

NO. 14-0776

IN THE SUPREME COURT OF TEXAS

MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION
IN HIS OFFICIAL CAPACITY, ET AL

Appellants/Cross-Appellees

v.

THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, ET AL;
CALHOUN COUNTY ISD, ET AL; EDGEWOOD ISD, ET AL;
FORT BEND ISD, ET AL; TEXAS CHARTER SCHOOL
ASSOCIATION, ET AL; AND JOYCE COLEMAN, ET AL

Appellants/Appellees/Cross-Appellants

**AMICUS CURIAE BRIEF OF
PASTORS FOR TEXAS CHILDREN**

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IDENTITIES OF PARTIES AND COUNSEL

Amicus Curiae supplements the parties' identification of parties and counsel with the following:

1. Amicus Curiae is Pastors for Texas Children (PTC), a nonprofit independent ministry and outreach group comprised of pastors and church leaders from across the state, organized to support quality public education opportunities for all Texas children. Pastors for Texas Children includes 1200 faith leaders from over 500 Texas churches of all denominations. PTC's goal is to connect every local church to every local neighborhood and community school in ministry and advocacy.

2. Counsel for Pastors for Texas Children is David Russell, TEMPLETON, SMITHEE, HAYES, HEINRICH & RUSSELL, LLP, 320 S. Polk, Suite 1000, Amarillo, Texas 79101.

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TO THE HONORABLE JUSTICES OF THE TEXAS SUPREME COURT:

Pastors for Texas Children (PTC) files this amicus brief in support of the Appellees, The Texas Taxpayer & Student Fairness Coalition, et al. PTC is a statewide organization mobilizing the faith community for support of public education. The U.S. Pastor Council (U.S. Pastor) has filed an amicus brief advocating that the current public school system should be declared constitutionally inefficient and that the Legislature should be directed to create an efficient system. The “efficient system” suggested is one in which public schools are defunded in favor of vouchers and other funding schemes in which government money is redirected to religious schools. We could not disagree more.

PTC believes that the current system of funding Texas public school is inadequate to meet the needs of all Texas students. This conclusion is drawn from the personal testimony of thousands of public school superintendents, teachers, coaches, staff and personnel serving both our local schools and our local churches. Texas ranks near the bottom in per-pupil spending nationwide. In 2011, devastating funding cuts forced school districts to lay off teachers, increase class sizes, and reduce pre-kindergarten programs. In 2013, Texas legislators restored only a portion of the cuts, leaving a gaping deficit in education funding in addition to this inadequacy. In 2015 the Legislature added \$1 billion to the public school fund, but

schools had to accommodate for dramatic student growth, totaling 300,000 more students than in 2011.

PTC believes that the creation of a second, parallel private system of education, while neglecting the public system, would be in violation of Article 7, Section 1 of the Texas Constitution which requires the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools. This Court has already rejected a challenge under Article VII, Section 1 of the Constitution requiring the State to issue vouchers. As the Court itself pointed out, it is the purvey of the Legislature, not the Judiciary, to determine the methods by which an adequate, equitable and efficient general diffusion of knowledge should occur. However, should the Legislature someday choose to enact a voucher system it is unlikely that such a system will improve the adequacy, equity or efficiency of the State's school finance system. In fact, such a law would be far more likely to ultimately harm the religious schools who seek to prosper from such a proposal.

STATEMENT OF INTEREST OF AMICUS CURIAE

This Brief was prepared on behalf of Pastors for Texas Children at no cost and in support of Appellees, The Texas Taxpayer & Student Fairness Coalition, et al.

I. U.S. Pastor’s Proposal Seeks to Usurp the Texas Legislature’s Authority on the Design of the Public School System.

A. Legal standard under Article VII, Section 1 of the Texas Constitution.

A system of public free schools must be efficient in order to survive a constitutional challenge. *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 729 (Tex. 1995) (*Edgewood IV*) As applied to school finance, constitutional efficiency requires that “children who live in poor districts and children who live in rich districts...be afforded a substantially equal opportunity to have access to educational funds.” *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.* 176 S. W.3d 746, 753 (Tex. 2005).

Under the Education Clause, this Court has maintained that the Legislature has the right to determine the “methods, restrictions, and regulations” of the educational system. *Edgewood IV*, 917 S.W.2d at 736 (quoting *Mumme v. Marrs*, 40 S.W.2d 31, 36 (Tex. 1931)). The means adopted by the Legislature must be “a suitable regime that provides for a general diffusion of knowledge....” *W. Orange-Cove Consol. I.S.D. v. Alanis*, 107 S.W.3d 558 (Tex. 2003) This Court has stated unequivocally that in discharging its review of Article VII claims, it will “not dictate to the Legislature how to discharge its duty, (nor will it) judge the wisdom of the policy choices of the

Legislature, or to impose a different policy of our own choosing, though that discretion is not without bounds.” *Edgewood IV*, 917 S.W.3d at 730, n.8.

B. U. S. Pastor’s Proposal is a Non-Justiciable Political Question.

A political question is one involving “a lack of judicially discoverable and manageable standards for resolving it,” or “a textually demonstrable constitutional commitment of the issue to a coordinate political department.” *Baker v. Carr*, 369 U.S. 186, 217 (1962).

Seventeen years ago, in *Edgewood IV*, this Court reviewed a similar proposal wherein intervenors urged the Court to prescribe a system that would permit their children to receive vouchers because the State’s system denied them an efficient education guaranteed by the Education Clause. The Court granted special exceptions to the petition in intervention stating that the petition “prays for a political remedy rather than alleging a statutory or constitutional right.” *Edgewood IV*, 917 S.W.2d at 747. The Court went on to hold:

In *Edgewood I*, we held that article VII, section 1 provides “a standard by which this court must, when called upon to do so, measure the constitutionality of the legislature’s actions.” 777 S.W.2d at 394. The Constitution gives to the Legislature, however, the “primary responsibility to decide how best to achieve an efficient system.” *Id.* at 399. Since then, we have consistently refrained from prescribing “the means which the Legislature must employ in fulfilling its duty.” *Edgewood II*, 804 S.W.2d at 498. Most recently, we explained our role as follows: We do not prescribe the structure for “an efficient system of

public free schools.” The duty to establish and provide for such a system is committed by the Constitution to the Legislature. TEX. CONST. ART. VII, § 1. Our role is only to determine whether the Legislature has complied with the Constitution. *Edgewood III*, 826 S.W.2d at 523.

Edgewood IV, 917 S.W.2d at 747-48.

In *West Orange-Cove II*, the Supreme Court expressly addressed the judicial limitation doctrine when courts are asked to dictate educational policy beyond their constitutional authority:

The judiciary is well-accustomed to applying substantive standards the crux of which is reasonableness. This is not to say that the standards in article VII, section 1 involve no political considerations beyond the judiciary’s power to determine. We have acknowledged that much of the design of an adequate public education system cannot be judicially prescribed. Litigation over the adequacy of public education may well invite judicial policy-making, but the invitation need not be accepted. The judiciary’s choice is not between complete abstinence from VII, section 1 issues, and being, in the State defendants’ words, “the arbiter of education and policy, overseeing such issues as curriculum and testing development, textbook approval, and teacher certification”. Rather, the judiciary’s duty is to decide the legal issues properly before it without dictating policy matters. The constitutional standards provide an appropriate basis for judicial review and determination. . . . [T]he standards of article VII, section 1—adequacy, efficiency, and suitability—do not dictate a particular structure that a system of free public schools must have. We have stressed this repeatedly. In *Edgewood I* we wrote: “Although we have ruled the school financing system to be unconstitutional, we do not now instruct the legislature as to the specifics of the legislation it should enact; nor do we order it to raise taxes.” In *Edgewood II*, we said: “We do not prescribe the means which the Legislature must employ in fulfilling its duty.” In *Edgewood III*, we reiterated: “As before, we do not prescribe the structure for ‘an efficient system of public free schools.’ . . . We have not, and we do not

now, suggest that one way of school funding is better than another, or that any way is past challenge, or that any member of this Court prefers a particular course of action . . . , or that one measure or another is clearly constitutional.”

Neeley v. West Orange Cove, 176 S.W.3d at 778-83.

By asking this Court to declare the current public school system constitutionally inefficient and directing the Legislature to replace it with a private system, U.S. Pastor essentially asks the Court to dictate to the Texas Legislature the policy choices it prefers. Such is not allowed under the political question doctrine.

II. A State Funded System of Private Religious Schools is Not More Efficient than the Current System and Will Not Produce a General Diffusion of Knowledge.

A. Private Religious Schools Funded by Vouchers Do Not Achieve the Goal of Enhancing Student Achievement.

U. S. Pastor advocates the diversion of state educational funds to private religious schools on the basis that they will be more efficient and will enhance student achievement. In reality, such programs actually impede student achievement and harm the overall education system. The Center for Tax and Budget Accountability published a study on April 15, 2015 entitled Analysis of Indiana School Choice Scholarship Program. The study analyzed the Indiana Choice Legislation whereby public tax dollars are used to subsidize private and parochial education. The findings of the study are the following, in part:

None of the independent studies performed of the most lauded and long standing voucher programs extant in the U.S.—Milwaukee, Wisconsin; Cleveland, Ohio; and Washington, D.C.—found any statistical evidence that children who utilized vouchers performed better than children who did not and remained in public schools.

After controlling for school type and student demographics, a comprehensive study commissioned by the administration of Republican President George W. Bush found that students who attend traditional, K-12 public schools outperform students who attend both charter schools and private religious schools, irrespective of denomination.

The nations that have been most successful in improving student achievement over time have focused on systems-based reforms that build capacity of the overall education system and have eschewed reforms based on competition and choice. Meanwhile, nations that have taken the competition choice path to education reform have failed to realize enhanced student achievement. (The five global leaders in education cited are Korea, Finland, Hong Kong, Singapore, and Canada.)

Analysis of Indiana School Choice Program by The Center for Tax and Budget Accountability, Chicago, Ill, April 16, 2015 (Appx. Tab 1).

B. Private Religious Schools Are Not Held to the Same Standards of Accountability as Public Schools.

U.S. Pastor argues for a change in the public education system on the basis that public school campuses are failing to meet yearly school progress goals established by the “No Child Left Behind” Act. The Record in this case indicates that there is a substantial segment of the school aged population that is inadequately resourced to meet their needs. This, however, does not indicate that the system as a whole is

failing. U.S. Pastor advocates the substitution of a private system which would be beyond the oversight of the Legislature and state agencies tasked with insuring the general diffusion of knowledge among Texas schoolchildren. Religious institutions operate independently from the public system and, by and large, do not participate in the same systems of assessment that the public schools do. Without a broad segment of the private school system participating in some assessment system common to that of the public schools, comparison between the two is speculative. It is impossible to assess how many private schools would meet the progress goals of the “No Child Left Behind” Act, as no private schools are subject to the Act and none have been evaluated by its standards.

C. The Application of Public Education Standards to Private Religious Schools Would Alter the Current Parochial School System.

Many of the pastors and religious leaders who are members of Pastors for Texas Children have private religious schools in their churches. PTC promotes the rights of churches and other religious institutions to have schools which not only educate their children but advocate a particular faith. Parents likewise should retain the right to choose to send their children to a school organized around the parents’ religious or other beliefs. However, if public funds are used to subsidize this choice, with the funds must come oversight and accountability. Religious schools will then

forfeit the right to set their own curricula and to be exempt from government mandated standards.

The Indiana Choice Legislation prohibits the state from regulating the “curriculum content” at private schools that accept vouchers. Such a system preserves the independence of private schools but results in public taxpayer money being spent on education of uncertain quality. (CTBA, page 4). The private system of education proposed will result in either the abdication by the state of oversight and control over the education of Texas children, or the abdication by private religious schools of independence and religious freedom.

D. The Exclusion of Religious Schools from the Public Education System is Not a Violation of Religious Liberty.

In 1785 John Adams said, “The whole people must take upon themselves the education of the whole people and be willing to bear the expenses of it. There should not be a district of one mile square without a school in it, not founded by a charitable individual, but maintained at the public expense of the people themselves.” Clearly, this founding father of our Republic saw public education as central to our social contract and fundamental to the provision of the common good. The last thing our fine public schools need is more dollars drained away from them, and the last thing

our fine private schools need is the government intervention and oversight that will inevitably and necessarily follow the public money they receive.

The current public school system does not force anyone to attend a public school or obtain a secular education. Private religious education is available to anyone who cherishes it enough to bear the cost. We prefer the system where those who love and cherish a faith have to bear the cost of that faith. That is the way faith flourishes.

Faith is strong and alive in America because of the freedom of religion and the separation of church and state. In the places where this is not true, the church is an empty shell. Depending on the state for funds is a death sentence for free religion and vibrant faith.

CONCLUSION

For the reasons stated above, Pastors for Texas Children respectfully requests the Court to reject the proposal for diversion of public funds to private religious schools.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that the computer program (WordPerfect X7) used to prepare this brief on the merits showed that the applicable word count pursuant to T.R.A.P. 9.4 contains 2,368 words.

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IN THE SUPREME COURT OF TEXAS

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Appellants/Appellees/Cross-Appellants

APPENDIX

Tab

1 *Analysis of Indiana School Choice Program*
by The Center for Tax and Budget Accountability, Chicago, Ill (04/16/2015)



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ANALYSIS OF INDIANA SCHOOL CHOICE SCHOLARSHIP PROGRAM

APRIL 16, 2015

1. INTRODUCTION

Recently, a number of states and cities across America have incorporated elements of school choice into their education systems in the hopes of improving student achievement.¹ Starting in 2011 and expanded in 2013, Indiana joined this movement by enacting three bills—House Enrolled Act (HEA) 1001, HEA 1002 and HEA 1003—which, when taken together, create one of the more comprehensive school choice programs in the nation (collectively the “**Indiana Choice Legislation**”). At its core, the Indiana Choice Legislation utilizes public tax dollars to subsidize school choice. These subsidies come in the form of vouchers, state income tax deductions and state income tax credits.

Certainly, Indiana’s goal of enhancing student achievement is laudable. It also directly coincides with growing national concern over the academic performance of America’s school children as measured under respected, international benchmarks like the Organization for Economic Co-operation and Development’s (OECD) “Programme for International Student Assessment” (PISA) exam. Indeed, in the most recent PISA exams, the performance of America’s children (considered as a whole) came in at just 27th in math, 20th in science, and 17th in reading.²

Not ranking among other international leaders has stimulated numerous attempts to reform America’s public education policy in a manner that improves student achievement. Of the many reforms proposed for this purpose, none have proven to be more politically divisive than school choice programs; particularly those paid for with vouchers financed by public tax revenue. The concept behind using vouchers to foment school choice is straightforward: rather than having children attend public schools based on where they live, parents receive a taxpayer financed voucher that covers all or a substantial part of the cost of having their children attend a school, public or private, of the parents’ choice. This will create competition among schools to attract students, which proponents maintain will in turn lead to adoption of better educational practices, and thereby generate enhanced student achievement.

Over the years, publically subsidized support for school choice has expanded beyond vouchers to include things like tuition tax credits. These tax credits are also appropriately called ‘tax expenditures’ because they involve the spending of public tax dollars, but indirectly through the tax code rather than directly through a government disbursement of funds. They can be designed in a number of ways, as illustrated by the Indiana Choice Legislation. Under that law, corporations or individuals can donate money to specifically designated, nonprofit “Scholarship Granting Organizations” (SGO) that then utilize the donations to grant scholarships to Indiana school children. An individual or business making such a donation can then take a credit against his, her or its Indiana state income tax liability equal to 50 percent of the donation made.

Similarly, the Indiana Choice Legislation allows parents to deduct various expenses incurred to send their children to a school other than their local, K-12 public school, against what they’d otherwise have to pay in state income taxes.³

The question for policy makers in Indiana then, is can Indiana expect its school choice program to enhance student performance or help build a better public education system statewide?

Answering this question fairly and accurately will require adherence to the following methodological practices. First, rather than focus on theoretical arguments, it is essential to review what the data say about the outcomes attained in communities that have actually implemented voucher based school choice programs in the US. For instance, the cities of Milwaukee, Wisconsin and Cleveland, Ohio have long standing voucher programs. Moreover, during the last decade, voucher programs have been initiated in Washington, D.C.; New Orleans, Louisiana; Douglas County, Colorado; and statewide in Ohio. Hence, there is plenty of evidence to analyze.

Moreover, a number of other OCED nations have adopted competition-based school reform models over the past decade in an effort to enhance student achievement⁴ and it would be instructive to review whether that approach effectively generated the desired outcomes. Focusing on what that evidence says will allow the analysis in this paper to be both accurate and to avoid the political posturing that frequently dominates this issue.

This paper will not utilize in its analysis studies conducted by organizations with a clear bias, be it pro-voucher or anti-voucher. It instead draws on objective, peer-reviewed analyses. The goal is to answer two key questions about the Indiana Choice Legislation as objectively as possible.

First, does the actual documented track record of existing voucher programs demonstrate that those programs in fact achieved the desired goal of enhancing student achievement? Here, the short and clear answer is no.

Second, can voucher programs be expected to enhance student performance or improve public education systems, based on the education reforms implemented in the nations that currently rank in the top five in the world in reading, math, and science under PISA? Again, based on the evidence, the answer is no.

In fact, it appears that core aspects of Indiana's voucher program are directly contrary to best practice education reforms implemented by the five global leaders in education: Korea, Finland, Hong Kong, Singapore, and Canada.⁵

Indeed, based on the available evidence, rather than improve student performance and the overall public education system in Indiana, the Indiana Choice Legislation may actually impede student achievement specifically and harm the education system generally. At a time when public resources are scarce, it is not advisable for state decision makers to divert public education funding to programs that cannot be expected to help children learn or improve the education system.

2. KEY FINDINGS

- None of the independent studies performed of the most lauded and long standing voucher programs extant in the U.S.—Milwaukee, Wisconsin; Cleveland, Ohio; and Washington, D.C.—found any statistical evidence that children who utilized vouchers performed better than children who did not and remained in public schools.
- After controlling for school type and student demographics, a comprehensive study commissioned by the administration of Republican President George W. Bush found that students who attend traditional, K-12 public schools outperform students who attend both charter schools and private religious schools, irrespective of denomination.
- One probable consequence of the Indiana Choice Legislation, therefore, will be the diversion of public, taxpayer dollars away from the state's higher performing public education system to lower performing private religious schools. Because of this, the Indiana Voucher Legislation may actually diminish student achievement in the state over time.
- The nations that have been most successful in improving student achievement over time have focused on systems-based reforms that build capacity of the overall education system and have eschewed reforms based on competition and choice. Meanwhile, nations that have taken the competition choice path to education reform have failed to realize enhanced student achievement.

Indiana School Choice Scholarship Program

- The Indiana Choice Legislation fails to comport with the capacity-building education reform model that has been implemented in nations that have successfully enhanced student achievement over time. Instead, the Indiana Choice Legislation adopts the competition/choice model of education reform that has failed to enhance student performance in other nations globally.
- According to the annual financial report of the Indiana Department of Education, Indiana spent \$115 million on its voucher program in the 2014-2015 school year. In context, that means over \$115 million of public, taxpayer money annually will be diverted from potentially enhancing student achievement by following the evidence-based strategy of building capacity in the state's public school system, and instead used to subsidize students attending private schools.
- Because the Indiana Choice Legislation prohibits the state from regulating the "curriculum content" at private schools that accept vouchers, public taxpayer money will be spent on education of uncertain quality.
- Subsidizing individual decisions that do not generate a public good or service—even legitimate ones well within the rights of, in this case, the parents making them—is an inappropriate use of public money. The Indiana School Expenditure Deduction is particularly difficult to justify from a public policy standpoint for two reasons. First, it is not means tested and hence is using public revenue to pay for private economic transactions that in all likelihood would have taken place anyway. Second, it diverts revenue from public education to assist children in attending private schools that have been found by the Lubienski study to underperform traditional public schools.
- Because white children as a percentage of voucher recipients in the 2014-2015 school year exceed the next largest racial group by more than 44 percentage points, Indiana's voucher program will likely lead to increased racial stratification within Indiana's K-12 public schools.
- The School Expenditure Deduction will cause local governments across Indiana to lose up to \$1.4 million annually in Local Option Income Tax revenue, thereby constraining their ability to provide police, fire, trash collection and other core local services to constituents. This is difficult to justify, given that the public revenue spent to subsidize private decisions under the School Expenditure Deduction serves no identifiable public interest.

3. VOUCHERS DO NOT ENHANCE STUDENT PERFORMANCE

While the notion of school choice is nothing new—Adam Smith discussed it in his seminal text *The Wealth of Nations*—when the data on the correlation between school choice programs and student achievement are examined, they consistently point to the same conclusion: there is little to no evidence that voucher programs enhance student achievement. Studies of the long-term effectiveness of the two oldest school choice programs in the US—the Cleveland voucher program⁶ and the Milwaukee Parental Choice Program,⁷ clearly illustrate this point.

Consider the experience in Milwaukee first. According to a long-term analysis of the Milwaukee Parental Choice Program conducted by the School Choice Demonstration Project at the University of Arkansas, a random sampling of non-voucher children attending grades 3-8 in Milwaukee public schools performed statistically similar to the children in grades 3-8 whose parents participated in the voucher program.⁸ This random sampling of grade school students in the Milwaukee school system was done over a five

year period and was longitudinal, meaning researchers initially chose a random sample, but then followed the same students over the entire five years. This method not only allowed researchers to view the results over a time period as opposed to a single year, but because it followed the same students, it eliminated the chance of bias due to different students being analyzed in different years.⁹

Indiana University researchers reached the same conclusion about Cleveland's experience with a voucher based school choice system after conducting a long-term analysis of that program.¹⁰ As for the highly lauded effort in Washington D.C., a three-year study conducted by the U.S. Department of Education found no significant difference between the performance of voucher and non-voucher children in reading and math.¹¹

The evidence that vouchers do not enhance student performance over the long haul has become so clear and convincing that even Rick Hess of the pro-voucher American Enterprise Institute (AEI) acknowledged as much when he said:

"First off, 20 years in, it's hard to argue that the nation's biggest and most established voucher experiment has worked if the measure is whether vouchers lead to higher reading and math scores."¹²

This failure of extant voucher programs to lead to enhanced student achievement has prompted a shift in the rhetoric of school choice advocates. Proponents used to argue in favor of school choice based upon the perceived academic benefits and increased student achievement school choice would generate. Given that the evidence consistently failed to support that claim, proponents have shifted their rationale for implementing vouchers away from enhanced student achievement altogether.

Now, many proponents of vouchers argue that, although there is scant evidence that vouchers improve student achievement, vouchers have not been found to have a significantly negative impact on student achievement.¹³ Others have gone so far as to eschew enhanced student achievement as a rationale for vouchers altogether, claiming that vouchers are worthwhile because parental choice is an important, fundamental right in and of itself. AEI scholar Charles Murray described the situation as follows:

"As an advocate of school choice, all I can say is thank heavens for the Milwaukee results. Here's why: If my fellow supporters of charter schools and vouchers can finally be pushed off their obsession with test scores, maybe we can focus on the real reason that school choice is a good idea. Schools differ in what they teach and how they teach it, and parents care deeply about both, regardless of whether test scores rise."¹⁴

Murray's statement is certainly a legitimate personal belief or ideological position, however, it is a questionable basis for taking public taxpayer dollars that are supposed to be used to provide the best education possible to children, and instead diverting those tax dollars to programs that have little to no correlation with enhanced student achievement. The charge of public officials is to ensure that public, taxpayer dollars spent on education are targeted to helping children learn and achieve academically to the highest levels. It is not appropriate to divert public, taxpayer dollars that are supposed to be funding the best education for children possible, to instead cover all or part of the cost of funding the choice of parents to send their children to private schools, which may meet their personal or ideological beliefs, but the data indicate do not enhance student achievement. Certainly, parents do and should retain the right to choose to send their children to a school organized around the parents' religious or other beliefs. It is just that there is no compelling policy reason for the public sector to subsidize that choice.

In fact, from a purely education policy point of view, the data indicate there are compelling reasons for the public sector not to subsidize such choices with tax dollars. One of the most comprehensive analyses of differences in student achievement by school type was conducted at the request of the George W.

Bush Administration by Professors Chris and Sarah Lubienski at the University of Illinois. The Lubienskis used data from the 2006 National Assessment of Educational Progress (NAEP) test. By utilizing a complex statistical method of analysis called hierarchical linear modeling, the Lubienskis were able to control for different factors, such as demographic composition of the student body, type of school (religious, charter, traditional public), and geographic location, all of which impact student achievement. Most other studies comparing student achievement in voucher, charter, and public schools do not control for these factors and consequently fail to provide a comprehensive picture of the impact demographics have on student achievement.

Thus, the Lubienski analysis offers the most comprehensive and reliable picture of how students across school types perform academically, and the results are unambiguous. After controlling for the geographic location of the school, the type of school, and the demographics of the students being tested, the Lubienski study clearly shows that students who attend traditional, K-12 public schools outperform students who attend both charter schools and private religious schools, irrespective of denomination (although student achievement was lowest in private, conservative Christian schools).¹⁵

The results of the Lubienski study are especially instructive for Indiana for two reasons. First, the majority of schools that benefited from the Indiana Choice Legislation are religiously affiliated private schools. In February 2015, over 90 percent of all schools approved to accept school choice funds have overtly religious mission statements.¹⁶ This means that a consequence of the Indiana Choice Legislation will be a diversion of taxpayer dollars from the state's higher performing public education system to lower performing private religious schools.

The Lubienski study was commissioned by the administration of President George W. Bush. That is important because the Bush Administration supported school choice and vouchers. This eliminates concerns that the Lubienskis were predisposed to produce a study that questioned the efficacy of school choice programs, and adds further weight and credibility to their findings.

This is not to say that schools with a religious curriculum are bad places to send a child or that they will poorly educate a child. The point is that if Indiana is going to divert funding from traditional K-12 public schools, it should divert the funding to a school which has been shown to have achievement rates that exceed that of the traditional public schools.

The bottom line here is clear: when an ideological viewpoint is not allowed to color the issue, the overwhelming corpus of independent data and evidence indicate that the Indiana Choice Legislation will most likely not enhance student achievement, and in all probability could lead to diminished student achievement over the long term. Hence using public taxpayer revenue to fund the program, whether indirectly through tax credits and deductions, or directly through vouchers, is questionable.

4. BASED ON THE REFORMS IMPLEMENTED BY GLOBAL LEADERS IN EDUCATION, THE INDIANA VOUCHER SYSTEM CAN NOT BE EXPECTED TO IMPROVE STUDENT PERFORMANCE SPECIFICALLY OR THE STATE EDUCATION SYSTEM GENERALLY.

As indicated previously, the top five nations in math, science, and reading on the 2009 PISA exam were Korea, Finland, Hong Kong, Singapore, and Canada.¹⁷ These nations, however, were not always at the forefront of public education. According to independent analysis conducted by Michael Fullan, Professor Emeritus of the Ontario Institute for Studies in Education at the University of Ontario, each of these nations implemented reforms that successfully enhanced student performance by building the overall capacity of their respective education systems generally. This capacity building effort focused on

systems-based enhancements in core aspects of education such as pedagogy, teacher quality (and pay), mentoring, and induction.¹⁸ These reforms incorporated key features designed to build the overall capacity of their public school systems. Those key features included reforms that: (i) were measurable in their results; (ii) based on the evidence, could be expected to lead to an improvement in the whole public education system; and (iii) for which a clear case can be made that a given strategy produces the desired result.¹⁹

Capacity building at its core includes: (i) initiatives that develop the skills of the vast majority of teachers to high levels through enhanced pedagogy, group work, collaboration, and mentoring; and (ii) investing sufficient resources into the education system so it can generate the aforesaid instructional capacity.

In the five nations that improved student achievement through successful systems-based capacity building, significant effort was expended on increasing the skills of teachers and their ability to impart knowledge to students as a primary pathway to enhanced rates of student achievement.²⁰

Moreover, focusing on reforms that build the capacity of the education system as a whole is not only crucial to enhancing student achievement overall, but it is also particularly crucial for children in poverty.²¹ This includes educators, administrators, and key support staff. The research also shows that capacity building performed laterally, that is among schools within a district, can have considerable district wide benefits.²² Case studies have indicated that administrators and teachers become almost as interested in the success of other schools in their district as they are about their own. This fosters a highly collaborative environment, where faculty and leadership work together across the district, developing clear operational understandings of educational goals and strategies, incubating new ideas, skills, and ultimately become focused on districtwide improvement.²³

The Indiana Choice Legislation not only fails to help build the type of teaching capacity that has been demonstrated to enhance student achievement successfully, but may actually diminish the capacity of the Indiana education system, thereby impeding its ability to improve overall. The reasons for this are obvious. First and foremost, it takes tax revenue out of the public education system and diverts that revenue to private, in many cases religious schools. Yet the Lubienski study showed that these schools generally provide a lower quality of education than do public schools, resulting in lower student achievement. This alone raises concern that the Indiana voucher program will ultimately have a negative impact on public education generally and on student achievement specifically.

Second, nothing in the Indiana Choice Legislation can be expected to build overall teaching capacity, encourage teachers to work in groups or encourage mentoring. If anything, creating competition between schools on the one hand and between teachers within a school on the other, reduces significantly the incentive to work collaboratively and build capacity. This is in direct opposition to the course followed by nations that have successfully improved their education systems. Consider, for instance, the example of Finland, which consistently ranks at or near the very top in student achievement on international evaluations such as PISA. It eschewed choice and competition in favor of capacity building. According to Pasi Sahlberg of the Finnish Ministry of Education, "The main driver of education policy is not competition between teachers and between schools, but cooperation."²⁴

Closer to home, a recent study conducted by Marisa Cannata of Vanderbilt University concluded that school choice programs do not effectively impact the teacher labor market in any measureable way, noting that teachers most often self-select into schools based upon a work environment and curriculum they value, as opposed to salary levels or job security.²⁵

The evidence is clear, school choice and competition neither lead to enhanced student performance, nor encourage quality teachers to self-select into one school over another. Yet, it is that failed competitive model that is at the heart of the Indiana Choice Legislation.

It appears that the sole policy justification for the Indiana Choice Legislation is ideological: that is, choice is supported for its own sake, irrespective of the fact that choice cannot be expected to improve either the overall education system or student achievement, and indeed may be counterproductive.

5. THE PARTICULARS OF THE INDIANA SCHOOL CHOICE INITIATIVE

Indiana joined the ranks of states with voucher programs with the enactment in 2011 with the Indiana Choice Legislation and expansion in 2013. As indicated previously, this legislation significantly expands the ways in which public dollars in Indiana may be directed to private schools. Indiana's school choice initiative contains three distinct components, each of which increases the ability of parents to use what would otherwise be public money to cover the cost of a private education.

First, the Indiana initiative offers parents a traditional school voucher (Choice Scholarship) program. Second, Indiana also created an income tax credit (Scholarship Tax Credit) for individuals and corporations making contributions to private, nonprofit SGOs, which in turn use these donations to fund scholarships for Indiana school children to attend private schools. An individual or corporate contributor to a SGO receives a credit against what she, he or it would otherwise have to pay in state income taxes, in an amount equal to 50 percent of her, his or its SGO contribution. Third, the Legislation allows parents to deduct against their Indiana taxable income, up to \$1,000 per child for unreimbursed education expenses.

(a) The Indiana School Choice Scholarship

Parents may receive a voucher that covers 50 to 90 percent of tuition payments at an Indiana school which has Indiana Department of Education approval (a "Choice Approved School"). In 2014-2015, the voucher level was set to a maximum of \$4,800 for grades K-8. The amount of a voucher is based on household income. To qualify for the 90 percent Choice Scholarship, the student must be a member of a household whose income is 100 percent or below the eligibility cutoff for the federal free or reduced (F/R) lunch program. Students in households with incomes up to 150 or 200 percent of the federal F/R lunch program eligibility cutoff may receive a 50 percent award. Since anyone in the state can apply for the scholarship if they meet the broad income guidelines, the initiative has the potential to be the largest voucher program in the country.

In order to be eligible, students must have either been enrolled in a traditional, K-12 Indiana public school that does not charge tuition for at least two semesters prior to enrolling in a Choice Approved school, have received a scholarship under the program, or from a SGO (via the Scholarship Tax Credit program) in the preceding school year. In 2013, eligibility was expanded via three new pathways: 1) siblings of previous choice scholarship students; 2) students living in areas served by an F school; and 3) all special education students with family income below 200 percent of F/R program (\$85,000). Each student may claim only one scholarship per year, and if an eligible student enrolls for only part of the year, the Choice Scholarship will be awarded on a pro-rated basis.

The actual dollar value of the voucher is limited to the lesser of:

- The sum of tuition, transfer tuition, and fees an eligible student would be required to pay to attend an eligible school;
- \$4,800 for students in grades K-8; or,
- An amount based off of the per-student state funding for the student's school of residence
 - 90 percent of the state funding formula amount if the household income is up to 100 percent of F/R eligibility

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- 50 percent of the state formula amount if household income is up to 150 percent of F/R eligibility
- 50 percent of the state formula amount for a student in a household with an income no more than 200 percent of the qualification for the F/R program, if the student received a Choice Scholarship for the 2012-2013 year or if the student has a disability that requires special education.²⁶

In its first year of existence, school year 2011-2012, the number of Choice Scholarships was capped at 7,500. For the 2012-2013 school year, that cap was increased to 15,000. Starting in 2013-2014, the cap was eliminated. There is no statutorily mandated cap on the number of Choice Scholarships that Indiana can issue in subsequent years.²⁷

(b) School Expenditure Tax Deduction

This tax deduction allows Indiana taxpayers to deduct up to \$1,000 per child for unreimbursed education expenses associated with enrollment, attendance, or participation of a child in a private school or for expenses connected with homeschooling a child. Families are eligible to claim this tax deduction regardless of household income.

(c) School Scholarship Tax Credit

Any individual or entity may donate funds to SGOs on a first come first donate basis. The maximum amount permitted is \$15 million, of which half, or \$7.5 million, is eligible as a tax credit. Money donated to SGOs is used to fund scholarships for private schools.²⁸ Donors are then able to claim a credit in an amount equal to 50 percent of their donation, against that donor's Indiana state income tax liability. SGOs are nonprofit entities authorized to distribute the donations to pay for tuition for children whose household income is at or below 200 percent of F/R eligibility. SGOs can set their own guidelines for distribution of funds, but cannot limit funds to one school. Indiana currently has five approved SGOs.²⁹

While each of the three components listed above have been implemented in other voucher programs, no other state offers as many methods to use public dollars (either via direct voucher offerings or tax deductions) to pay for private school attendance. As previously stated, because Indiana's program is open to any student who meets the eligibility guidelines, now that the number of Choice Scholarships is uncapped it has the potential to be one of the largest voucher programs in the nation and is already the fastest growing voucher program ever.³⁰ Combined with the school Scholarship Tax Credit and the School Expenditure Tax Deduction, there are more school choice options in Indiana than in any other state.

6. COST BENEFIT ANALYSIS – IMPACT ON TAXPAYERS

(a) Identifying the Value Proposition

A final objective method by which to evaluate an education reform such as the Indiana School Choice Scholarship Program is a comparison of the initiative's costs to its benefits. If this initiative is going to cost the taxpayers of Indiana money—either by way of increased costs or decreased revenues—what is the value of the benefits it will generate? If it cannot show benefits in excess of costs, decision makers and taxpayers alike should question whether it should remain public policy in the state of Indiana.

The value of the benefits the Indiana Choice Legislation can be expected to generate is best measured in the context of student achievement and educational equity or access. If this initiative is going to add to the overall cost of education in Indiana, or result in a reduction of tax revenue, by what comparable level can it be expected to raise student achievement and/or increase access to a high quality education for children who currently do not have it?

To put the question succinctly:

“Will the Indiana school choice initiative lead to better educational outcomes for my and/or my neighbors’ children, and be an efficient use of taxpayer dollars at a time when public budgets are stretched as thin as they currently are?”

(b) Fiscal Implications Generally

Previous sections of this report analyzed the evidence concerning the potential impact of the Indiana Choice Legislation on student achievement, and found that there can be no expectation that achievement will improve, and there is concern that it may decline.

The Indiana school choice initiative has fiscal implications for both state and local governments. State government will realize reduced revenue from the initiative’s tax credit and income tax deduction. Local governments at the county level will also realize decreased tax collections due to the initiative’s School Expenditure Tax Deduction. The question of whether the revenue loss caused by the Indiana Choice Legislation is justified, needs to be evaluated in the context of both the benefits the initiative can reasonably be expected to generate as well as other significant developments that have impacted the state’s fiscal system.

First and foremost is the reality that Indiana, like all other states, is recovering from the Great Recession. Among other things, the recession noticeably reduced state tax revenue.³¹ In FY2010, Indiana experienced a decline in sales tax revenue of 3.6 percent, while personal income tax revenues declined by 12.5 percent and corporate income tax revenue declined by 34.8 percent from FY2009.³² This loss of state revenue is coming at a time that is very difficult for Indiana’s fiscal system generally and education funding regime specifically to absorb. In 2008, the Indiana General Assembly made the decision to change the Indiana public school funding formula by shifting more of the responsibility to fund education to state-based resources—specifically the sales tax—and away from local resources—specifically the property tax. Funding for education is now less reliant on property tax revenue and more reliant on sales tax revenue.³³

From a school funding equity standpoint, this change in law represents a positive move forward. After all, because of differences in local community home values and thus local property wealth bases available to tax, overreliance on property tax revenue to fund public education can lead to inequitable levels of education funding. Unfortunately, this shift in responsibility for education funding to the state level is coming at a time when Indiana’s state tax revenue collections are being constrained by the combined impact of the Great Recession and the slow recovery following it on the one hand, and the overly narrow base of the Indiana sales tax on the other.

The base of a tax is simply what the tax is imposed upon. So for a sales tax, the base includes solely those transactions to which the sales tax is applied. Indiana’s sales tax base is too narrow because it does not include a significant number of consumer services. Instead, of the 168 categories of services available to tax, Indiana’s sales tax only applies to 24.³⁴ This is a problem, because services represent both a very large and the fastest growing segment of the Indiana economy.³⁵

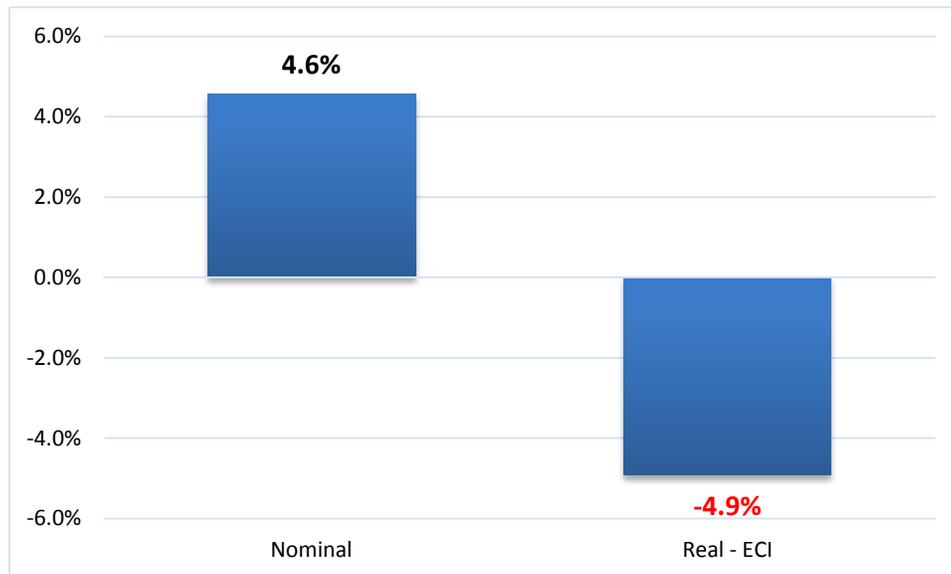
Not surprisingly then, given the scope of the economic downturn and the narrowness of Indiana’s sales tax base, the state’s sales tax revenue declined during the Great Recession. This in turn led Indiana to reduce its funding for K-12 education, just as new legislation allocated more responsibility to the state to fund schools. In FY2013, the per student “foundation” funding was lowered to \$4,405, a \$100 reduction from the FY2011 level.³⁶ Additionally, between FY2010 and FY2013, Indiana law makers cut K-12 education general funds by nearly \$100 million.³⁷ However, in FY2014 and FY2015, law makers did

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increase funding for K-12 education, increasing the per student foundation level to \$4,569 and \$4,587 respectively, a 1.8 percent increase from FY2011 levels.³⁸

However, because the cost of providing public services such as education increases annually due to inflation and population changes, this nominal dollar decrease is actually a greater reduction in real, inflation adjusted terms, from FY2010 levels.

Figure 1
Nominal and Real Percent Change in K-12 Education Tuition Support Funding
FY2010 to FY2015



Source: CTBA analysis of Indiana Biennium Budget, July 1, 2011 to June 30, 2013; Indiana Biennium Budget, July 1, 2013 to June 30, 2015.

Since FY2010, and the enactment of the Indiana Choice Legislation, K-12 Tuition Support funding in the state has been increased by \$293.6 million or 4.6 percent in nominal terms from \$6.42 billion to \$6.71 billion.³⁹ However, in real terms, adjusting for inflation using the Employment Cost Index (ECI), state funding for Tuition Support has declined by **-\$347.3 million** or **4.9 percent**. This diminished the capacity of Indiana schools to provide quality education over the past fiscal years, despite the fact that enhancing capacity is the evidence-based driver of improving school systems generally and student achievement specifically. The expansion of the Indiana School Choice Scholarship Program will make matters worse by diverting additional revenue from public schools, further diminishing the capacity of the K-12 education system. This runs counter to evidence-based reform efforts that have effectively enhanced student performance.

(c) **State Level Effects**

All three components of the Indiana Choice Legislation will result in a loss of operating revenue for public K-12 schools, with the School Choice Scholarship and the School Expenditure Deduction having the largest impact in the short term. The effects of each are detailed below.

(i) **Choice Scholarship Fiscal Impact**

The Choice Scholarship not only resulted in a loss of operating revenue to Indiana K-12 public schools over the last two years, but the total amount of that loss could increase significantly in future years given the design of the program. For the 2014-2015 school year, the Indiana Department of Education

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awarded Choice Scholarships to 29,148 students statewide, with an average scholarship amount of \$3,977.08 per student.⁴⁰

In total, Indiana distributed \$115.9 million dollars in Choice Scholarships to the 29,148 students in 2014-2015.⁴¹ The number of students applying for vouchers, and the total amount of voucher funding the state will disburse are projected by to grow in subsequent years.⁴²

Figure 2 illustrates the number, value and average of voucher scholarships awarded in the first four years of the program. Note that while the cap on voucher scholarships doubled from 7,500 to 15,000 between 2012 and 2013, the number of actual voucher scholarships issued more than doubled, a 133 percent increase, from 3,911 to 9,125. In 2013-2014, the first school year in which voucher scholarships were uncapped, the number of scholarships increased from 9,135 to 19,809, a 116 percent increase. By 2014-2015, the number of scholarships increased to 29,148, a 47 percent increase from 2013-2014.⁴³

Figure 2
Choice Scholarship Details: FY2012 and FY2013

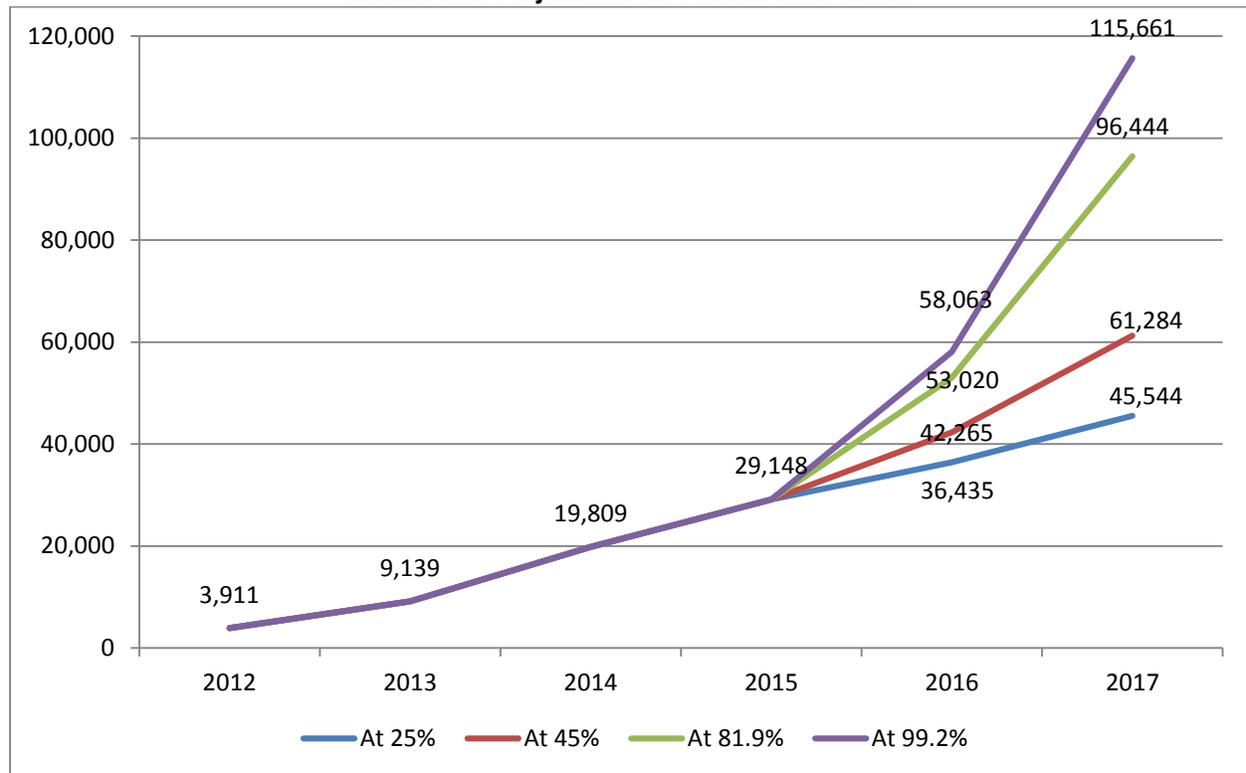
School Year	Number of Scholarships	Cap on Scholarships	Percent Change	Eligible Award Amount of Scholarships	Average Scholarship
2012	3,911	7,500		\$16,207,912	\$4,144
2013	9,139	15,000	133.7%	\$37,317,881	\$4,083
2014	19,809	None	116.8%	\$81,066,786	\$4,092
2015	29,148	None	47.1%	\$115,923,831	\$3,977

Source: Indiana Department of Education, *Choice Scholarship Program Annual Report: Participation and Payment Data*, February 2015

The number of vouchers Indiana was able to offer in the 2011-2012 school year was capped at 7,500. In the 2012-2013 school year the cap was increased to 15,000, and in 2013-2014 the cap on the number of vouchers available was lifted. While it is impossible to predict the number of students that will apply for and receive vouchers in subsequent years, CTBA has modeled several different potential scenarios, displayed below in Figures 3, 4 and 5.

In Figure 3, CTBA projected the potential increase in students receiving choice scholarships in 2015-2016 and 2016-2017 using four different scenarios. As noted, in 2013, the number of students who were granted voucher scholarships increased by 133 percent from 2012 levels, but was still subject to an overall cap of 15,000.⁴⁴ In 2014 and 2015, with the number of voucher scholarships that can be awarded uncapped, the program grew by 117 and 47 percent respectively. If the number of scholarships awarded doubles each year for the next two years—which is slightly above the average annual rate of growth of 99.2 percent over the last three years—then in just six years, the number of choice scholarships granted will have increased by 2,857 percent, costing a total of over \$480 million.

Figure 3
Awarded Student Choice Scholarships in FY2012 -
FY2015 and Projections for FY2016 and FY2017



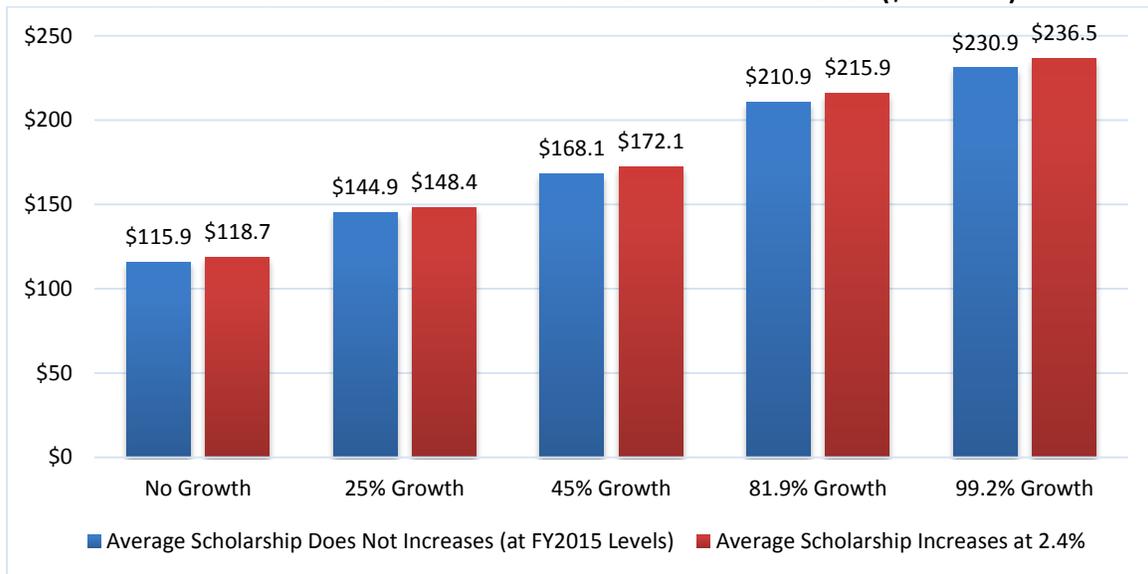
Source: CTBA estimates based upon Indiana Department of Education, Choice Scholarship Program Annual Report: Participation and Payment Data

There is one important point to consider when looking at the CTBA projections in Figure 3. There are a limited number of private schools and limited seats in those schools for students. According to the U.S. Department of Education, there were 111,872 students enrolled at private schools in Indiana in 2011-12.⁴⁵ Currently, 314 schools participate in the program, but there are over 900 private schools in Indiana.⁴⁶ While it is unlikely, if over the next few years these schools join the program, it is possible for enrollment to reach the FY2017 projection level at 99.2 percent growth. Also, new private schools may open or current ones expand the number of seats they offer, as demand grows. Finally as the Indiana Senate Democrats point out, past predictions have underestimated the total number of vouchers.⁴⁷

However, considering the lower growth levels in enrollment between 2014 and 2015 compared to previous years and the fact that most private schools in Indiana still are not a part of the program, a lower growth projection may, in fact, be more realistic. Even still, at 25 percent annual growth, the program projects to enroll over 45,000 students in 2017, over double the number of students in 2014.

Based on the projections in Figure 3, CTBA projected future changes in spending on the voucher scholarships over the coming two years. In 2015, the maximum individual Choice Scholarship a student can receive was \$4,800 for 1st through 8th grade students.⁴⁸ However, the average scholarship awarded fell by \$115 to \$3,977. In Figure 4, CTBA projected the total cost of the voucher scholarships for FY2016 under two scenarios: (i) the average per student scholarship spending remained at FY2015 levels (\$3,977); (ii) the average per student scholarship increased to \$4,073 by 2.4 percent from FY2015, which is the average percent increase in K-12 tuition support funding in Indiana since FY2013.

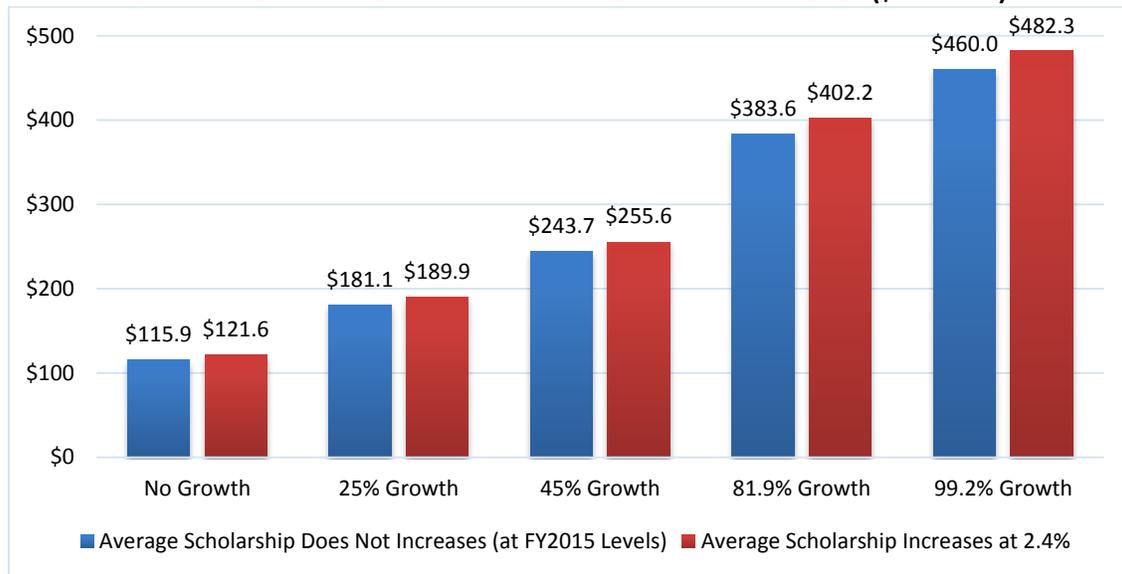
Figure 4
Projected Voucher Spending Under School Choice Scholarships
Based on Different Enrollment Growth Estimates for FY2016 (\$ Millions)



Source: CTBA estimates based upon Indiana Department of Education, Choice Scholarship Program Annual Report: Participation and Payment Data

In 2015, the maximum individual Choice Scholarship a student can receive increased from \$4,700 to \$4,800 (2.1 percent) for 1st through 8th grade students.⁴⁹ In Figure 5, CTBA projected the total cost of the voucher scholarships for FY2017 under two scenarios: (i) the average per student scholarship spending remained at FY2015 levels (\$3,977); (ii) the average per student scholarship increased to \$4,170 a compounded increase of 2.4 percent from FY2015, which is the average percent increase in K-12 tuition support funding in Indiana since FY2013.

Figure 5
Projected Voucher Spending Under School Choice Scholarships
Based on Different Enrollment Growth Estimates for FY2017 (\$ Millions)



Source: CTBA estimates based upon Indiana Department of Education, Choice Scholarship Program Annual Report: Participation and Payment Data

The future cost estimates for 2015-2016 (FY2016) and 2016-2017 (FY2017) are based on data from the Indiana Department of Education. CTBA estimates are based upon student growth projections and the average awarded scholarship remaining flat at FY2015 levels or increasing at 2.4 percent annually (the same rate that the state has increased K-12 tuition support since FY2013). In Figures 4 and 5, the blue bars show the increase in total spending by the state on vouchers if enrollment increases but the average spent per student on Choice Scholarships remains at FY2015 levels. However, this is unlikely for two reasons. First, the cost of educating students increases annually due to inflation and population changes; second, the state has continued to raise the maximum scholarship and in doing so, makes opening a private school more attractive as more money is available to those schools.

Given these reasons, the total spending on vouchers could exceed \$200 million for FY2016 and possibly reach over \$400 million in FY2017 under a number of scenarios. While growth of 99.2 percent over the next two years is somewhat unlikely due to space limitations, if enrollment were to increase by 81.9 percent, which is the average growth of the program over the last two years, in each of the next two school years, even if the average scholarship remained at FY2015 levels, spending on the scholarships would top \$380 million. If the average per student scholarship spending were to grow at a rate similar to that of the state’s K-12 tuition support and enrollment were to increase at 99.2 percent, the average over the last three years, then the total spending on student voucher scholarships would approach half a billion dollars.

Although the total voucher distribution is relatively small compared to the overall K-12 general fund budget in 2015, 1.7 percent, it has the potential to increase significantly in subsequent years, putting a strain on Indiana’s K-12 budget. It also diverts public spending on education away from investing in evidence-based strategies tied to enhancing student achievement. However it’s not difficult to envision the program consuming over 3 percent of the K-12 education budget in the years to come. If by 2017 enrollment increases to over 60,000 students, then the cost of program will be in excess of \$250 million.

(ii) School Choice Scholarship Accountability and Oversight Measures

Indiana Code 20-51-4 creates a number of mandates charter and voucher schools must satisfy to be eligible to receive public funds. For instance, voucher and charter schools that receive public funds must have their entire student body take Indiana's standardized test, the ISTEP, and the schools must thereafter make the results of those test publicly available. They also must include in their curriculum education on a variety of civic topics, from the Indiana and U.S. Constitutions, the National Anthem, Pledge of Allegiance, Thomas Paine's 'Common Sense,' and The Mayflower Compact, to the importance of following directions, respecting authority and one's parents and methods of voting in democratic elections.⁵⁰ Indiana also requires the state Department of Education to evaluate whether participating voucher and charter schools are in compliance with the preceding requisites of Indiana Code 20-51-4.

While the content minimum of the civics-related curriculum that Indiana requires voucher schools to provide is specified in some detail, other core areas of instruction are only referenced generally. So while voucher schools must provide instruction in Language Arts, Math, Social Studies, Sciences, Fine Arts and Health, the statute specifically provides that the state cannot regulate "curriculum content."⁵¹ Hence the level, depth, and breadth of academic offerings available at voucher schools will not be subject to any minimums nor scrutiny. This means public tax dollars will be spent to pay for an education of uncertain quality.

Moreover, prior to the Indiana Choice Legislation, the Department of Education was required to evaluate the civics curriculum of charter schools annually. However, in the final version of the Indiana Choice Legislation, the number of schools evaluated annually was changed from every school to just five percent of all charter and voucher approved schools.⁵² As of 2015, Indiana has approved 314 private schools for eligibility for the Choice Scholarship Program.⁵³ Thus, although the number of schools potentially subject to evaluation by the Department of Education increased from 65 (the number of charter schools that existed prior to the creation of the Indiana Choice Legislation) to 314, the actual number of schools that the state's Department of Education must evaluate has declined to just 16.

One reason for this change was to ensure the Department of Education would not have to hire additional staff and hence save taxpayer money. Although that money will be saved, it will come at the cost of both accountability and transparency, since it will now be possible for schools to go up to twenty years without having the civic education aspects of their curriculum evaluated.

This lack of accountability in a civic education curriculum should be troubling to Indiana taxpayers for at least two reasons. On the one hand, if public money is flowing to charter and private schools, those schools should be held accountable to the same standards and have the same basic, civic curriculum as their public counterparts. On the other hand, in an effort to save money, the Indiana School Choice legislation may frustrate the goal of having a similar, uniform civic curriculum to help establish social norms and values by not holding private, voucher schools to the same rigorous standard required of K-12 public schools. That said, at least the Indiana Choice Legislation specifies some minimum content for civics. It completely leaves curriculum content in all other subjects up to the full discretion of the applicable voucher school. Hence, concerns about academic rigor are even more pertinent to other core curriculum, such as Math, Science and English.

Additionally, it has recently come to light that former Indiana school Superintendent Tony Bennett's education team may have overhauled his signature "A-F" school grading system to improve certain schools' marks.⁵⁴ These allegations show another possible flaw in the accountability system that has been set up in the state. If insiders are easily able to 'juke the stats' of schools that have strong political

ties, then the information that is provided for the public may not be accurate, only impeding parents' abilities to make good decisions about schools they are choosing among. Even worse, it calls into question the validity of the entire accountability system in the state.

(iii) School Expenditure Deduction

Indiana's Choice Scholarships are restricted to families who meet income eligibility requirements. That means the program is targeted to families that have limited means and hence limited capacity to pay for a private school education. That targeting of benefits is totally absent from the Indiana School Expenditure Deduction, which is available to all Indiana families, regardless of income. Under this program, a taxpayer is entitled to reduce their adjusted gross income for purposes of computing their Indiana income tax liability by deducting education expenditures connected with enrollment, attendance, participation of a child in a private K-12 school, or for expenses incurred while home-schooling a child.⁵⁵

Since the only eligibility requirements are that the child of the taxpayer claiming the deduction be entitled to a free elementary or high school education in an Indiana public school, the school expenditure deduction may be used for private school tuition, books, curricula, and other school supplies. It cannot be claimed for the purchase of a computer, but software is allowed.⁵⁶ The deduction is limited to \$1,000 per dependent child on behalf of whom the taxpayer made education expenditures.⁵⁷ It can also be utilized by a parent whose child is receiving a School Choice Scholarship or a Tax Credit Scholarship.⁵⁸

As of June 2012, the Indiana Department of Revenue (DOR) informed CTBA that current DOR staff will have the capacity to oversee the administrative components of the School Expenditure Deduction. However, if the program grows in size, the DOR believes it will have to hire additional staff to help with the administrative portions of the deduction.

In May 2011, the Indiana Legislative Services Agency (LSA) estimated the School Expenditure Deduction will result in a loss of \$3.3 to \$3.7 million tax dollars annually.⁵⁹ LSA cautions, however, that it is possible the actual loss in revenue will exceed \$3.7 million if taxpayers claim the deduction for dependent children at non-accredited private schools, in which the number of students enrolled is unknown.⁶⁰ However, these costs are based on data from 2011 and since then the law has changed. More families are eligible to take part in the Choice Scholarship program and enrollment in private schools has increased and is projected to continue to do so. Thus, earlier estimates most likely underestimate the true cost today.

In fiscal terms, this loss of revenue to the Indiana general fund constitutes a "tax expenditure." As the name implies, a "tax expenditure" is spending of public money, not directly by cutting a check, but indirectly through the tax code. In essence it works like this. Instead of collecting tax revenue from a taxpayer and then using that money to cover the direct costs of providing a public good or service such as education or caring for the elderly, a taxpayer is allowed to keep the tax revenue he or she otherwise would have to pay, to help cover the cost of a public good or service that individual taxpayer is providing. One classic example of a tax expenditure used in the public interest involves granting tax relief to businesses for job creation – because that job creation generates positive economic growth that benefits everyone.

It is hard to justify the Indiana School Expenditure Deduction as a legitimate tax expenditure, because there does not appear to be any public benefit associated with this use of public money. Sure, an individual parent has the right to decide, for instance, that her child will receive a religious-based education. But that is purely an individual choice that generates no corresponding public good. Indeed, it makes little difference to the neighbors of that child if the child receives an education steeped in the

teachings of Islam, Judaism or Christianity, especially if the neighbor happens to be of another religious denomination. Moreover, as discussed previously in this study, there is no statistical basis for believing that attending a nonpublic school will in fact lead to greater student achievement.

Subsidizing individual decisions that do not generate a public good or service—even legitimate ones well within the rights of, in this case, the parents making them—is an inappropriate use of public money. The Indiana School Expenditure Deduction is particularly difficult to justify from a public policy standpoint for two reasons. First, it is not means tested and hence is using public revenue to pay for private economic transactions that in all likelihood would have taken place anyway. Second, it diverts revenue from public education to assist children in attending private schools that do not enhance student achievement.

(iv) Scholarship Tax Credit

The Indiana Scholarship Tax Credit, which began in 2009, is the oldest component of the Indiana School Choice Initiative. It allows any individual or corporation to donate funds to SGOs, and the individual or corporation may claim a credit of 50 percent of the donated amount against his, her or its state income tax liability. SGOs are nonprofit organizations authorized by the state of Indiana to collect and use donations to grant scholarships to residents of Indiana who attend private schools.⁶¹

The total amount of tax credits available through SGOs was increased from \$2.5 million to \$5 million in FY2011, and then was increased again from \$5 million to \$7.5 million beginning in FY2014 (P.L. 205-2013). As of March 16, 2015, total tax credits claimed for FY2015 were \$6.8 million, a 278 percent increase over the \$1.8 million donated in FY2013.⁶² This also means that the state has lost \$6.8 million in tax revenue and is likely to reach \$7.5 million in state tax revenue foregone in FY2015 and subsequent years.

Moreover, currently only 50 percent of the donated amount can be claimed against a donor's state income tax liability. In Arizona, which has a similar tax credit scholarship program, donors can claim 100 percent of the donation against their state income tax liability. Donations are limited in Arizona to \$500 for single filers, \$1,000 for joint filers and total corporate donations are capped at \$14.4 million statewide. Even with those limits, in 2009 the total amount donated for scholarship tax credits in Arizona was \$61.4 million dollars.⁶³ There are no caps on individual or corporate contributions in Indiana, only a cap on the total amount of tax credits that can be distributed.

There have already been proposals introduced in Indiana to raise or eliminate the cap on donations, and to increase the percentage of donations which can be claimed against state income tax liability. If the total revenue loss to state government was to reach even half of the Arizona total of \$61.4 million for 2009, it would amount to a significant reduction in state revenue, which would lead to cuts in spending that would impact Indiana families and taxpayers.⁶⁴

Along with the School Expenditure Deduction, the Indiana Tax Credit Scholarship program is an example of another questionable tax expenditure, because it uses public dollars without providing a corresponding public benefit. In June 2012, the Indiana DOR assured CTBA that it possesses enough staff capacity to administer the Tax Credit program without having to hire new staff. However if the cap is increased or eliminated altogether, and contributions approached even half of the Arizona total in 2009, it is difficult to see how the DOR would not have to hire additional staff to administer the program. This means that as the program grows in size, it will not only reduce revenue at the state level, it will likely cost the state more money in terms of administrative expenses.

(v) Summary of State Level Effects in the Short Term

Indiana School Choice Scholarship Program

- Choice Scholarships led to a loss of \$81.1 million in operating revenue for K-12 public schools during the 2013-2014 school year, an amount which increased to \$115.9M in 2014-2015.⁶⁵ In subsequent years, the loss could be as high as \$400 million, but is likely to be \$150 - \$250 million.
- The School Expenditure Tax Deduction is estimated to result in a revenue loss at the state level of up to \$3.7 million dollars per year.
- The School Scholarship Tax Credit will result in a revenue loss of at least \$6.8 million for the current school year, a loss which will likely be \$7.5 million this year and in years to come.

(vi) Potential State Level Effects in the Long Term

In FY2014, the total potential financial impact of the Indiana Choice Legislation, in terms of a reduced K-12 budget and decreased income tax collections, is estimated to be about \$125 million. This impact will affect all Indiana residents in the form of decreased revenue at the state level, or K-12 budgets cut stemming from reallocation of K-12 funding to distribute to School Choice Scholarships. Moreover, this annual total is projected to increase significantly due to Choice Scholarships, as Figures 4 and 5 indicated.

If the Indiana Choice Legislation enjoys public support in coming years, proposals to increase eligibility or reimbursement amounts could make their way onto the floor of the Indiana Legislature. If income eligibility guidelines are loosened, in the case of Choice Scholarships, or tax credits are increased, in the case of Scholarship Tax Credits, the annual cost in lost revenue to the state of Indiana could increase beyond that which was presented in the preceding section.

(d) Local Impacts

Of the three components of the Indiana school choice initiative, the School Expenditure Deduction will have the most visible and direct annual impact on finances for local governments. The School Expenditure Deduction will result in some localities losing revenue at the county level due to reduced Local Option Income Tax (LOIT) collections. These fiscal ramifications will exist in the short term and persist into the long term, most likely increasing in size and scope due to increases in the number of students and families utilizing the School Expenditure Deduction.

The School Expenditure Deduction will result in decreased tax collections at the county level for those counties with LOITs. Since 1974, Indiana counties have had the ability to levy income taxes at the county level as an alternative to increasing property taxes, Indiana's traditional local revenue source.⁶⁶ Counties may choose to levy a County Adjusted Gross Income Tax (CAGIT), County Option Income Tax (COIT), or County Economic Development Income Tax (CEDIT). Of Indiana's 92 counties, only Lake County does not levy any type of LOIT.⁶⁷

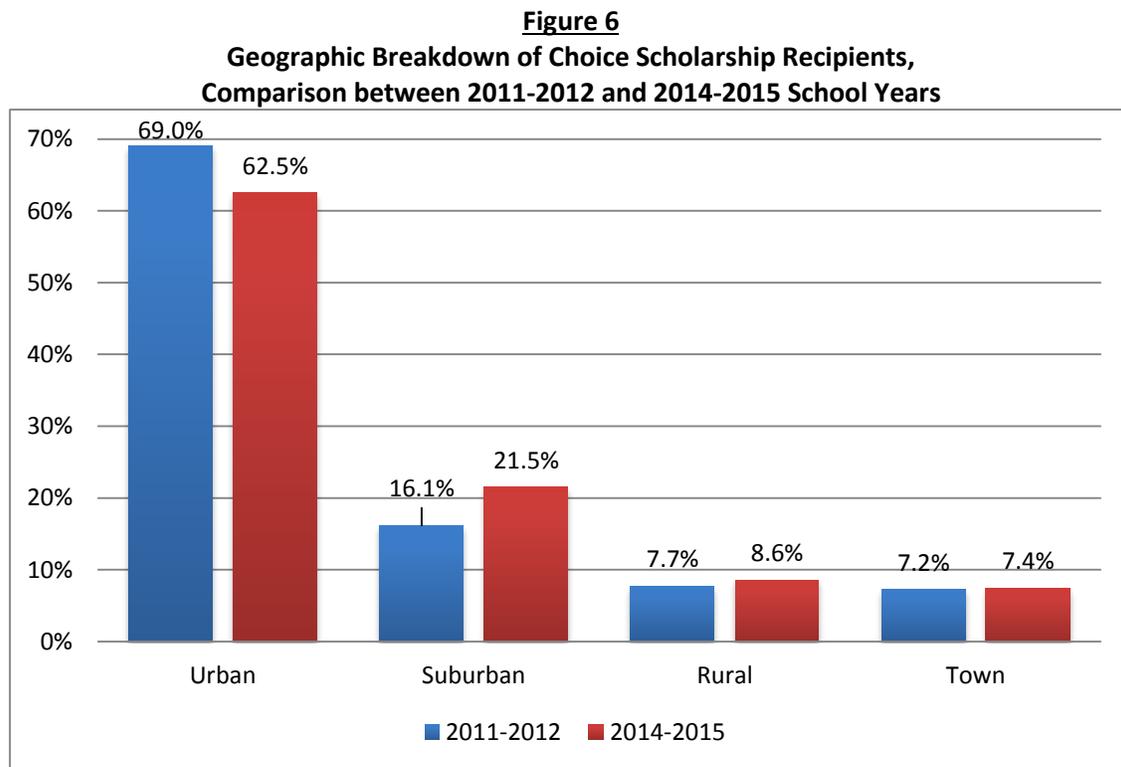
Because the School Expenditure Tax Deduction will reduce a taxpayers' adjusted gross income and thereby his or her total tax liability, counties with some type of LOIT will not be able to collect as much revenue. Based on a current state average LOIT rate of 1.3 percent, LOIT collections statewide will be reduced by up to \$1.4 million dollars annually.⁶⁸ Although this may not seem like a large amount when spread across 91 Indiana counties, the revenue loss comes at a time when local budgets have already been strained due to the Great Recession. This reduction in income tax collections at the local level will place additional strain on local governments, forcing them to reduce services or lay off employees at a time when many have already had to do just that.⁶⁹ As noted previously, the School Expenditure Deduction is questionable policy as a tax expenditure because it effectively spends public taxpayer revenue without generating a corresponding public benefit. Even worse from the local government

standpoint, they had no role in creating this questionable tax expenditure that reduces their revenue and hence ability to provide services at the local level.

7. EFFECTS OF VOUCHERS ON DIFFERENT GROUPS OF STUDENTS

During the 2011-2012 school year, 3,911 students applied for and received School Choice Scholarships, for which Indiana diverted nearly \$16 million in funding that would have otherwise gone to its K-12 public schools.⁷⁰ By 2014-2015, Choice Scholarships increased to 29,148 students and diverted \$115.9 million in funding from K-12 public schools.

The Indiana voucher program will likely negatively impact students of color and high poverty students. Figure 6 provides a geographic comparison between the students who received School Choice Scholarships in the 2011-2012 school year to those who did in 2014-2015.



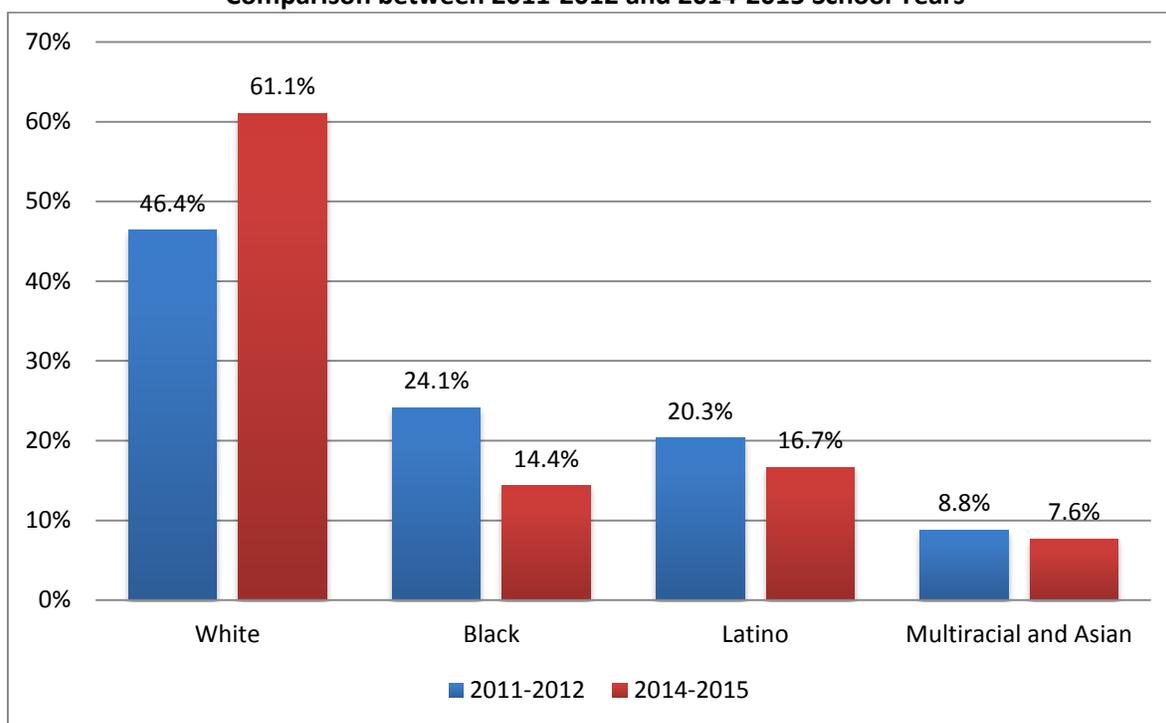
Source: Indiana Department of Education, Choice Scholarship Program Annual Report: Participation and Payment Data

Since a higher percentage of Indiana’s voucher approved schools are located in urban areas, the diversion of funds from K-12 public schools to private voucher schools will not be distributed evenly across the state. Indeed, as previously illustrated in Figure 6, 62 percent of voucher recipients during the 2014-2015 school year lived in urban areas, primarily around cities such as Indianapolis, Fort Wayne, South Bend, Hammond, Evansville, and Elkhart.⁷¹

However, it is important to note the changes in the distribution of Choice Scholarships between geographical areas. The percentage of Choice Scholarships going to students living in urban areas fell by 6.5 percentage points, at the same time, the percentage going to pupils living in suburban areas increased by 5.4 percentage points.

Figure 7 provides a demographic comparison between students who received School Choice Scholarships in the 2011-2012 school year to those who did in 2014-2015.

Figure 7
Demographic Breakdown of Choice Scholarship Recipients,
Comparison between 2011-2012 and 2014-2015 School Years



Source: Indiana Department of Education, Choice Scholarship Program Annual Report: Participation and Payment Data

As Figure 7 indicates, while minority students make up a combined 38.7 percent of total scholarship recipients, Caucasian children are by far the single largest group of recipients, making three out of five of all recipients. This is a huge increase over the four years the program has been in place. In 2011-2012, white students made up only 46.4 percent of all Choice Scholarship recipients, today that has increased by nearly 15 percentage points. This has important implications for equity and student achievement, for both voucher recipients and their former classmates in public schools.

Because white children as a percentage of voucher recipients in the 2014-2015 school year exceed the next largest racial group by more than 44 percent points, Indiana's voucher program will likely lead to increased racial stratification within Indiana's K-12 public schools.⁷² The implications of this are discussed in further detail below.

In 2014-2015, 70 percent of School Choice Scholarship recipients met the income criteria for the federal free and reduced lunch program and qualified for a 90 percent award scholarship.⁷³ This certainly makes sense, given the income eligibility requirements of the School Choice Scholarship program. However, most studies indicate that it is more expensive to educate students who are eligible for F/R Lunch, because these students come from higher-risk backgrounds and are disproportionately students of color.⁷⁴ Moreover, schools located in urban areas tend to have greater concentrations of students in poverty on a per-student basis.⁷⁵

Indiana School Choice Scholarship Program

Unlike public schools, private schools do not have to accept all students who desire to attend. So some students, particularly those from higher-risk or high poverty backgrounds, could face a number of barriers to enrollment. Although the Choice Scholarship statute explicitly states that voucher schools cannot discriminate based upon race, color, or national origin,⁷⁶ private schools are still able to expel students for many other reasons, such as English language ability, special education needs, disciplinary behavior, academic records, the inability to pay full tuition if the Choice Scholarship does not cover it or for no reason at all. Private schools also may refuse admission to students who are not able to demonstrate achievement at their respective grade levels, which many students who receive F/R Lunch are unable to do.

Children from high poverty areas are often the first to apply to school choice programs; their parents see choice programs as an alternative to a public school in an area of concentrated poverty. Research has shown that students of color are more likely to populate schools in high poverty areas, and are also more likely to be suspended or expelled from the same public schools.⁷⁷

Disciplinary actions are often based upon the personal impressions of a student's teacher, which frequently can be influenced by racial differences.⁷⁸ Racial bias in disciplinary action taken at the public school level will be exacerbated if a student's prior disciplinary record is used as a reason to prevent the student from attending a voucher school. Indeed, studies have shown that private schools often take a student's prior disciplinary record into consideration when determining whether to admit a student.⁷⁹

The barriers to entry do not stop at disciplinary history. Studies have also shown that private schools are often unwilling to change curriculum to accommodate students who do not fluently speak English, have learning disabilities or are not currently achieving at grade level.⁸⁰ Moreover, at-risk students are much more costly to educate from a per pupil spending perspective.⁸¹ In fact, the cost of educating some special needs children is so high that states have mandated special education spending which is at least partially covered with specific state funds. States also receive federal monies to be spent exclusively on special education.⁸² Private schools have neither of these options available.

Private schools are not required to release demographic data on their students, and thus, it is not possible to count the number of special education students currently enrolled in Indiana's private schools. But, due to the increased cost of educating special education students, it is safe to assume that Indiana schools accepting vouchers will be unable to provide the same level of educational quality for this demographic as public schools are currently able to provide.

Despite the fact that over 70 percent of all current Indiana voucher students receive free or reduced priced school lunches, many private schools do not offer programs that low-income students depend on, such as (ironically enough) free or reduced priced school lunches, transportation to and from school, and in some cases, access to on campus nurses or medical care.⁸³ Additionally, if a voucher school requires uniforms, extra textbooks, or has activity fees, low-income parents will make maximum use of the Indiana School Expenditure Tax Deduction, thereby further decreasing state tax revenue.

The bottom line is that the School Choice Scholarship statute does not require schools who accept voucher students to accommodate for the needs of at-risk students. Hence, it is questionable whether those students will realize any quantifiable educational benefit from being removed from public schools that do make such accommodations.

The demographic composition of Choice Scholarship recipients for the 2014-2015 school year raises a number of significant policy concerns. Start with the premise that given limited fiscal resources, one goal an education funding system should satisfy is ensuring public dollars are invested in the most cost effective strategies for attaining high levels of student achievement. However, if attaining high levels of student achievement truly is the objective, it should worry taxpayers and parents that students from

high poverty backgrounds, who are traditionally more costly to educate, are the demographic who have taken up school vouchers in the greatest numbers,⁸⁴ for two compelling reasons.

First, the evidence indicates that once socioeconomic status, race/ethnicity, gender, and location are controlled for, the “private school effect” disappears for the religious-based private schools that many voucher recipients attend, and in many cases these religious-based private schools actually do a worse job of educating children to high levels of achievement than public schools.⁸⁵ Second, private schools do not generally provide the additional supports needed to educate at-risk students. Thus far, the vast majority of students who have been awarded vouchers are in fact, at-risk given their F/R Lunch status, and hence less likely to have their educational needs met in a private school.

Given these realities, it is highly unlikely that low income or otherwise at risk voucher students will receive the same quality of education, and be able to achieve at the same levels as their peers who attend traditional K-12 public schools.

When all the preceding factors are considered together, the decision to divert revenue that would have funded traditional K-12 public schools in Indiana to instead cover the cost of the state’s School Choice program seems questionable. After all, public tax dollars are being used:

- To pay for an education program that cannot reasonably be expected to generate levels of student achievement equal to or greater than traditional public schools;
- To subsidize private school choice decisions that in many cases would be made without the subsidy and frequently are made based on religious beliefs that by definition cannot be universal across the state and hence create no true public benefit; and
- In a manner that diverts revenue from being used to build capacity in the extant public school system, when such capacity building has been demonstrated to be one of the core drivers of enhancing student achievement in the nations with the best performing schools systems in the world.

8. CONCLUSION

This report has described the three components of the Indiana Choice Legislation in detail. We have examined whether the experience generated by both the extant choice programs in the U.S., and other education reforms implemented by the nations that have the best performing school systems in the world, indicate that the Indiana Choice Legislation will enhance student achievement. Finally, we have analyzed whether the Indiana Choice Legislation, despite its best attempts to the contrary, can be used to discriminate against different types of students.

This research and analysis was done to answer the simple question posed at the outset of this report:

“Will the Indiana Choice Legislation lead to better educational outcomes for my and/or my neighbors’ children, and be an efficient use of our taxpayer dollars, at a time when public budgets are stretched as thin as they currently are?”

As it turns out, the answer is no, when ideology is put aside and evidence of what has worked to enhance student achievement is used as the barometer.

All three core components of the Indiana Choice Legislation are designed to funnel taxpayer money to private schools, with little evidence that demonstrates improved academic achievement for students who are most at-risk. The metric in question should be and must be student achievement. While parental choice is an undeniable right, there is no compelling policy reason to subsidize it with public, taxpayer dollars meant to educate children. On the other hand, enhancing student achievement will benefit everyone in Indiana.

It follows then that Indiana should invest its scarce public education dollars in those schools where taxpayers can expect to receive the best educational bang for their buck—that is schools that have been proven, when compared to other types of schools, to educate the most children to the highest levels. Those schools are, unequivocally, K-12 public schools.

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