York, for example, math proficiency rates rose around twenty percent over the course of two years as a result of the collaboration. Conor Williams, Opinion, *In New York City, A District-Charter Collaboration That Puts Kids First and Offers a Fresh Perspective on the Political Divide*, THE74 (Oct. 6, 2019), <https://www.the74million.org/article/in-new-york-city-a-district-charter-collaboration-that-puts-kids-first-and-offers-a-fresh-perspective-on-the-political-divide/> [https://perma.cc/VA76-UC AQ]. Harvard conducted a study in Houston that found that students increased their performance on math, while their reading achievement remained the same. Fryer, *supra* note 84, at 1. Nearly identical experiments in Chicago and Denver yielded similar results. *Id.*

However, we have also seen less successful partnerships. For example, seven out of twelve traditional schools that entered into a partnership program in Texas received F ratings after over a year of partnership. Aliyya Swaby, *Texas Lets Struggling Schools Partner with Nonprofits or Charters for Improvement. But Many Got Fs This Year*, THE TEX. TRIBUNE (Aug. 27, 2019, 12:00 AM), <https://www.texastribune.org/2019/08/27/texas-charter-nonprofit-ratings/> [https://perma.cc/R8NT-7NYP]. Shared professional development around areas like the Common Core also has not resulted in much academic gain. Marytza A. Gawlik, *The U.S. Charter School Landscape: Extant Literature, Gaps in Research, and Implications for the U.S. Educational System*, 3 GLOBAL EDUC. REV. 50, 61 (2016).

122. Richard Whitmire, *Inside Successful District-Charter Compacts*, EDUC. NEXT, Fall 2014, at 43.

Island, Mayoral Academic charter schools are teaming with traditional schools to share their practices around personalized learning.<sup>123</sup>

But examples like these are the exception, not the norm. Also, this form of replication is limited in reach, as successful charter schools can only influence a single school district. And instead of learning from the innovations of charter schools throughout the country, traditional schools are limited to learning from just one. Districts with no successful charter schools, on the other hand, are deprived of the opportunity to infuse charter innovations altogether. Initiatives that push for collaboration at the district level prevent successful charter schools from transforming the public education system on a national scale.<sup>124</sup>

A last drawback to this approach is that its stability can ebb and flow depending on leadership, politics, and staff bandwidth.<sup>125</sup> Unfortunately, researchers found that over half of the cities with district-charter compacts regressed after earlier gains.<sup>126</sup> Districts that began compacts on amicable terms, like Harford, Connecticut; Austin, Texas; and Rochester, New York have seen partnerships turn sour over time and have reverted to the same competitive and tense relationships of the past.<sup>127</sup> In Philadelphia, Pennsylvania, suspicion and mistrust led to the breakdown of a common school-enrollment system.<sup>128</sup> In Sacramento, California, when superintendent and collaboration champion Jonathan Raymond, left office, the district no longer prioritized their compact with charter schools.<sup>129</sup>

District-level partnerships between traditional and charter schools have not led to transformative school improvement. Examples of failed cooperation are more common than successes, which has led decision makers to question whether the partnerships are worth the effort.<sup>130</sup> Even when collaboration goes smoothly, it can focus on tangential areas of low impact.<sup>131</sup> At their best, these partnerships are used to replicate the innovations of a single charter school into a single school district, rather than at a national scale.<sup>132</sup> To fulfill the original promise of charter schools, the

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123. Peter Cunningham, Opinion, *Create Cooperation in Education*, U.S. NEWS & WORLD REP. (Jan. 11, 2017, 9:00 AM), <https://www.usnews.com/opinion/knowledge-bank/articles/2017-01-11/donald-trump-and-betsy-devos-push-public-schools-and-charters-to-team-up> [<https://web.archive.org/web/20200922194646/https://www.usnews.com/opinion/knowledge-bank/articles/2017-01-11/donald-trump-and-betsy-devos-push-public-schools-and-charters-to-team-up>].

124. Hinton, *supra* note 64. Recent changes to the federal Charter Schools Program backed away from requiring collaboration between traditional and charter schools and instead only encourage it, as that form of collaboration “may not be available in every district.” *Id.*

125. LAKE ET AL., *supra* note 99, at 6.

126. *Id.* at 16 fig.6.

127. *Id.* at 25; *SXSWedu Recap: District-Charter Partnerships, Diversity in Edtech, Better Teachers*, BELLWETHER (Mar. 11, 2015), <https://aheadoftheheard.org/sxswedu-recap/> [<https://perma.cc/Q9V6-TA92>].

128. LAKE ET AL., *supra* note 99, at 25.

129. *Id.* at 24–25.

130. *See supra* notes 125–29 and accompanying text.

131. *See supra* notes 110–19 and accompanying text.

132. *See* Hinton, *supra* note 64.

education system should make way for a new form of collaboration between the traditional and charter school sectors.

### B. *The New Promises of Charter Schools*

As mentioned in Part I, though charter schools were originally created to serve as labs of innovation, over time, new rationales for the creation of charter schools have emerged. This has resulted in a muddled set of policies and lack of clear direction for the charter school movement. Thinking beyond originalist or purist stances on the purpose of charter schools, this Section discusses the new promises of charter schools and addresses why each is not the right fit for the charter school movement.

The most common and long-standing alternative rationale for charter schools is that they create market competition through school choice by incentivizing traditional schools to improve their quality when families begin to choose charter schools over them.<sup>133</sup> Though sound in theory, in practice, this rationale has not played out like expected.

First, this rationale ignores the reality that, in terms of academic achievement, charters perform at the same level as traditional schools.<sup>134</sup> Often, resources are spent to place average- or low-performing charters in a school district, which results in a lack of market competition for neighboring schools.<sup>135</sup> Second, even when a charter school is high-performing, its presence has either no impact or only a small positive impact on student achievement for traditional schools in the same district.<sup>136</sup> District leaders, for lack of capacity or lack of will, have not improved their schools as a result of the competitive presence of successful charter schools.<sup>137</sup>

Another new rationale for charter schools is that they can focus on improving outcomes for disadvantaged students.<sup>138</sup> Though this may sound appealing, it is not a responsibility that should be delegated to charter schools. Closing achievement gaps for disadvantaged students should be the imperative of *all* schools, not just charters. We should not discourage charter school administrators who want to create an innovative practice with an aim of closing achievement gaps. But we should caution against charter schools focusing on equity without innovation, as it could remove that responsibility from the traditional school system.

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133. Remarks on Signing an Executive Order on Safe Policing for Safe Communities, *supra* note 39, at 4.

134. Cohodes & Parham, *supra* note 28, at 1, 8. Outside of student achievement, it is possible that charter schools are outperforming traditional schools on indicators that are more in line with their goals, but harder to measure. (For example, students feeling like they have a voice in school decision making.)

135. *Id.*

136. Cohodes, *supra* note 40, at 12; Hill, *supra* note 44; Ridley & Terrier, *supra* note 44; Terrier et al., *supra* note 45; Gill, *supra* note 50; Epple et al., *supra* note 45; Carpenter and Medina, *supra* note 45.

137. See sources cited *supra* note 136.

138. Liu, *supra* note 15, at 277–78; Garnett, *supra* note 39 at 165.

An additional rationale put forth for charter schools is that they allow parents and students to have greater control over education.<sup>139</sup> In a sense, because parents and students can choose whether to attend a charter school and which charter school to attend, they inherently have more control than in traditional schools. But once students enter a charter school, there is no evidence that parents or students have more influence over school operations than they do in the traditional school system. And federal law already requires state<sup>140</sup> and local<sup>141</sup> educational agencies in the traditional school system to engage with families in various parts of the decision-making process. A separate school system dedicated to parent and student control would be unnecessarily duplicative and fragmented.

### III. REFOCUSING THE CHARTER SCHOOL MOVEMENT

The charter school movement is in need of reform to bring it back to its core purpose. What were meant to be labs of innovation that would transform our education system have become schools that, for the most part, are isolated and only slightly more imaginative than traditional schools. With new requirements—based on old ideas—we can realize the original purpose of charter schools and propel the education system’s evolution.

This Part outlines three new requirements that should be added to federal, state, and local charter school accountability and authorization frameworks. Section III.A proposes that charter school applicants should be required to demonstrate a commitment to implementing innovative practices in their schools. Section III.B adds that charter school authorizers must evaluate the innovative practice to assess its impact and build an evidence base around it. And Section III.C details that charter school authorizers should be required to disseminate such evaluations to state, national, and global databases of evidence-based practices for education.

#### A. Requiring Innovation

Among the states that have enacted charter school laws, nearly three quarters of them explicitly state innovation as a goal of the initiative.<sup>142</sup> Yet, in those states, the implementation of an innovation is merely a suggestion for charter school applicants and not required for authorization.<sup>143</sup> If we want charter schools to be true labs of innovation, we must *require* them to implement innovative practices.

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139. See Sources cited *supra* note 138.

140. 20 U.S.C. § 6311(a)(1)(A) (2018).

141. *Id.* § 6318.

142. Lubienski, *supra* note 68, at 399; Lake, *supra* note 68; see also SPENCER FOUND. & PUB. AGENDA, *supra* note 68.

143. See U.S. DEP’T OF EDUC., POLICY FRAMEWORK FOR HIGH-QUALITY CHARTER AUTHORIZATION PRACTICES (2021), <https://charterschoolcenter.ed.gov/sites/default/files/upload/toolkits/Policy-Framework-for-High-Quality-Charter-Authorizing-Practices.pdf> [<https://perma.cc/8J9W-H78E>] (not including innovation as a

To grasp how we can require innovation in charter schools, it is necessary to understand charter school accountability and authorization frameworks. Charter schools can be funded federally, by states, or locally.<sup>144</sup> With each funding source typically come accountability requirements.

The Elementary and Secondary Education Act of 1965,<sup>145</sup> now reauthorized as the Every Student Succeeds Act (“ESSA”),<sup>146</sup> contains much of the nation’s federal education law. In order for states to receive federal funding through the ESSA, their traditional schools must comply with accountability requirements including measures like standardized test scores and graduation rates.<sup>147</sup> The ESSA grants states flexibility in whether to include charter schools in their state accountability systems, which allows them to set their own charter schools laws.<sup>148</sup> Most states choose to hold charter schools accountable to the same standards as traditional schools.<sup>149</sup> The ESSA also provides separate federal grants for charter schools under title IV that come with requirements on areas like budget, operational autonomy, school quality, and student supports.<sup>150</sup>

Beyond this, states and local educational agencies can layer on their own accountability requirements for charter schools through laws, regulations, and performance agreements with an authorizer.<sup>151</sup> These policies and performance agreements

requirement); *see also* NAT’L CHARTER SCH. RSCH. CTR., <https://charterschoolcenter.ed.gov/front> (last visited May 3, 2023) (type “state profiles” into the search bar at the top of the webpage and click “search”) (listing analyses of every state’s charter school frameworks, none of which require innovation).

144. *Charter Schools in California*, EDUC. DATA P’SHIP (Dec. 14, 2020), <https://www.ed-data.org/article/Charter-Schools-in-California#A2> [<https://perma.cc/83Q7-XPP3>]; CTR FOR PUB. EDUC., NAT’L SCH. BD. ASS’N, RESEARCH BRIEF: HOW STATES FUND CHARTER SCHOOLS (2021), <https://www.nsba.org/-/media/NSBA/File/cpe-charter-fund-brief-september-2021.pdf> [<https://perma.cc/WTT7-LU55>].

145. Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (codified as amended at 20 U.S.C. §§ 6301–7981 (2018)).

146. Every Student Succeeds Act, Pub. L. No. 114-195, 129 Stat. 1802 (2015) (codified in scattered titles of U.S.C.).

147. *See also Every Student Succeeds Act (ESSA): ESSA Implementation Resources for Educators*, ASCD, [https://files.ascd.org/staticfiles/ascd/pdf/siteASCD/policy/ESSA-Accountability-FAQ\\_May112016.pdf](https://files.ascd.org/staticfiles/ascd/pdf/siteASCD/policy/ESSA-Accountability-FAQ_May112016.pdf) [<https://perma.cc/YK9W-7FNP>].

148. 20 U.S.C. § 6311(c)(5) (2018) (“The accountability provisions under this chapter shall be overseen for charter schools in accordance with State charter school law.”); *see also* Amanda Fenton, *Get Your Charter Sector Ready for ESSA. Do You Need a Gut Job or a Coat of Paint?*, EDUC. COMM’N STATES (Jan. 24, 2017), <https://ednote.ecs.org/get-your-charter-sector-ready-for-essa-do-you-need-a-gut-job-or-a-coat-of-paint/> [<https://perma.cc/EZN2-JPVP>].

149. JENNIFER THOMSEN, EDUC. COMM’N OF THE STATES, POLICY ANALYSIS: CHARTER SCHOOL ACCOUNTABILITY UNDER ESSA (2017), [https://www.ecs.org/wp-content/uploads/Charter\\_School\\_Accountability\\_Under\\_ESSA-1.pdf](https://www.ecs.org/wp-content/uploads/Charter_School_Accountability_Under_ESSA-1.pdf) [<https://perma.cc/Y7U7-2XFK>].

150. *See* Every Student Succeeds Act, §§ 4002–4101, 20 U.S.C. §§ 7111–7122 (2018); *see also* Fenton, *supra* note 148.

151. *50-State Comparison: Charter School Policies: Does the State Require the Authorizer to Report on the Performance of Its Portfolio of Schools?*, EDUC. COMM’N OF THE STATES, (Jan. 2020), <https://reports.ecs.org/comparisons/charter-school-policies-12> [<https://perma.cc/6Z6T-S7PT>]; U.S. DEP’T OF EDUC., DOC. NO. 2001-06, EVALUATION OF THE PUBLIC CHARTER SCHOOLS PROGRAM: YEAR ONE 42–58 (2000), <https://www2.ed.gov/rschstat/eval/choice/pcsp-year1/year1report.pdf> [<https://perma.cc/GF3A-NNQ3>].

can cover areas like academic achievement, student attendance, staff performance, curriculum and course completion, parent involvement, and graduation.<sup>152</sup> The requirements must also be met when the charter is up for renewal or closure, usually after a five-year inaugural period.<sup>153</sup>

Again, notably absent from most policies and authorizing agreements is the requirement to innovate. In fact, due to the pressures of creating successful schools, many charter school authorizers tend to avoid innovative proposals and opt for proposals that list well-established practices instead.<sup>154</sup> Additionally, the regulatory overlays and growing list of requirements in the accountability and authorization frameworks listed above, though often necessary to protect a child's academic and social needs, have likely reduced the ability of charter schools to experiment.

To refocus charter schools on the development of innovative practices, federal, state, and local accountability and authorization frameworks should require charter schools to show a commitment to implementing an innovative practice in their initial application.<sup>155</sup> Innovations can extend to any aspect of a school such as buildings, use of time, staffing, curriculum, out of school activities, testing, and homework. Because of the risks that come with experimentation, authorizers should maintain high standards for applicants and analyze the research or rationale behind a new approach and their ability to implement it.<sup>156</sup> But authorizers will also need to grow a bit more tolerant of the potential for unsuccessful charter schools because with experimentation comes potential failure.

Importantly, policymakers will need to do a better job at defining innovation if requiring it. The legislative language of most charter school laws lack a clear definition for innovation. Massachusetts's charter school law, for example, included the words "innovative" and "innovation" almost a dozen times without defining them.<sup>157</sup> A subsequent auditor report found that some charter schools in Massachusetts claimed to be innovative but pointed to practices that were commonly found in traditional schools as evidence of their "innovation."<sup>158</sup>

There are a few different approaches authorizers could take in defining innovation.<sup>159</sup> The first type of innovation (what most would consider innovation) is doing

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152. U.S. DEP'T OF EDUC., *supra* note 151, at 42–58.

153. Cohodes & Parham, *supra* note 28, at 2.

154. HASSEL ET AL., *supra* note 9, at 15.

155. *Id.*

156. *Id.* at 34.

157. James Vaznis, *Are Charter Schools Truly Innovative? The Answer Can Depend on Your Definition*, BOS. GLOBE (Oct. 11, 2016, 9:21 PM), <https://www.bostonglobe.com/metro/2016/10/11/have-charter-schools-fulfilled-promise-innovators-debate-persists/r8kZEcTiXnnPML1gCcOa7l/story.html> [<https://web.archive.org/web/20220117031445/https://www.bostonglobe.com/metro/2016/10/11/have-charter-schools-fulfilled-promis-e-innovators-debate-persists/r8kZEcTiXnnPML1gCcOa7l/story.html>].

158. *Id.*

159. Lubienski, *supra* note 68, at 401–05; Lake, *supra* note 68, at 4–8.

something that has never been done before in education.<sup>160</sup> For example, designing an entirely new teaching method or staffing structure. A second approach to innovation includes combining different pre-existing practices to form a new cohesive approach.<sup>161</sup> Though there is no innovation per se, the combination of approaches is still new and could lead to improved outcomes. A third definition of innovation is doing something that has never been done before in the local context.<sup>162</sup> This form of experimentation is useful in testing models on different types of populations, though authorizers should ensure the local context is truly distinct and warrants additional experimentation.<sup>163</sup>

Because all three approaches to innovation can produce useful information, authorizers should permit them all. The variety of definitions also allows a single charter school network to test its innovation a few times in different contexts. For example, a charter school may open in an urban district with a model that has never been seen before in education. Later, it may decide to open another campus, this time with only a portion of the features of the prior model in an attempt to isolate the successful practices. Then, it may open a charter school in a district with a rural population to see if the innovation is still effective.

Perhaps charter schools arguably should even be allowed to replicate and study successful models, with no variations, a few more times to expand the sample size of their observations and ensure that their model is truly worthy of imitation by traditional schools. But this form of replication must have limits and should not be used for the sole purpose of expanding charter school networks. Ultimately, proposed innovations by administrators who genuinely desire to learn new information, however small, or to strengthen an evidence base for the benefit of traditional schools, should be welcomed.

With the added requirement of innovation, the number of charter school applications will likely reduce significantly. The requirement keeps the charter school movement a small supplement to the traditional school system, as it was intended to be. This would likely help assuage the concerns of those worried that charter schools are slowly taking over and decentralizing the traditional school system. The reduction in the number of new charter schools would also potentially lessen the

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160. Lake, *supra* note 68, at 4–5.

161. Lubienski, *supra* note 68, at 402.

162. *Id.*; Lake, *supra* note 68, at 56.

163. New selection criteria for the federal Expanding Opportunity Through Federal Charter Schools Program released on July 5, 2022 included a new “needs analysis” requirement. Expanding Opportunity Through Quality Charter Schools Program Requirements, 128 Fed. Reg. 40406, 40415 (July 5, 2022). The new requirement “provides applicants with a number of examples of evidence they may provide to indicate the need for the proposed charter school, such as current waitlists for existing charter schools, or interest in a specialized instructional approach.” Hinton, *supra* note 64. Though this is not the same as requiring something that has never been done before in the local context outright, it is a step in the right direction and may increase innovation in charter schools.

previously-discussed financial burden on traditional schools that can arise when charter schools open in a district.

That said, there are a few drawbacks to consider if we were to require charter schools to be innovative. First, as discussed above, many existing charter schools are not currently innovative and might not have the capacity or willingness to become innovative. We do not want to shut down existing charter schools that are providing a decent education, as this could be very disruptive for students. To avoid this, we should apply the requirement of innovation only prospectively to new charter school applicants.

Another drawback to consider is that by prioritizing innovation, successful charter schools with proven track records will no longer be able to expand their networks.<sup>164</sup> Often, charter schools aim to replicate their schools, like the over 280 KIPP charter schools throughout the country.<sup>165</sup> Preventing the expansion of successful charter school networks will raise concerns, especially when those charter schools are able to provide an education to disadvantaged populations, which traditional schools often fail to do. However, these concerns misunderstand the core purpose of charter schools. Of course, we should replicate successful charter schools, but not by continuing to expand their charter school network. Instead, it is time to encourage states and districts to learn from the best practices of charter schools like KIPP and implement those practices in traditional schools.

### B. Requiring Evaluation

Once a charter school implements an innovative practice, charter-school accountability and authorization frameworks should require that innovation be evaluated by charter school authorizers.<sup>166</sup> Though it seems like a logical complement to innovation, evaluations of charter school practices are rarely prioritized in authorizing frameworks.<sup>167</sup> The Department of Education, for example, put out a policy framework for high quality charter authorizing practices and made no mention of requiring charter schools innovations to be evaluated.<sup>168</sup> Similarly, none of the local efforts in portfolio districts or district-charter collaboration compacts discussed in Part II required charter schools to evaluate specific practices before sharing them with

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164. Lake, *supra* note 68, at 3.

165. *How is KIPP Structured?*, KIPP: PUB. SCHS., <https://www.kipp.org/schools/structure/> [<https://perma.cc/LJ7E-WGKW>] (“We are a network of 280 public charter schools . . .”).

166. SARA ALLENDER & AIMEE EVAN, MID-ATLANTIC COMPREHENSIVE CTR., IDENTIFYING PROMISING PRACTICES IN CHARTER SCHOOLS: A FRAMEWORK FOR AN EVIDENCE-BASED APPROACH (2019), <https://www.wested.org/wp-content/uploads/2019/09/SEA-Promising-Practices-Framework.pdf> [<https://perma.cc/P5ZU-6S3A>].

167. James S. Sass, Charter School Evaluation: Trends, Challenges, and Prospects 10–16 (2009) (unpublished manuscript), <https://comm.eval.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=6905a633-1452-4409-bdfe-22301aa19eb8&forceDialog=0> [<https://perma.cc/2XMH-QJXD>].

168. U.S. DEP’T OF EDUC., *supra* note 143.



traditional schools. Currently, charter schools are evaluated primarily for purposes of closure or renewal, not to assess what innovative practices have proven successful.<sup>169</sup>

To reap the benefits of innovation, it will be crucial to study and build an evidentiary basis around each experiment. This ensures that the identification of best practices by charter schools is grounded in evidence, and not intuition. It also allows charter schools to examine the impact of their practices and make way for new experimentation.<sup>170</sup> In addition to measuring impact on academic achievement, evaluations could measure other areas of focus for charter schools. (For example, a charter school might open with the goal of improving social development or increasing attendance.)

Evaluation, like innovation, can be an ambiguous term, including studies done with varying degrees of rigor. The ESSA neatly organizes evidence-based practices into four tiers: (1) strong evidence; (2) moderate evidence; (3) promising evidence; and (4) evidence that demonstrates rationale.<sup>171</sup> These evidence levels can be used by charter school authorizers to establish standards of quality for evaluations.

“Strong evidence” under the ESSA requires the demonstration of a statistically significant effect on improving outcomes supported by one or more well-designed and well-implemented randomized-control studies.<sup>172</sup> In randomized-control studies, individuals are randomly assigned to either an intervention group or control group, which ensures that there are no differences between the two groups when measuring the effects of the intervention.<sup>173</sup> For example, if a school wants to implement a new tutoring program, school administrators would randomly assign some students to the new tutoring program, while leaving others out, and then track the progress of both groups to see what differences arise.<sup>174</sup>

169. Sass, *supra* note 167, at 10.

170. U.S. DEP’T OF EDUC., *supra* note 143.

171. 20 U.S.C. § 7801(21)(A) (2018); *see* ALLENDER & EVAN, *supra* note 166, at 3.

172. 20 U.S.C. § 7801(21)(A)(i)(I) (2018) (emphasis added); *see also Evidence-Based Interventions Under the ESSA*, CAL. DEP’T OF EDUC. (Sept. 13, 2022), <https://www.cde.ca.gov/re/es/evidence.asp> [<https://perma.cc/PAR3-RBYB>]. Additional guidance released by the Department of Education elaborates that strong evidence must not be overridden by statistically significant and negative evidence, and must have a large or multi-site sample that overlaps with the populations (such as types of students) and settings (such as rural, urban, and the like) proposed to receive the intervention. U.S. DEP’T OF EDUC., NON-REGULATORY GUIDANCE: USING EVIDENCE TO STRENGTHEN EDUCATION INVESTMENTS 8 (2016), <https://www2.ed.gov/policy/elsec/leg/essa/guidanceuseinvestment.pdf> [<https://perma.cc/NZH9-QAU3>].

173. 34 C.F.R. § 77.1(c) (2022) (defining “randomized controlled trial”); *see also* COAL. FOR EVIDENCE-BASED POL’Y, U.S. DEP’T OF EDUC., NCEE ED2003, IDENTIFYING AND IMPLEMENTING EDUCATIONAL PRACTICES SUPPORTED BY RIGOROUS EVIDENCE: A USER FRIENDLY GUIDE 1 (2003), <http://coalition4evidence.org/wp-content/uploads/2012/12/PublicationUserFriendlyGuide03.pdf> [<https://perma.cc/KFS6-B65G>].

174. Random assignments can also be done at the classroom, school, or district level.

Randomized-control studies are increasingly demanded by education policy makers<sup>175</sup> and are considered the “gold standard” of program evaluation, often used in fields like medicine, employment, and psychology.<sup>176</sup> They eliminate the selection bias that underpins other forms of evaluation so that differences in outcomes can confidently be attributed to an intervention and not other factors.<sup>177</sup> This is especially important in education, where out-of-school factors such as wealth or parental levels of education drive students to certain schools or programs.<sup>178</sup> This type of study can be done for charter schools with an over-enrollment lottery by, for example, comparing students offered admission to such a charter school with students denied admission.<sup>179</sup>

“Moderate evidence” under the ESSA requires the demonstration of a statistically significant effect on improving outcomes and must be supported by one well-designed and well-implemented quasi-experimental study.<sup>180</sup> Unlike randomized-control trials, quasi-experimental studies lack the feature of randomly selected groups.<sup>181</sup> For example, in a quasi-experimental study, instead of randomly assigning students to a new tutoring program, students are asked to volunteer to participate.

The absence of random assignment introduces selection bias that has the potential to produce erroneous conclusions, as the two groups might have critical differences that affect the outcome.<sup>182</sup> However, quasi-experimental studies are still informative, especially when a baseline equivalence showing that the two groups had characteristics that were closely matched is established.<sup>183</sup> This type of study is commonly used when comparing students enrolled in charter schools to students enrolled in nearby traditional schools.<sup>184</sup>

175. Sally Sadoff, *The Role of Experimentation in Education Policy*, 30 OXFORD REV. ECON. POL’Y 597, 599 (2014).

176. *Id.*; COAL. FOR EVIDENCE-BASED POL’Y, *supra* note 173, at iii.

177. Sadoff, *supra* note 175, at 598; COAL. FOR EVIDENCE-BASED POL’Y, *supra* note 173, at 2.

178. Sadoff, *supra* note 175, at 598.

179. Sass, *supra* note 167, at 6; MOMMANDI & WELNER, *supra* note 53, at 17. These studies, though generally well-grounded, do not tell us how the population of students who did not apply for the lottery would have performed. See Sass, *supra*; MOMMANDI & WELNER, *supra*. They can also become muddled because of students who (1) decline an offer of admission; (2) accept an offer of admission but later leave the school; and (3) are not extended an offer of admission and enroll in a different charter school as a result. See Sass, *supra*; MOMMANDI & WELNER, *supra*.

180. 20 U.S.C. § 7801(21)(A)(i)(II) (2018).. Similarly to strong evidence, moderate evidence must not be overridden by statistically significant and negative evidence, have a large sample or multi-site sample, and have a sample that overlaps with the populations and settings proposed to receive the intervention. See *Evidence-Based Interventions Under the ESSA*, *supra* note 172; U.S. DEP’T OF EDUC., *supra* note 173, at 8.

181. *Observing Moderate Evidence: Quasi-experimental Designs*, REG’L EDUC. LAB’Y SE. AT FLA. STATE UNIV., [https://ies.ed.gov/ncee/edlabs/infographics/pdf/REL\\_SE\\_Moderate\\_Evidence.pdf](https://ies.ed.gov/ncee/edlabs/infographics/pdf/REL_SE_Moderate_Evidence.pdf) [<https://perma.cc/JT5W-QR9U>].

182. COAL. FOR EVIDENCE-BASED POL’Y, *supra* note 173, at 3.

183. *Observing Moderate Evidence: Quasi-experimental Designs*, *supra* note 181, at 2.

184. MOMMANDI & WELNER, *supra* note 53, at 18. Though those studies typically establish a baseline equivalence with prior test scores, race, and eligibility for free and reduced-price lunch, the approach is still

“Promising evidence” under ESSA requires the demonstration of a statistically significant effect on improving outcomes and must be supported by one well-designed and well-implemented correlational study with statistical controls for selection bias.<sup>185</sup> Correlational studies look at differences in behaviors and outcomes, but lack the components needed to prove causality.<sup>186</sup> For example, a study might show that students who read more books perform better on reading exams.<sup>187</sup> Though this provides some evidence that reading more can increase your score on a reading exam, it does not preclude that other unobserved factors are influencing the results, like parent involvement in the child’s education.<sup>188</sup>

Last, “evidence that demonstrates a rationale” under the ESSA must only be based on high quality research findings or positive evaluation that the activity is likely to improve outcomes.<sup>189</sup> Evidence that demonstrates a rationale describes the logical relationship between a program and desired outcome.<sup>190</sup> For example, a school may use a program that is proven to improve student engagement in an effort to reduce absenteeism by arguing that increasing one would theoretically reduce the other.<sup>191</sup>

The level of evidence that should be required of charter schools will differ depending on the school and the innovation, but we should encourage charters to produce the highest level of evidence possible in each circumstance.<sup>192</sup> In addition to looking at the overall impact of a charter school, evaluations can also be used to separate and study a single practice from the bundle of programs that make up a school. Evaluations should be accompanied by descriptions of school characteristics, allowing traditional schools to identify programs that fit their demographic profiles, as well as descriptions of the core features needed for implementation.

States may already have an existing infrastructure in place for evaluating school practices, including pooled funding streams for evaluations, in-house research teams, partnerships with universities and independent researchers, and technical

susceptible to omitted variables that result from the lack of random assignment between the charter and traditional school. *Id.*

185. 20 U.S.C. § 7801(21)(A)(i)(III) (2018). Like the prior evidence tiers, it also cannot be overridden by statistically significant and negative evidence. *Evidence-Based Interventions Under the ESSA*, *supra* note 172; U.S. DEP’T OF EDUC., *supra* note 173, at 8.

186. *Observing Promising Evidence: Correlational Studies*, REG’L EDUC. LAB’Y SE. AT FLA. STATE UNIV., [https://ies.ed.gov/ncee/edlabs/infographics/pdf/REL\\_SE\\_Promising\\_Evidence.pdf](https://ies.ed.gov/ncee/edlabs/infographics/pdf/REL_SE_Promising_Evidence.pdf) [<https://perma.cc/DF2R-UM5E>].

187. *Id.*

188. *Id.*

189. 20 U.S.C. § 7801(21)(A)(ii) (2018); *see also Evidence-Based Interventions Under the ESSA*, *supra* note 172.

190. *Observing Evidence that Demonstrates a Rationale*, REG’L EDUC. LAB’Y SE. at FLA. STATE UNIV., [https://ies.ed.gov/ncee/edlabs/infographics/pdf/REL\\_SE\\_Demonstrates\\_a\\_Rationale.pdf](https://ies.ed.gov/ncee/edlabs/infographics/pdf/REL_SE_Demonstrates_a_Rationale.pdf) [<https://perma.cc/UYJ5-2SCP>].

191. *Id.*

192. COAL. FOR EVIDENCE-BASED POL’Y, *supra* note 173, at 4.

assistance.<sup>193</sup> Wherever possible, states should aim to leverage existing resources for the evaluation of charter schools. For example, California has the Charter Schools Development Center and California Charter Schools Association, each with existing infrastructures for formative and summative evaluations.<sup>194</sup> Also, the Colorado League of Charter Schools and Hawaii Charter Schools Network have resources and services available for the evaluation of charter schools.<sup>195</sup>

When it comes to evaluations that compare charter and traditional school outcomes, some argue that validity is compromised because charters shape enrollment in ways that traditional schools do not.<sup>196</sup> Studies are mixed as to whether this is true. Initially, a charter school's description, marketing, and lack of special education or English language services may shape who applies.<sup>197</sup> In the application process, certain studies show that charters do not favor high achieving applications,<sup>198</sup> but others show that conditions on enrollment like in-person applications, assessments, clear disciplinary records, and mandatory parent volunteer hours further shape access.<sup>199</sup> Once enrolled, some studies show that charter schools utilize pushout practices like grade point average requirements and zero-tolerance policies,<sup>200</sup> while others show no evidence that charters attempt to induce low-performing students to leave.<sup>201</sup> Issues around charter schools shaping access will differ depending on the jurisdiction. But wherever they are present, efforts should be made to eliminate such

193. ESSA also promotes the generation of evaluations through the Education Innovation and Research Grants program, whose recipients must “conduct an independent evaluation of the effectiveness of [a] program carried out” under the grant program. 20 U.S.C. § 7261(e) (2018). Further, the ESSA enables the U.S. Secretary of Education to “carry out a charter school program that supports charter schools that serve early childhood, elementary school, or secondary school students by . . . carrying out national activities to support,” *inter alia*, “the evaluation of the impact of the charter school program under this part on schools participating in such program.” *Id.* § 7221a(a)(3)(C).

And one of the stated permissible uses of grant money under title IV of ESSA is to support the evaluation of the impact of charter schools' programs and the dissemination of information concerning successful practices of charter schools. CHIEFS FOR CHANGE & RESULTS FOR AM., EVIDENCE-BUILDING OPPORTUNITIES UNDER ESSA: HOW STATES CAN AND SHOULD GENERATE EVIDENCE TO DRIVE BETTER OUTCOMES FOR STUDENTS 3 (2018), [https://results4america.org/wp-content/uploads/2018/05/Evidence-Building-Opportunities-Under-ESSA\\_May-2018-Final.pdf](https://results4america.org/wp-content/uploads/2018/05/Evidence-Building-Opportunities-Under-ESSA_May-2018-Final.pdf) [<https://perma.cc/6E5V-7X7W>].

194. SASS, *supra* note 167, at 20.

195. *Id.*

196. *See, e.g.*, DAVID L. SILVERNAIL & AMY F. JOHNSON, THE IMPACTS OF PUBLIC CHARTER SCHOOLS ON STUDENTS AND TRADITIONAL PUBLIC SCHOOLS: WHAT DOES THE EMPIRICAL EVIDENCE TELL US? 17 (2014).

197. MOMMANDI & WELNER, *supra* note 53, at 37–39.

198. Cohodes, *supra* note 40, at 11–12; ZIMMER ET AL., *supra* note 62; James Forman, Jr., *Do Charter Schools Threaten Public Education? Emerging Evidence from Fifteen Years of a Quasi-market for Schooling*, 2007 U. ILL. REV. 839, 862 (2007).

199. ZIMMER ET AL., *supra* note 62, at 55, 71, 77.

200. *Id.* at 105, 120.

201. Cohodes, *supra* note 40, at 11–12; Ron W. Zimmer & Cassandra M. Guarino, *Is There Empirical Evidence That Charter Schools “Push Out” Low-Performing Students?*, 35 EDUC. EVALUATION & POL'Y ANALYSIS 461 (2013).

issues<sup>202</sup>—both to improve equitable access and to ensure comparability between charter and traditional schools.

### C. Requiring Dissemination

Databases exist, both government and non-profit operated, to collect evidence-based practices in education and make them available to schools across the country. Once a charter innovation is implemented and evaluated, charter school authorizers should disseminate it to state, national, and even global databases of evidence for education. With this approach, the practices developed by charter schools in, say, Minneapolis, Minnesota, would no longer be constrained to their district through local partnerships, and would become widely available to influence federal, state, and local decision-making. That said, this requirement does not necessarily need to replace local partnerships between traditional and charter schools, and can be layered on to those programs.

At the state level, existing databases should begin to include the evaluations of charter school innovations. For example, as mentioned above, Massachusetts and New Jersey have created databases specifically for the innovations developed by charter schools.<sup>203</sup> Further, to comply with the ESSA, states like California, Illinois, and New York have created databases of pre-approved evidence-based practices for schools and districts to choose from.<sup>204</sup> The databases can be used by any district, including low-performing districts asked to choose evidence-based interventions showing strong, moderate, or promising levels of evidence.<sup>205</sup> Considering that the practices of charter schools have proven particularly effective for disadvantaged students, including those practices in evidence databases for low-performing traditional schools could have a significant impact.

202. MOMMANDI & WELNER, *supra* note 53, at 148–71.

203. See text accompanying *supra* notes 97–98.

204. Alyson Klein, *Satisfying ESSA's Evidence-Based Requirement Proves Tricky*, EDUC. WK. (Apr. 3, 2018), <https://www.edweek.org/ew/articles/2018/04/04/satisfying-essas-evidence-based-requirement-proves-tricky.html> [<https://perma.cc/6LJ6-4BG7>]; *Core Component 5: Research-Based Interventions*, CAL. DEP'T OF EDUC., <https://www.cde.ca.gov/ci/cr/ri/corecomp5.asp> (last visited Apr. 10, 2023); *Evidence-Based Interventions*, N.Y. STATE EDUC. DEP'T, <http://www.nysed.gov/accountability/evidence-based-interventions> (last visited Apr. 10, 2023).

205. See Every Student Succeeds Act, Pub. L. No. 144-95, §§ 1000–1017, 1201, 1301, 1401, 1501, 1601, 129 Stat. 1802, 1814–1913 (2015) (title I) (codified in scattered sections of 20 U.S.C.); *id.* §§ 2001–2002 (title II) (codified in scattered sections of 20 U.S.C.); *id.* §§ 4001, 4002, 4101, 4201, 4301, 4401, 4501, 4601 (title IV) (codified in scattered sections of 20 U.S.C.). According to the ESSA, schools receiving federal funding must use evidence-based practices for particular programs described in titles I, II, and IV of the Elementary and Secondary Education Act of 1965. ALICIA N. GARCIA & ELIZABETH DAVIS, AM. INSTS. FOR RSCH., *ESSA ACTION GUIDE: SELECTING EVIDENCE-BASED PRACTICES FOR LOW-PERFORMING SCHOOLS 1* (2019), <https://www.air.org/sites/default/files/downloads/report/Selecting-Evidence-Based-Practices-for-Low-Performing-Schools-508-May-2019-rev.pdf> [<https://perma.cc/2RZY-KY5K>]. Among those are requirements for low-performing schools identified for comprehensive support and improvement, targeted support and improvement, and additional targeted support and improvement under title I. *Id.*

Nationally, the Department of Education’s Institute of Education Sciences (“IES”) is the primary source for education related research. Their What Works Clearinghouse provides educators, policymakers, and the public with a central source of scientific evidence showing what works in education, as well as explanations for how their evidence standards align with the ESSA’s evidence tiers.<sup>206</sup> The IES also endorses the Doing What Works library,<sup>207</sup> which includes tools to help educators use research-based practices, and the Education Resources Information Center, which catalogs research studies on a variety of educational topics.<sup>208</sup>

Non-profit organizations also collect and disseminate research, including the Campbell Collaboration,<sup>209</sup> Attendance Works,<sup>210</sup> Evidence for ESSA,<sup>211</sup> ArtsEdSearch,<sup>212</sup> Best Evidence Encyclopedia,<sup>213</sup> Blueprints for Healthy Youth Development,<sup>214</sup> and National Mentoring Resource Center.<sup>215</sup>

Once a traditional school selects an evidence-based charter innovation, it likely will need technical assistance to implement it. A critical difference to this approach compared to portfolio districts and district-charter collaboration compacts is that the latter strategies provide built-in technical assistance since the creators of the desired practice work directly with the traditional school.<sup>216</sup> However, it is unclear whether charters in those partnerships have the capacity to provide the level of technical assistance needed for high quality implementation, as charter staff have described the partnerships as requiring an “excessively demanding workload.”<sup>217</sup> Under the widespread dissemination approach, the selection of a charter school innovation will likely need to be coupled with technical assistance.

The education system still has a long way to go in developing a culture of and infrastructure for evidence use. Even if we make the evidence-based practices of charter schools available in the above databases, some education decision makers

206. *What Works Clearing House*, INST. OF EDUC. SCIS., <https://ies.ed.gov/ncee/wwc/FWW> (last visited May 3, 2023).

207. *The Doing What Works Library*, DOINGWHATWORKS, <https://dwwlibrary.wested.org/> (last visited May 3, 2023).

208. ERIC: INST. OF EDUC. SCIS., <https://eric.ed.gov/> (last visited May 3, 2023).

209. *See* CAMPBELL CORP., <https://www.campbellcollaboration.org> (last visited May 3, 2023).

210. *See Research*, ATTENDANCE WORKS, <https://www.attendanceworks.org/research/> (last visited May 3, 2023).

211. *See* EVIDENCE FOR ESSA, <https://www.evidenceforessa.org/> (last visited May 3, 2023).

212. *See* ARTSEdSEARCH, <https://www.artsedsearch.org/> (last visited May 3, 2023).

213. *See* BEST EVIDENCE ENCYCLOPEDIA, <http://www.bestevidence.org/> (last visited May 3, 2023).

214. *See* BLUEPRINTS FOR HEALTHY YOUTH DEV., <https://www.blueprintsprograms.org/> (last visited May 3, 2023).

215. *See Evidence Reviews*, NAT’L MENTORING RES. CTR., <https://nationalmentoringresourcecenter.org/research-tools/evidence-reviews/> (last visited May 3, 2023).

216. *See supra* Section II.A.

217. Susan Kobes, *Implementation of the Principles of the Knowledge is Power Program (KIPP) in an Inner-City High School-Within-a-School* (Sept. 2013) (Ph.D. dissertation, Walden University) (ProQuest); *see also* LAKE ET AL., *supra* note 99, at 19.

will sadly choose to ignore them. Though addressing the general lack of evidence-based decision making in education goes beyond the scope of this Article, charter school innovations will only be impactful if the traditional school system is willing to learn from them. For now, the requirements proposed in this Article will at least make the information available. Hopefully, with time, the cultural push for evidence-based decision making in education will continue to grow and the successful innovations of charter schools will spread throughout the country.<sup>218</sup>

## CONCLUSION

Whether the goal is to excel in the global market, or the hope is to create a more equitable education system, change is key. The originators of the charter school movement hoped that charter schools could help foster this change. Instead, the movement has lost sight of its original purpose and has become a target of political criticism. The proposal in this Article aims to offer a sensible path forward for the tempestuous charter school movement, providing a reasoned middle ground between the competing advocacy for outright elimination or mass expansion of charter schools.

For charter schools to be true labs of innovation, they must be required to implement and evaluate innovative practices. Charter schools' evaluations should then be disseminated broadly to public databases of evidence-based practices for education so we can improve the U.S. education system as a whole. Hopefully, with this new framework, the education field can move past ideological divides to realize that charter schools, at their core, were created to help traditional schools, not hurt them.

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218. See Guy Johnson, *Ryan and Biden and Evidence: Oh My!*, THE OPPORTUNITY INST. (Mar. 24, 2022), <https://theopportunityinstitute.org/blog/2022/3/24/ryan-and-biden-and-evidence-oh-my> [<https://perma.cc/74ZP-FDKU>]; Christopher Lubienski et al., *The Politics of Research Production, Promotion, and Utilization in Educational Policy*, 28 EDUC. POL'Y 131 (2014); COAL. FOR EVIDENCE-BASED POL'Y, *supra* note 173; EDUCATION.ORG, CALLING FOR AN EDUCATION KNOWLEDGE BRIDGE: A WHITE PAPER TO ADVANCE EVIDENCE USE IN EDUCATION (2021), <https://education.org/white-paper> (click image above text, "White Paper Full Document, 21 September 2021," and fill out contact information to retrieve PDF); *Evidence-Based Policy and Practice*, THE F. FOR YOUTH INV., <https://forumfyi.org/wp-content/uploads/2018/08/evidence-basedpolicyandpractice.pdf> [<https://perma.cc/8BQR-975Y>].