

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9800 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

University of Alaska Board of Regents

Mr. Joshua B. Horst of Douglas

Appointed: 06/29/1999 Expires: 06/01/2001

Sec. 39.05.080. Procedure for all appointments.

Except as otherwise provided in a law relating to the positions or memberships on a specific board or commission, appointment to a position or membership shall be made in the following manner:

(1) Each governor shall present to the legislature the names of the persons appointed by that governor; each governor may present the name of a person appointed by a previous governor; only presentment that occurs during the time that the legislature is in regular session constitutes presentment under this section. The governor shall, within the first 30 days after the legislature convenes in regular session, present to the legislature for confirmation the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature, and (B) persons to be appointed to fill a position or membership the term of which will expire March 1 during that session of the legislature. If an appointment is made after the first 30 days of the convening of the regular session but while the legislature is in regular session, the governor shall, within five calendar days after the appointment is made, present to the legislature for confirmation the name of the person appointed. The deadline may be extended by the legislature by the approval of a concurrent resolution.

(2) When appointments are presented to the legislature for confirmation,

(A) the presiding officer of each house shall assign the name of each appointee to a standing committee of that house for a hearing, report, and recommendation; standing committees of the two houses assigned the same person's name for consideration may meet jointly to consider the qualifications of the person appointed and may issue either a separate or a joint report and recommendation concerning that person; then

(B) the legislature shall, before the end of the session in which the appointments are presented, in joint session assembled, act on the appointments by confirming or declining to confirm by a majority vote of all of the members the appointments presented.

(3) When the legislature declines to confirm an appointment, the legislature shall notify the governor of its action and a vacancy in the position or membership exists which the governor shall fill by making a new appointment. The new appointment shall be presented for confirmation to the legislature within 20 calendar days following receipt by the governor of the legislature's notification of its refusal to confirm the prior appointment. The governor may not appoint again the same person whose confirmation was refused for the same position or membership during the session of the legislature at which confirmation was refused. The person whose name is refused for appointment by the legislature may not thereafter be appointed to the same position or membership during the interim between legislative sessions. Failure of the legislature to act to confirm or decline to confirm an appointment during the session in which the appointment was presented is tantamount to a declination of confirmation on the day the session adjourns.

(4) Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, have the powers, and be charged with the duties prescribed by law for the appointive positions or membership. However, the duration of an appointment made during the time period between regular sessions of the legislature by a person who is not still the governor on the first day of the next regular session ends on the date during the next regular session that the sitting governor presents for confirmation an appointment to the office. For the purpose of applying laws that limit the number of terms or parts of terms that may be served by a member of a board or commission, the part of the term of office that is served under an interim appointment immediately before the member is reappointed under this paragraph is considered to be merged with the part of the term of office that is served immediately after reappointment so that the two periods of service constitute only one part of a term. The duration of an appointment made during a regular session of the legislature and not presented to the legislature by the governor during that session ends no later than the last day of that session. The duration of an appointment made during an interim by a governor who is not in office at the beginning of the next regular session of the legislature ends no later than the last day of that regular session unless the governor who is in office during that session presents the person's name for confirmation. The same governor may not appoint the same person to the same position or membership if the person's appointment ends because of the governor's failure to present the person's name for confirmation.

Joshua B. Horst
 513 St. Anns Ave.
 Douglas AK 99824

Objective: Student Regent for the University of Alaska Board of Regents

SUMMARY OF QUALIFICATIONS

- * Committed to promoting and strengthening the progress and future of the University of Alaska
- * Strong team ethic
- * Extremely well organized: Follow through to completion of all tasks
- * Talented public speaker
- * Good time management skills

RELATED EXPERIENCE

1998-present University of Alaska Southeast Student Government President, Juneau AK

- * Attended five and presented at three Board of Regents meetings
- * Organized, hosted, and/or completed events including; candidate forums (congressional and legislative), fund raisers, Legislative Affairs Conference
- * Co-developed a successful mentorship program
- * Developed and initiated student racquetball program
- * Presenter at Juneau Campus Council, Downtown and Glacier Rotary Clubs, Workshop presenter at JDHS day
- * Member of TLTR (Teaching, Learning, Technology, Roundtable), Coalition of Student Leaders, Student Retention Committee, and System Governance

1995-1996 Marie Callender's "Lead Server" and Corporate Trainer

- * Semi-management position
- * Represent all servers to general management
- * Train new servers on corporate regulations, safety, sanitation, and customer service
- * Work as a team member on service staff and training crew

EMPLOYMENT HISTORY

- | | |
|--|--------------|
| * Student Government President, UAS, Juneau AK | 1998-present |
| * Catering Server, T.K. Maguire's, Juneau AK | 1998-present |
| * Assistant Racquetball Professional, Juneau Racquet Club, Juneau AK | 1997-present |
| * Contractor's Assistant, Nordic Contracting, Juneau AK | 1998 |
| * Server, Taku Eateries, Juneau AK | 1997 |
| * Lead Server/Corporate Trainer, Marie Callender's, Visalia CA | 1995-1996 |

EDUCATION AND TRAINING

- * Completed 44 credits, Business Management Program, UAS 1997-present
- * Attended Northwest Student Leadership Conference, Portland OR 1998
- * TAMS Certified, Juneau AK 1997
- * Customer Service Training , Marie Callender's, Visalia CA 1995
- * Completed 26 credits, General Education, College of the Sequoias 1994-1995
- * Attended Christian Student Leadership Conference, Visalia CA 1992&1993

Alaska Mental Health Trust Authority Board of Trustees

Ms. Susan LaBelle of Anchorage

Appointed: 10/31/1997 Re-appointed: 01/19/2000 Expires: 03/03/2004

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Susan LaBelle, MSW
4830 Shelikof Street
Anchorage, Alaska 99507

OBJECTIVE Utilize my 15+ years progressively responsible experience in program management, policy development, administration, coordination and direct services.

Summary of

Qualifications experience managing multiple contract and grant programs. Over 5 years experience managing a department of 15 professional, paraprofessional and support staff;

Knowledgeable of and experience working with regional Native nonprofit organizations, federal and state programs;

EDUCATION

Master of Social Work (MSW) degree, University of Alaska, Anch., 1997
Bachelor of Social Work (BSW) degree, University of Alaska, Anchorage, 1984
Associate of Arts (AA) degree, Health Sciences, Alaska Methodist University, 1975

WORK EXPERIENCE

Chugachmiut, Anchorage, Ak 9/7/99 to present; **Community & Social Services Director**. Responsible for managing the following departments and programs: Forestry & Fire Management, Village Public Safety Officers, Employment & Training Dept, Youth Action, Child Protective Services, STOP Violence project, Environmental Health Division, Headstart, Alcohol programs, and Native Education Planning and Curriculum Development project.

Consultant. Provided analysis and evaluation of programs; conducted research, and direct client advocacy. Clients include the Alaska Federation of Natives, Inc. , Native Village of Barrow, and Hope Cottages, Inc.

Native Village of Eklutna, Anchorage, Ak 8/98 to 1/27/99 **Program Director, Eklutna Child Advocacy Center**. Provide overall management of Administration for Native Americans (ANA) legal advocacy and social services grant, Project Succeed, Indian Child Welfare program and Mentor ship project; direct supervision of staff, budgets, coordination of activities, preparation of reports, conduct performance evaluations; assist with development of tribal court children codes; provide a full range of direct services to family and children; networking with local and statewide agencies and tribes;

Cook Inlet Tribal Council (CITC), Anchorage, Alaska. 2/85 - 5/96 **Director, Family Services Department.** (10/91-5/96 Responsible for day-to-day operation and oversight for all applicable contracts, personnel and budgets; Program receipts exceeded \$1 million dollars per year. Performed all facets of direct supervision of professional office staff; including recruitment, hiring, promotions, terminations, transfers and performance evaluations.

Planned and directed multiple program elements and activities involving line staff and organizational subunits with a broad scope of services including case management and counseling services. Work involved developing staff and client services to accomplish the goals and objectives of the total program.

Division Manager, CITC Family Services Department. (10/90-10/91)

Provided direct supervision to three program components; Provided counseling services, advocacy, outreach, information and referral services to individuals, families and groups; provided Indian child welfare services; responsible for overseeing the Homeless Assistance program; served as Program Manager for the Elders Nutrition and Supportive Services;

Developed Memorandums of Agreements with various social service agencies; participated in program planning; recommended use of program funds; assisted staff members in areas of program knowledge, expertise and information; responsible for preparation of reports; served as Field Instructor for university students; represented CITC throughout the community.

Lead Social Worker II, CITC Community Services. (12/85-10/90)

Responsible for development of social work component within the Community Services Department; provided a wide range of services to individuals, families, groups, and communities which involved dealing with issues of child protection, substance abuse, mental health, disabilities, public assistance, to name a few. Performed social work tasks and functions, i.e counseling, advocacy, information & referral; facilitated weekly case reviews with counseling staff.

Home School Coordinator, CITC Johnson O'Malley Program. (2/85-12/85)

Provided academic, personal and career guidance counseling to Native students at Service High School; provided counseling to individuals and families; assisted and guided them toward self-sufficiency and crisis management, assisted Anchorage school District personnel in finding solutions to school-related problems; provide linkages between school, home and appropriate agencies.

Miscellaneous employment/Volunteer Service:

National Association of Social Workers (NASW), Department of Peace and Int'l Affairs, Wash. D.C. 4/96-9/96. **Alaska Coordinator**, Indigenous Peoples' Advocacy Project. Planned and coordinated a 12-day study tour in Alaska for the project team; participated in a 10 day tour in Siberia Served as co-trainer in advocacy workshops in Siberia and liaison between the national office and the Alaska Chapter.

University of Alaska, Department of Human Services, 2/95-5/95 **Adjunct Faculty**. Conducted weekly seminars for undergraduate students involved in the UAA/Alaska Psychiatric Institute Mental Health Project. Duties included assessment of written materials and providing oral feedback and support.

Impact Assessment, Inc. and Sharon Arajii. 4/90-8/90 **Interviewer/Researcher**. Conducted interviews with informants from two villages relative to the Exxon/Valdez Oil spill. Interviews were tabulated and analyzed to determined to what extent individuals were impacted by the oil spill.

Field Instructor, UAA and APU students of Social Work, Human Services and Justice 1989-1995

TRAINING/PRESENTATIONS

Have participated in and conducted numerous classes and training in the helping professions to various groups and organizations. Will provide a list upon request.

MEMBERSHIP AFFILIATION (Partial list)

- o Prevention Advisory Council, Member, October 1998 to present
- o Alaska Mental Health Trust Authority, Trustee, October 1997 to present
- o Steering Council of Chapter Presidents, National Association of Social Workers 4/98 to present
- o National Association of Social Workers (NASW), Alaska Chapter member and past board President, Vice-president and Treasurer
- o Alaska Children' Services, Board of Directors, member 6/97 to 11/97
- o Case Consultation Team, Municipality of Anchorage. 1990-5/96
- o Alaska State/Tribal Collaboration Group, CITC representative. 4/94-5/96
- o Alaska Federation of Natives Subcommittee on Children & Families
- o Mayor's Task Force on Homelessness, Municipality of Anchorage. 6/93-6/94



Official Business

Alaska State Legislature

House of Representatives

State Capitol
Juneau, AK. 99801-1182

Date: 03/16/00

The Honorable Brian Porter
Speaker of the House
State Capitol
Juneau, AK 99801

Dear Mr. Speaker:

In accordance with AS 39.05.080, the Health, Education and Social Services Committee has reviewed the qualifications of the following individual and recommends that the appointment be forwarded to a joint session for consideration:

Alaska Mental Health Trust Authority Board of Trustees

Ms. Susan LaBelle of Anchorage

Appointed: 10/31/1997 Reappointed: 01/19/2000 Expires: 03/03/2004

This does not reflect an intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Rep. Fred Dyson, Chair

Rep. Jim Whitaker

Rep. Joe Green

Rep. Carl Morgan

Rep. Tom Brice

Rep. Allen Kemplen

Rep. John Coghill



Alaska State Legislature

House of Representatives

Official Business

State Capitol
Juneau, AK. 99801-1182

Date: 04/11/00

The Honorable Brian Porter
Speaker of the House
State Capitol
Juneau, AK 99801

Dear Mr. Speaker:

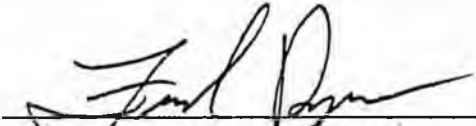
In accordance with AS 39.05.080, the Health, Education and Social Services Committee has reviewed the qualifications of the following individual and recommends that the appointment be forwarded to a joint session for consideration:


Board of Education


Ms. Sally Rue - Juneau

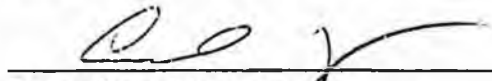
Appointed: 03/23/00 Expires: 01/31/02

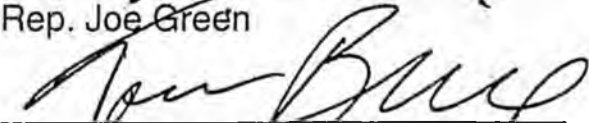
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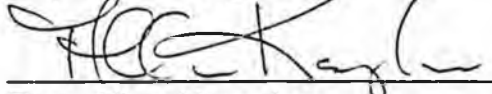

Rep. Fred Dyson, Chair

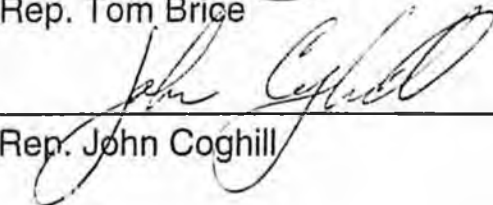

Rep. Jim Whitaker


Rep. Joe Green


Rep. Carl Morgan


Rep. Tom Brice


Rep. Allen Kemplen


Rep. John Coghill



Alaska State Legislature

House of Representatives

Official Business

State Capitol
Juneau, AK. 99801-1182

Date: 4/6/00

The Honorable Brian Porter
Speaker of the House
State Capitol
Juneau, AK 99801

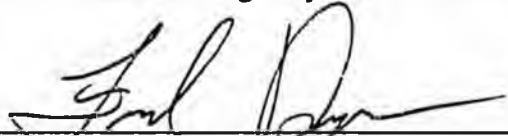
Dear Mr. Speaker:

In accordance with AS 39.05.080, the Health, Education and Social Services Committee has reviewed the qualifications of the following individual and recommends that the appointment be forwarded to a joint session for consideration:


Board of Education

Mr. Ernest E. Hall - Anchorage
Appointed: 03/23/00 Expires: 01/31/05


This does not reflect an intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.



Rep. Fred Dyson, Chair




Rep. Jim Whitaker




Rep. Joe Green

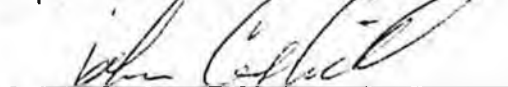
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Alaska State Legislature

House of Representatives

State Capitol
Juneau, AK. 99801-1182

Official Business

Date: 04/11/00

The Honorable Brian Porter
Speaker of the House
State Capitol
Juneau, AK 99801

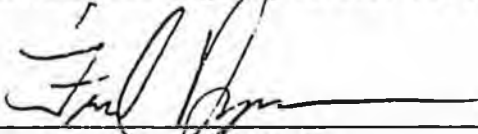
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In accordance with AS 39.05.080, the Health, Education and Social Services Committee has reviewed the qualifications of the following individual and recommends that the appointment be forwarded to a joint session for consideration:


Alaska Mental Health Trust Authority Board of Trustees

Mr. Phil A. Younker - Fairbanks
Appointed: 03/03/95 Reappointed: 03/21/00
Expires: 03/03/05

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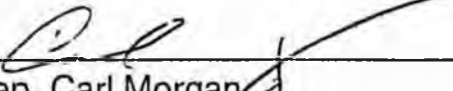
Rep. Fred Dyson, Chair




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Rep. Joe Green



Rep. Carl Morgan



Rep. Tom Brice



Rep. Allen Kemplen



Rep. John Coghill

Board of Education Confirmation

Ms. Sally Rue – Juneau

Appointed: 03/23/00 Expires 01/31/02

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SALLY RUE
7083 Hendrickson Road
Juneau, Alaska 99801

EDUCATION

University of Massachusetts, Department of Landscape Architecture and Regional Planning,
Master of Regional Planning, 1976.
University of Pennsylvania, Urban Studies, B.A., 1973.
Dartmouth College, Environmental Law and Native American Studies, Summer 1972.

EDUCATION COMMUNITY SERVICE

1999 - 2000 Juneau Douglas High School Site Council

1992 - 1998 Board of Education, City and Borough of Juneau

President 1996 - 1998

Vice President 1995 - 1996

Clerk 1993 - 1995

Facilities Committee, Chair

Policy Committee

Budget Committee

Joint School Board-Assembly Construction Oversight Committees: Dzantik'i Heeni

Middle School, Riverbend Elementary School

New High School Planning Committee

1996 Alaska Education Summit

1996 Juneau Education Summit

1990 - 1992 Juneau School District Committees:

Budget Advisory Task Force

Strategic Planning Committee

Calendar Committee

World Languages Curriculum Committee

1982-1987 Board of Directors, Hillcrest Day Care Center, Anchorage

President 1984-1986

Treasurer 1983-1984

Juneau School Bond Campaign Committees:

School District Technology Bond I (1993), Technology Bond II (1996)

Riverbend Elementary School Construction (1994)

New High School Construction (1998, 1999)

Active in Parent Groups:

Juneau Douglas High School

Dzantik'i Heeni Middle School, Marie Drake Middle School

Harborview Elementary School, Chugach Optional School

Juneau Cooperative Preschool, Hillcrest Day Care Center

Association of Alaska School Boards Committees:
Resolutions Committee
Budget Committee
Nominating Committee

OTHER COMMUNITY SERVICE

- 1989 Mayor's Scoping Committee for A-J Mine Project EIS, City and Borough of Juneau
1987-1988 Platting Board, Municipality of Anchorage
1985-1986 Girdwood Development and Disposal Plan Advisory Committee, Municipality of Anchorage

EDUCATION AWARDS AND HONORS

- MacKinnon Education Excellence Award, Alaska Association of School Administrators, 1998
Academy of Excellence Award for service as School Board President, Juneau School District, 1998
Outstanding School Board Member of the Year Nominee, Association of Alaska School Boards, 1997
Basic Boardmanship Awards, Association of Alaska School Boards, 1994 and 1996
Academy of Excellence Award for service as Parent Volunteer, Juneau School District, 1992

PROFESSIONAL EXPERIENCE

- 1995 - present Office of the Lieutenant Governor, Special Assistant for Natural Resources.
1982 -1995 President, Resource Management Group. Consulting services in land use and resource management, transportation and public facilities planning, comprehensive planning, community development, intergovernmental coordination and public involvement.
1977 - 1982 Division of Policy Development and Planning, Office of the Governor. Principal Land and Resource Policy Analyst/Planner IV/Research Analyst II and III. Research and policy analysis on land and resource management issues; intergovernmental coordination; review of agency budgets and legislation.

PERSONAL INFORMATION

Married; two children (18 and 15) attended Anchorage and Juneau public schools; Alaska resident since 1977.

Resource Management Group Clients/Projects (1982-1995)

- Cominco Alaska and NANA Development Corporation. Legislative briefing paper on Red Dog mine and developing rural regional transportation systems.
- Municipality of Anchorage, Division of Property Management. Inventoried and evaluated 10,000 acres of municipal lands. Advised on management, retention and disposal decisions and the initial organization and operation of the Heritage Land Bank and the HLB Advisory Commission.
- Sohio Alaska Petroleum Company, Lands Department. Lands Department's land records management system improvements.
- Municipality of Anchorage, Division of Property Management. Inventoried and evaluated 15,000 acres of state land in Anchorage to identify additional municipal entitlement conveyances. Selection priorities and appropriate acquisition strategies.
- North Slope Borough, Planning Department. Recommendations on the Permitting Section's records management system.
- Municipality of Anchorage, Department of Intergovernmental Affairs. Municipal land entitlement settlement.
- University of Alaska, Statewide Office of Land Management. University land selections.
- Municipality of Anchorage, Department of Economic Development and Planning. Developed computerized property inventory and evaluation system for the Heritage Land Bank; five-year management plan and annual work program.
- Sealaska Corporation. Edited and proofed 1989 Annual Report.
- Alaska Department of Transportation and Public Facilities, Division of Design and Construction. Annotated bibliography - Juneau Access Project EIS.
- Alaska Information Service. Background research reports on the state budget and education entitlement programs.
- Alaska Department of Environmental Conservation, Division of Environmental Quality. FY 89 Oil and Hazardous Substance Release Response Fund ("470 Fund") summary for Legislature.
- Alaska Marine Highway System. AMHS Plan public involvement.
- Municipality of Anchorage, Department of Economic Development and Planning *Eagle River Comprehensive Plan*.
- City of Yakutat. *Yakutat Shoreline Use Survey and Analysis*.
- Alaska Veterans' Golf Course and Recreation Area, Inc. Permit information and project development.
- Yak-Tat Kwaan, Inc. Land Management Plan.
- City of Unalaska. Capital Improvements Program.
- Alaska Department of Transportation and Public Facilities *Juneau Access Engineering Reconnaissance Study* (land use, public involvement).
- Alaska Department of Transportation and Public Facilities. *Juneau Access Improvement Environmental Impact Statement* (land use, socioeconomic impacts, public involvement).

ASSOCIATION OF ALASKA SCHOOL BOARDS

Advocates for Alaska's Youth

April 3, 2000

Representative Fred Dyson, HESS Chair
House HESS Committee Members
Alaska State Legislature
Juneau, Alaska

RE: Recommendation for Sally Rue for State Board of Education

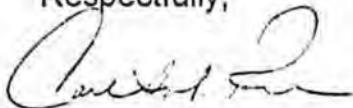
Knowing that you will be considering confirmation of appointments to the State Board of Education in the near future, We'd like to offer our recommendation Sally Rue of Juneau.

We are well acquainted with Sally from her years of experience on the Juneau School Board. She is one of those individuals who distinguished herself during her school board service as meeting and exceeding Board Standards, even before they were thought of. She has demonstrated her commitment to being an active community advocate for education for years before serving on a school board, and will continue to be an active contributor in this new position as a State Board member.

Sally is extremely knowledgeable about the challenges school districts are facing today. She researches issues carefully and provides leadership in making sound decisions. Sally has demonstrated a statewide perspective and appreciation for the needs of schools in both urban and rural settings.

We believe someone of Sally's experience and commitment will play a valuable role in advancing public education statewide. I'm sure you will find a wide range of support for her appointment. The Association of Alaska School Boards would like to add our voice to that support. We would look forward to working with her in this capacity.

Respectfully,



Carl Rose
Executive Director

Board of Education Confirmation

Mr. Ernest E Hall – Anchorage

Appointed: 03/23/00 Expires 01/31/05

Sec. 39.05.080. Procedure for all appointments.

Except as otherwise provided in a law relating to the positions or memberships on a specific board or commission, appointment to a position or membership shall be made in the following manner:

(1) Each governor shall present to the legislature the names of the persons appointed by that governor; each governor may present the name of a person appointed by a previous governor; only presentation that occurs during the time that the legislature is in regular session constitutes presentation under this section. The governor shall, within the first 30 days after the legislature convenes in regular session, present to the legislature for confirmation the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature, and (B) persons to be appointed to fill a position or membership the term of which will expire March 1 during that session of the legislature. If an appointment is made after the first 30 days of the convening of the regular session but while the legislature is in regular session, the governor shall, within five calendar days after the appointment is made, present to the legislature for confirmation the name of the person appointed. The deadline may be extended by the legislature by the approval of a concurrent resolution.

(2) When appointments are presented to the legislature for confirmation,

(A) the presiding officer of each house shall assign the name of each appointee to a standing committee of that house for a hearing, report, and recommendation; standing committees of the two houses assigned the same person's name for consideration may meet jointly to consider the qualifications of the person appointed and may issue either a separate or a joint report and recommendation concerning that person; then

(B) the legislature shall, before the end of the session in which the appointments are presented, in joint session assembled, act on the appointments by confirming or declining to confirm by a majority vote of all of the members the appointments presented.

(3) When the legislature declines to confirm an appointment, the legislature shall notify the governor of its action and a vacancy in the position or membership exists which the governor shall fill by making a new appointment. The new appointment shall be presented for confirmation to the legislature within 20 calendar days following receipt by the governor of the legislature's notification of its refusal to confirm the prior appointment. The governor may not appoint again the same person whose confirmation was refused for the same position or membership during the session of the legislature at which confirmation was refused. The person whose name is refused for appointment by the legislature may not thereafter be appointed to the same position or membership during the interim between legislative sessions. Failure of the legislature to act to confirm or decline to confirm an appointment during the session in which the appointment was presented is tantamount to a declination of confirmation on the day the session adjourns.

(4) Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, have the powers, and be charged with the duties prescribed by law for the appointive positions or membership. However, the duration of an appointment made during the time period between regular sessions of the legislature by a person who is not still the governor on the first day of the next regular session ends on the date during the next regular session that the sitting governor presents for confirmation an appointment to the office. For the purpose of applying laws that limit the number of terms or parts of terms that may be served by a member of a board or commission, the part of the term of office that is served under an interim appointment immediately before the member is reappointed under this paragraph is considered to be merged with the part of the term of office that is served immediately after reappointment so that the two periods of service constitute only one part of a term. The duration of an appointment made during a regular session of the legislature and not presented to the legislature by the governor during that session ends no later than the last day of that session. The duration of an appointment made during an interim by a governor who is not in office at the beginning of the next regular session of the legislature ends no later than the last day of that regular session unless the governor who is in office during that session presents the person's name for confirmation. The same governor may not appoint the same person to the same position or membership if the person's appointment ends because of the governor's failure to present the person's name for confirmation.

Ernest E. (Ernie) Hall

Graduated from Lathrop High School Fairbanks, Alaska 1961
Married in 1965, Wife is Regina. 3 Children, Evan, Kathleen & Brian
Started Alaska Furniture Manufactures Inc., July 1971. It began
as an upholstered furniture factory and reupholstery, and added wood
furniture refurbishing in 1976 and millwork in 1978. We now custom
build commercial millwork as well as upholstery in all phases and
refinishing.

Memberships, committees and boards

Present:

Anchorage Economic Development Corporation, Past Chair.
Anchorage Rotary, Past President
UAA Chancellors Advisory Committee, Co-Chair
Career Technology Advisory Committee; ASD (chair)
Trustee, Pioneers of Alaska Igloo 15
SBA Advisory Committee Member
CAB Alaska Command Community Advisory Board Member
Academic Decathlon, Judge
Anchorage Cemetery Commission, Chair
Member, Honorary Board for Alaska Children's Services.
Anchorage Airport Advisory Committee
Municipality of Anchorage ERB Board Member
United Way "Success by Six" Co Chair, Governance Board
Alaska Manufacturers Association, Board
AEDC Airport Marketing Committee, Chair

Past:

Chair, Anchorage Chamber of Commerce
Chair, Anchorage Parking Authority
Chair, Food Bank of Alaska
Chair, Alaska Children's Services Board
Member, Buy Alaska, Make it Alaska
Chair, Sand Lake Community Council
President, Pioneers of Alaska Igloo #15

Board of Education Confirmation

Ms. Paula Rae Pawlowski – Anchorage

Appointed: 08/27/98 Reappointed:03/23/00 Expires 01/31/05

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Paula Rac Pawlowski
3300 Balchen Drive
Anchorage, Alaska 99517

Experience:

Elected President of the Alaska PTA, April 1997-99
National PTA Parent Involvement Commission 1997- current

Office Manager, *Mystron For Anchorage* re-election campaign, 1996-1997
24 years diverse volunteer activities in schools, museums, and community associations
with numerous boards, workshops, and presentations including:

Docent, Anchorage Museum of History and Fine Arts
Docent, Heritage Plantation, Sandwich, MA
Docent, Plimoth Plantation, Plymouth MA
Docent, Alaska Zoo, Anchorage, AK

11 years self-employed as home daycare provider

5 years art gallery experience

Department of Defense Education Activity:

Invited Presenter: Parent Involvement & Site Based Management
Panama City, Panama - 1996
Monterey, California - 1996

Appointments/Volunteer Activities:

National Military Family Representative for Alaska, 1996-current
Parent Involvement Chair, Alaska PTA Board of Managers
Chair, Family School Partnerships, Alaska PTA Board of Managers
4th Vice President, Anchorage Council of PTA
President, West Anchorage High School PTSA
President, Turnagain PTA
Parent Representative, Coalition of Essential Schools, Falmouth, MA
Alaska Goals 2000, Geography
Education representative, Women League of Voters, Falmouth, MA
Host parent, American Field Service, 1979, 1986, 1992, 1997

Awards:

Volunteer of the Month, April, Anchorage School District- 1997
Volunteer of the Year, Secondary Level, Anchorage School District - 1992
Outstanding Program for the Town of Falmouth, Falmouth School Board - 1991
Volunteer of the Year, Anchorage Community Schools - 1989

References:

Dr. Bill Mell, Anchorage School District
Dr. Lance Bowie, West High School
Abbe Hensley, Anchorage
Denise Burger, Office of the Mayor, Anchorage

Alaska Mental Health Trust Authority Board of Trustees Confirmation

Mr. Phil A. Younker – Fairbanks

Appointed: 03/03/95 Reappointed: 03/21/00 Expires 03/03/05

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PHIL A. YOUNKER, JR.
Phil A. Younker & Associates, Ltd.
121 Spruce Avenue
Fairbanks, AK 99709-4150
(907) 452-6393 (Office)

Position as Trustee for Alaska Mental Health Land Trust

PROFESSIONAL EXPERIENCE

Horace Mann Insurance 1985-1986
Anchorage, Alaska
INSURANCE AGENT. Agent for life, auto, property and annuities. \

Phil A. Younker & Associates, Ltd. 1986 - Present
Fairbanks and Anchorage, Alaska
VICE PRESIDENT. Investment advisor for six million dollars in discretionary accounts. Provide estate, retirement and investment advice for a fee and commission for 1,500 clients.

Estate Planning for the Disabled 1990- Present
Fairbanks and Anchorage, Alaska
STATEWIDE DIRECTOR. Conduct workshops on estate and retirement planning for families with disabled members. Establish individual estate plans for families, including establishment of wills and trusts to protect assets left for members. Established over 100 plans to date.

EDUCATION

University of Iowa 1981-1985
Iowa City, Iowa
BBS in FINANCE

College for Financial Planning 1989-1992
Denver, Colorado
CERTIFIED FINANCIAL PLANNING

PROFESSIONAL MEMBERSHIPS

International Association of Financial Planners
National Association of Life Underwriters
Fairbanks Association of Life Underwriters

ADDITIONAL PROFESSIONAL ACTIVITIES

Presenter: Pathways Conference (see attached)
Conducts: Retirement & Investment Planning Workshops @ University of Alaska
Fairbanks and Anchorage (3 - 4 workshops @ each campus annually)

COMMUNITY ACTIVITIES

Member - Board of Directors, Alaska Crippled Childrens & Adults (ACCA)
Instructor - Junior Achievement of Alaska (Fairbanks Schools)

REFERENCES

Richard Thwaites
Attorney at Law
500 "L" Street, Suite 301
Anchorage, AK 99501
(907) 277-1595

Dante' Zeller
Executive Director, ARCA
2211-A ARCA Drive
Anchorage, AK 99508
(907) 277-6677

Mary Slaughter
Executive Director, ACCA
1020 Barnette Street
Fairbanks, AK 99701
(907) 456-4884

Donna Davidson
Down Syndrome - Alaska Chapter
HC 3, Box 1706
Eagle River, AK 99577
(907) 694-2545

Pam Davis, Director
Office of Development
University of Alaska Fairbanks
325 Signers' Hall
Fairbanks, AK 99775
(907) 474-6402

Alaska Mental Health Trust Authority Board of Trustees Confirmation

Ms.Caren Robinson - Juneau

Appointed: 04/21/97 Reappointed: 03/21/00 Expires 03/03/05

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RESUME OF CAREN ROBINSON

Service Organizations

Trustee, Alaska Mental Health Trust Authority (Chair)
Member, Alaska League of Women Voters
Member, Business & Professional Women
Former Member, Governor's Police Standards Council
Former Chair and Board Member, SAGA Youth Conservation Program/Americorp

Government Experience

Representative, Alaska State Legislature, 1995 and 1996
 International Trade & Tourism Committee,
 Health, Education & Social Services Committee & State Affairs Committee
Six years on Juneau Borough Assembly, 1986-1992 - Chair of HESS Committee
Twenty-two years working with Alaska Legislature
 Lobbyist/monitor, League of Women Voters, Network on Domestic Violence &
 Sexual Assault, Alaska Women's Lobby, Kidpac, Alaska Civil Liberties Union,
 Alaska Public Health Association
 Legislative aide to Rep. Bettye Davis
Special Assistant, Governor Steve Cowper, 1987-90 specialist on public safety,
 crime, health and family
Chair, Governor's Federal Anti-Drug Commission, 1987-90
President, Alaska Network on Domestic Violence and Sexual Assault, 1979-1986
Coordinator, Governor's Domestic Violence Summit, 1997

Business and Professional Positions

Owner/Partner, DC2 consulting/lobbying/management
Owner/Partner, The Shellfish Market -Tenass Pass Shellfish Company
Owner/Partner, A Moveable Feast
Owner/Partner, Poseidon BoardSports
Co-Founder/Director, AWARE Women and Children's Shelter, 1977-1986
Former certified Police Trainer (DV & SA), Sitka Police Academy

Honors

Selected by MS Magazine as one of the "Women to Watch in the '80s"
One of six Americans to be honored by President Reagan for "outstanding
 service on behalf of victims of crime", 1985
Recognized by the City and Borough of Juneau's Accessibility Task Force as its
 founder and leader in making Juneau more accessible for citizens and
 visitors with disabilities, 1992
Honored by the 13th & 14th Alaska Legislature for "spirit, compassion, and dedication"
 in service to the "people of Alaska", 1983 & 1985
Honored as one the outstanding new state legislators by being named a
 " Flemming Fellow" 1995
Honored by U.S. Dept. of Health & Human Services, for "outstanding leadership &
 service in the prevention of child abuse & neglect ", 1996

Alaska Mental Health Trust Authority Board of Trustees Confirmation

Ms.Caren Robinson - Juneau

Appointed: 04/21/97 Reappointed: 03/21/00 Expires 03/03/05

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Twenty-two years working with Alaska Legislature
Lobbyist/monitor, League of Women Voters, Network on Domestic Violence &
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Alaska Public Health Association
Legislative aide to Rep. Bettye Davis
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crime, health and family
Chair, Governor's Federal Anti-Drug Commission, 1987-90
President, Alaska Network on Domestic Violence and Sexual Assault, 1979-1986
Coordinator, Governor's Domestic Violence Summit, 1997

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Owner/Partner, A Moveable Feast
Owner/Partner, Poseidon BoardSports
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Former certified Police Trainer (DV & SA), Sitka Police Academy

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visitors with disabilities, 1992
Honored by the 13th & 14th Alaska Legislature for "spirit, compassion, and dedication"
in service to the "people of Alaska", 1983 & 1985
Honored as one the outstanding new state legislators by being named a
"Flemming Fellow" 1995
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Mr. Phil A. Younker – Fairbanks

Appointed: 03/03/95 Reappointed: 03/21/00 Expires 03/03/05

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(B) the legislature shall, before the end of the session in which the appointments are presented, in joint session assembled, act on the appointments by confirming or declining to confirm by a majority vote of all of the members the appointments presented.

(3) When the legislature declines to confirm an appointment, the legislature shall notify the governor of its action and a vacancy in the position or membership exists which the governor shall fill by making a new appointment. The new appointment shall be presented for confirmation to the legislature within 20 calendar days following receipt by the governor of the legislature's notification of its refusal to confirm the prior appointment. The governor may not appoint again the same person whose confirmation was refused for the same position or membership during the session of the legislature at which confirmation was refused. The person whose name is refused for appointment by the legislature may not thereafter be appointed to the same position or membership during the interim between legislative sessions. Failure of the legislature to act to confirm or decline to confirm an appointment during the session in which the appointment was presented is tantamount to a declination of confirmation on the day the session adjourns.

(4) Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, have the powers, and be charged with the duties prescribed by law for the appointive positions or membership. However, the duration of an appointment made during the time period between regular sessions of the legislature by a person who is not still the governor on the first day of the next regular session ends on the date during the next regular session that the sitting governor presents for confirmation an appointment to the office. For the purpose of applying laws that limit the number of terms or parts of terms that may be served by a member of a board or commission, the part of the term of office that is served under an interim appointment immediately before the member is reappointed under this paragraph is considered to be merged with the part of the term of office that is served immediately after reappointment so that the two periods of service constitute only one part of a term. The duration of an appointment made during a regular session of the legislature and not presented to the legislature by the governor during that session ends no later than the last day of that session. The duration of an appointment made during an interim by a governor who is not in office at the beginning of the next regular session of the legislature ends no later than the last day of that regular session unless the governor who is in office during that session presents the person's name for confirmation. The same governor may not appoint the same person to the same position or membership if the person's appointment ends because of the governor's failure to present the person's name for confirmation.

PHIL A. YOUNKER, JR.
Phil A. Younker & Associates, Ltd.
121 Spruce Avenue
Fairbanks, AK 99709-4150
(907) 452-6393 (Office)

Position as Trustee for Alaska Mental Health Land Trust

PROFESSIONAL EXPERIENCE

Horace Mann Insurance 1985-1986
Anchorage, Alaska
INSURANCE AGENT. Agent for life, auto, property and annuities. \

Phil A. Younker & Associates, Ltd. 1986 - Present
Fairbanks and Anchorage, Alaska
VICE PRESIDENT. Investment advisor for six million dollars in discretionary accounts. Provide estate, retirement and investment advice for a fee and commission for 1,500 clients.

Estate Planning for the Disabled 1990- Present
Fairbanks and Anchorage, Alaska
STATEWIDE DIRECTOR. Conduct workshops on estate and retirement planning for families with disabled members. Establish individual estate plans for families, including establishment of wills and trusts to protect assets left for members. Established over 100 plans to date.

EDUCATION

University of Iowa 1981-1985
Iowa City, Iowa
BBS in FINANCE

College for Financial Planning 1989-1992
Denver, Colorado
CERTIFIED FINANCIAL PLANNING

PROFESSIONAL MEMBERSHIPS

International Association of Financial Planners
National Association of Life Underwriters
Fairbanks Association of Life Underwriters

ADDITIONAL PROFESSIONAL ACTIVITIES

Presenter: Pathways Conference (see attached)
Conducts: Retirement & Investment Planning Workshops @ University of Alaska
Fairbanks and Anchorage (3 - 4 workshops @ each campus annually)

COMMUNITY ACTIVITIES

Member - Board of Directors, Alaska Crippled Childrens & Adults (ACCA)
Instructor - Junior Achievement of Alaska (Fairbanks Schools)

REFERENCES

Richard Thwaites
Attorney at Law
500 "L" Street, Suite 301
Anchorage, AK 99501
(907) 277-1595

Dante' Zeller
Executive Director, ARCA
2211-A ARCA Drive
Anchorage, AK 99508
(907) 277-6677

Mary Slaughter
Executive Director, ACCA
1020 Barnette Street
Fairbanks, AK 99701
(907) 456-4884

Donna Davidson
Down Syndrome - Alaska Chapter
HC 3, Box 1706
Eagle River, AK 99577
(907) 694-2545

Pam Davis, Director
Office of Development
University of Alaska Fairbanks
325 Signers' Hall
Fairbanks, AK 99775
(907) 474-6402

Board of Education Confirmation

Ms. Paula Rae Pawlowski – Anchorage

Appointed: 08/27/98 Reappointed:03/23/00 Expires 01/31/05

Sec. 39.05.080. Procedure for all appointments.

Except as otherwise provided in a law relating to the positions or memberships on a specific board or commission, appointment to a position or membership shall be made in the following manner:

(1) Each governor shall present to the legislature the names of the persons appointed by that governor; each governor may present the name of a person appointed by a previous governor; only presentment that occurs during the time that the legislature is in regular session constitutes presentment under this section. The governor shall, within the first 30 days after the legislature convenes in regular session, present to the legislature for confirmation the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature, and (B) persons to be appointed to fill a position or membership the term of which will expire March 1 during that session of the legislature. If an appointment is made after the first 30 days of the convening of the regular session but while the legislature is in regular session, the governor shall, within five calendar days after the appointment is made, present to the legislature for confirmation the name of the person appointed. The deadline may be extended by the legislature by the approval of a concurrent resolution.

(2) When appointments are presented to the legislature for confirmation,

(A) the presiding officer of each house shall assign the name of each appointee to a standing committee of that house for a hearing, report, and recommendation; standing committees of the two houses assigned the same person's name for consideration may meet jointly to consider the qualifications of the person appointed and may issue either a separate or a joint report and recommendation concerning that person; then

(B) the legislature shall, before the end of the session in which the appointments are presented, in joint session assembled, act on the appointments by confirming or declining to confirm by a majority vote of all of the members the appointments presented.

(3) When the legislature declines to confirm an appointment, the legislature shall notify the governor of its action and a vacancy in the position or membership exists which the governor shall fill by making a new appointment. The new appointment shall be presented for confirmation to the legislature within 20 calendar days following receipt by the governor of the legislature's notification of its refusal to confirm the prior appointment. The governor may not appoint again the same person whose confirmation was refused for the same position or membership during the session of the legislature at which confirmation was refused. The person whose name is refused for appointment by the legislature may not thereafter be appointed to the same position or membership during the interim between legislative sessions. Failure of the legislature to act to confirm or decline to confirm an appointment during the session in which the appointment was presented is tantamount to a declination of confirmation on the day the session adjourns.

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Paula Rae Pawlowski
3300 Balchen Drive
Anchorage, Alaska 99517

Experienc:

Elected President of the Alaska PTA, April 1997-99
National PTA Parent Involvement Commission 1997- current

Office Manager, *Mystrum For Anchorage* re-election campaign, 1996-1997
24 years diverse volunteer activities in schools, museums, and community associations
with numerous boards, workshops, and presentations including:

Docent, Anchorage Museum of History and Fine Arts
Docent, Heritage Plantation, Sandwich, MA
Docent, Plimoth Plantation, Plymouth MA
Docent, Alaska Zoo, Anchorage, AK

11 years self-employed as home daycare provider

5 years art gallery experience

Department of Defense Education Activity:

Invited Presenter: Parent Involvement & Site Based Management
Panama City, Panama - 1996
Monterey, California - 1996

Appointments/Volunteer Activities:

National Military Family Representative for Alaska, 1996-current
Parent Involvement Chair, Alaska PTA Board of Managers
Chair, Family School Partnerships, Alaska PTA Board of Managers
4th Vice President, Anchorage Council of PTA
President, West Anchorage High School PTSA
President, Turnagain PTA
Parent Representative, Coalition of Essential Schools, Falmouth, MA
Alaska Goals 2000, Geography
Education representative, Women League of Voters, Falmouth, MA
Host parent, American Field Service, 1979, 1986, 1992, 1997

Awards:

Volunteer of the Month, April, Anchorage School District- 1997
Volunteer of the Year, Secondary Level, Anchorage School District - 1992
Outstanding Program for the Town of Falmouth, Falmouth School Board - 1991
Volunteer of the Year, Anchorage Community Schools - 1989

References:

Dr. Bill Mell, Anchorage School District
Dr. Lance Bowie, West High School
Abbe Hensley, Anchorage
Denise Burger, Office of the Mayor, Anchorage



Official Business

Alaska State Legislature

House of Representatives

State Capitol
Juneau, AK. 99801-1182

Date: 4/6/00

The Honorable Brian Porter
Speaker of the House
State Capitol
Juneau, AK 99801


Dear Mr. Speaker:

In accordance with AS 39.05.080, the Health, Education and Social Services Committee has reviewed the qualifications of the following individual and recommends that the appointment be forwarded to a joint session for consideration:

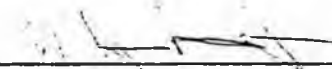
Board of Education

Ms. Paula Rae Pawlowski - Anchorage
Appointed: 08/27/98 Reappointed: 3/23/00
Expires: 01/31/05

This does not reflect an intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

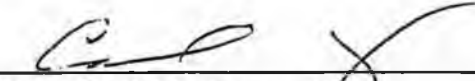


Rep. Fred Dyson, Chair

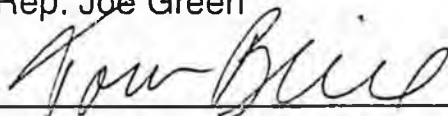


Rep. Jim Whitaker

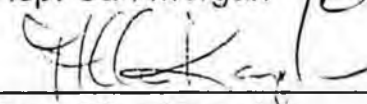
Rep. Joe Green



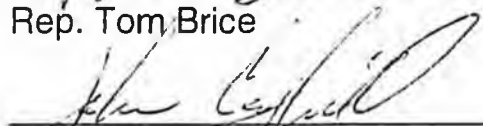
Rep. Carl Morgan



Rep. Tom Brice



Rep. Allen Kemplen



Rep. John Coghill



Official Business

Alaska State Legislature

House of Representatives

State Capitol
Juneau, AK. 99801-1182

Date: 4/6/00

The Honorable Brian Porter
Speaker of the House
State Capitol
Juneau, AK 99801

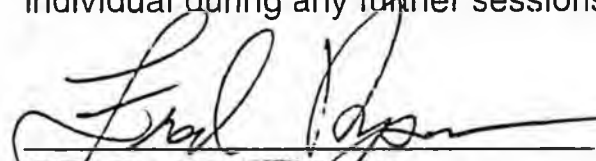
Dear Mr. Speaker:


In accordance with AS 39.05.080, the Health, Education and Social Services Committee has reviewed the qualifications of the following individual and recommends that the appointment be forwarded to a joint session for consideration:

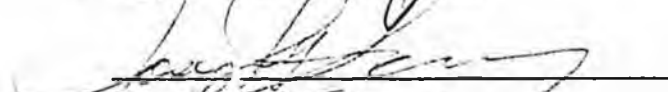
Alaska Mental Health Trust Authority Board of Trustees

Ms. Caren Robinson - Juneau
Appointed: 04/21/97 Reappointed: 03/21/00
Expires: 03/03/05

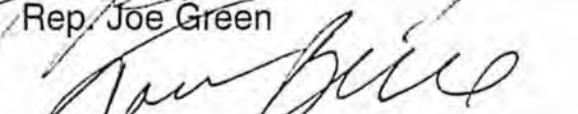
This does not reflect an intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.


Rep. Fred Dyson, Chair


Rep. Jim Whitaker


Rep. Joe Green


Rep. Carl Morgan


Rep. Tom Brice


Rep. Allen Kemplen


Rep. John Coghill



Kodiak Island Borough School District

Resolution #990-007

In Support of State of Alaska Board of Education Appointment

WHEREAS, Governor Tony Knowles has appointed Sally Rue to the Alaska State Board of Education, pending confirmation by the Legislature; and

WHEREAS, Sally Rue has distinguished herself by her active involvement in and commitment to education, serving not only on the Board of Education of the Juneau Borough School District but also on numerous Juneau Borough School District and Association of Alaska School Boards committees; and

WHEREAS, Sally Rue has been honored as a parent volunteer in 1992, with the MacKinnon Education Excellence Award in 1998, and with the Academy of Excellence Award for service as a School Board President in 1998; and

WHEREAS, Sally Rue has two children who have experienced public school education in Alaska; and

WHEREAS, Sally Rue has experienced first-hand and is knowledgeable about the challenges school boards are facing today,

NOW THEREFORE BE IT RESOLVED, the Kodiak Island Borough School District Board of Education strongly supports Governor Tony Knowles' appointment of Sally Rue to the State of Alaska Board of Education.

Alice Knowles

Alice Knowles, Vice President
Kodiak Island Borough School District
Board of Education

4/06/00

Date

ASSOCIATION OF ALASKA SCHOOL BOARDS
Advocates for Alaska's Youth

April 3, 2000

Representative Fred Dyson, HESS Chair
House HESS Committee Members
Alaska State Legislature
Juneau, Alaska

RE: Recommendation for Sally Rue for State Board of Education

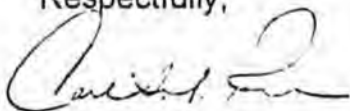
Knowing that you will be considering confirmation of appointments to the State Board of Education in the near future, We'd like to offer our recommendation Sally Rue of Juneau.

We are well acquainted with Sally from her years of experience on the Juneau School Board. She is one of those individuals who distinguished herself during her school board service as meeting and exceeding Board Standards, even before they were thought of. She has demonstrated her commitment to being an active community advocate for education for years before serving on a school board, and will continue to be an active contributor in this new position as a State Board member.

Sally is extremely knowledgeable about the challenges school districts are facing today. She researches issues carefully and provides leadership in making sound decisions. Sally has demonstrated a statewide perspective and appreciation for the needs of schools in both urban and rural settings.

We believe someone of Sally's experience and commitment will play a valuable role in advancing public education statewide. I'm sure you will find a wide range of support for her appointment. The Association of Alaska School Boards would like to add our voice to that support. We would look forward to working with her in this capacity.

Respectfully,



Carl Rose
Executive Director

HB

5

STATE OF ALASKA

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

(907) 465-2800
FAX (907) 465-4156

February 23, 1999

The Honorable John Coghill, Jr., Co-Chair
House Health, Education and Social Services Committee
State Capitol, Room 416
Juneau, AK 99801-1182

Dear Representative Coghill, Jr.:

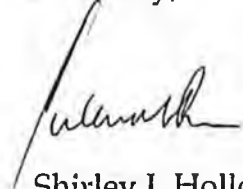
At the February 16 the Health, Education and Social Services Committee hearing on vouchers, questions were asked of Department of Education staff that I would like to answer.

- 1) Representative Brice asked how Sec. 14.31.020 (d) might be implemented, and how much direction from the legislature would be necessary to regulate and implement the bill. Sec. 14.31.020 (d) reads "the department may adopt regulations necessary to administer the education voucher program under this section." Therefore, assuming the program is constitutional, the only way to ensure program quality or accountability for this voucher system would be in Department of Education regulation.
- 2) Representative Whitaker asked if federal funding and local funding would also be provided for students participating in the voucher program. The answer is no. Only state aid would be made available for students participating in the voucher program.
- 3) Representative Kemplen asked if the legislature appropriated funds that were not equal to the amount applied for by parents with students in the voucher program, what would be the result? The bill states that if the legislature appropriates insufficient funds, the department would distribute the available funds on a pro rata basis.

Letter, Representative Coghill, Jr.
February 23, 1999
Page 2 of 2

As you know, the State Board of Education is opposed to any voucher plan that would take public money from public schools and give it to private schools. As the Board considers the topic of choice within the public school system, we hope to continue this constructive dialogue with the legislature. We certainly share the same goal to improve student learning.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shirley J. Holloway".

Shirley J. Holloway, Ph.D.
Commissioner

cc: The Honorable Fred Dyson

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Legal Forum

By Allen B. Dyal,
Assistant Professor
Educational Leadership
Auburn University at Montgomery

Court Allows Use Of Public Funds In Private Schools For Title I Services

The debate over public funds being used in religious K-12 schools has persisted for many years. However, in most instances, the establishment clause of the First Amendment to the Constitution has been interpreted to prohibit financial support for religious schools.

In 1965, the U.S. Congress passed legislation intended to provide full educational opportunities to economically-disadvantaged children. Title I of the Elementary and Secondary Education Act of 1965 provided funds to local schools for the specific purpose of providing remedial education, guidance services and job counseling.

The city of New York, as well as many other cities, developed programs that not only met the needs of public school students, but also provided services to students enrolled in private schools. In 1971, the court developed a three-pronged test to evaluate whether practices of schools and individual laws violated the First Amendment. The standard requires that the law has a secular purpose, neither promotes nor inhibits religion and avoids excessive governmental entanglement. I have often looked at this standard in previous Legal Forum articles.

Title I programs provided by many urban school systems to children in parochial schools were finally challenged in *Aguilar v. Felton*. The question the court considered was whether it was permissible for a school system, in this case the city of New York, to place public school teachers in private parochial schools to provide Title I remedial services to students. The Supreme Court found the program created an excessive entanglement of church and state. The court indicated that remedial services



Allen B. Dyal

could be provided to a religious school, but the services must be provided at a neutral site. Stricter guidelines have since been created which relate to these programs.

Many school systems provided

mobile classrooms off campus to satisfy the ruling. You may ask, "Why would a public school system want to provide such services to religious schools?" Clearly, the programs helped economically-disadvantaged children. For large urban districts, the program provided a significant amount of funding to the district.

Since 1985, school systems have carefully provided appropriate remedial services at neutral sites. The common sense question that has surfaced in the educational community concerns how a neutral site could really make a difference. The petitioners in *Agostini v. Felton* sought relief from the courts earlier decision based on the excessive cost of complying with the neutral site provision of the *Argular* decision.

Can the Supreme Court change its mind? Yes, and it did just that in *Agostini v. Felton*. This past June, the court asserted that with appropriate safeguards, providing Title I programs on parochial school grounds was not a violation of the establishment clause. There was no evidence that public school teachers attempted to religiously indoctrinate students or that the programs promoted or enhanced religion. The court also determined the program did not excessively entangle government, or that public funds for religious schools were not auto-

matically inappropriate or invalid.

This case is significant to educational leaders for several reasons. It shows how important it is to stay up-to-date on legal matters that are dynamic and ever changing. It also shows us that the Supreme Court can change its mind. On the broader question of the separation of church and state, it would seem that the pendulum, constantly moving on such matters, is swinging toward a more flexible view concerning public funds being spent in parochial schools.

I spoke with Barry Blackwell, federal programs coordinator for the State Department of Education, concerning this case. It is Blackwell's opinion that, "The *Agostini* case will have a major impact on students in Alabama's private schools. In the past, a number of school systems provided services to private school students using mobile units. This finding will allow school systems to provide better and more Title I services at a lower cost. School systems as diverse as Mobile and Wilcox Counties are likely to take advantage of this decision."

It is my view that while Alabama has yet to take advantage of Title I funds for students in religious schools, we are likely to see a move in that direction. The Supreme Court, in this case, affirmed its trend of moving toward greater acceptance of allowing the use of public funds for students in private schools. ■

References

- Aguilar v. Felton*, 473 U.S. 402 (1985).
- Agostini v. Felton* (In Press) (1997).
- Lemon v. Kurtzman*, 403 U.S. 602 (1971).
- Barry Blackwell, telephone interview, Oct. 31, 1997.



much effect as these more mundane predictors of school success.

The picture of Vietnamese "boat people" struggling to give their children an education and of the children scoring high on tests as a consequence is one that has been painted often in articles critical of native-born American students. Overall, though, those who have immigrated from Southeast Asia don't reach the national average on standardized tests. In fact, says Kim, "the high school dropout rates for schools with high concentrations of Southeast Asians hover around 50%." Southeast Asians also have lower expectations of what their own educational attainments will be. Some 65% of them think they'll earn at least a bachelor's degree, while for the other Asian groups the figures are in the range of 80%-95%. Fully 75% of the South Asian seniors expect to wind up with an advanced degree, 39% saying they'll get a master's degree and 37% anticipating a Ph.D. or its equivalent.

Kim observes that "the stereotype of Asian Americans is that of a highly successful minority who have made it in American society. Asian American students are portrayed as 'whiz kids,' the 'best and the brightest,' math and science majors, students who pass through our toughest universities with ease. . . . Contrary to the stereotype, there are significant differences among Asian American seniors in terms of socioeconomic characteristics, parental expectations and involvement, educational values, academic achievement, and college aspirations." (Another stereotype that Kim doesn't discuss envisions Asians living in various urban "Chinatowns" when, in fact, a majority live in the suburbs.)

If we put all of the Asian kids into one school district, we would characterize it as an affluent (median income of \$41,251 in 1990, compared to \$32,142 overall), highly educated, suburban system. No wonder they score well on tests.

Kim goes on to make a different point. Although the stereotype of Asian students is a "good" stereotype, it is still a stereotype and so prevents us from seeing the reality. Recall that Denis Doyle earned his Rotten Apple Award in the Seventh Brace Report for claiming that it was "Asian" kids who were pushing the SAT math scores up. (Kim's report can be obtained for \$9.50, prepaid, from the Policy Information Center, Mail Stop 04-R, Educational Testing Service, Rosedale Rd., Princeton, NJ 08541-0001. **■**)

A RARE RELIGIOUS REVERSAL

BY PERRY A. ZIRKEL

CONGRESS enacted Title I of the Elementary and Secondary Education Act of 1965 "to provide full educational opportunity to every child regardless of economic background." Under Title I school districts receive and spend federal funds for remedial education, guidance, and job counseling for eligible students. Eligibility is based on residence in low-income areas and failing — or being at risk of failing — the state's student performance standards.

Title I funds are not limited to eligible children in public schools; services to eligible students in private schools must be "equitable in comparison to services and other benefits for public school children." However, special restrictions do apply, such as 1) the school district must retain complete control over the funds, 2) the district must provide the services through public employees or other persons independent of the private school and any religious institution, and 3) the services must supplement, not supplant, the level of services provided by the private school and must be "secular, neutral, and nonideological."

The New York City Board of Education first applied for Title I funds in 1966 and has grappled ever since with how to provide Title I services to the private school students, especially those in parochial schools, within its jurisdiction. Its initial arrangement, which was to transport the children to public schools for after-school Title I instruction, was largely unsuccessful; attendance was poor, teachers and children were tired, and parents were concerned with

safety. The board next tried after-school instruction on the private school campuses, which also yielded mixed results. Then the board offered Title I services on private school premises during school hours. Under this arrangement, the Title I teachers, who were district employees, received a detailed set of rules spelling out the secular purpose of the program, and a board field supervisor made unannounced monthly visits to monitor compliance.

In 1978, six taxpayers from New York City filed suit in federal court, claiming that the board's third arrangement violated the establishment clause of the First Amendment. In 1985, after appeals to and beyond the Second Circuit, the Supreme Court issued a 5-4 decision in *Aguilar v. Felton* finding the board's program to be unconstitutional because of an "excessive entanglement of church and state in the administration of [Title I] benefits." On remand, the federal district court permanently enjoined the board from offering Title I instruction and counseling services provided by public school personnel "on the premises of sectarian schools."

The board then arranged for Title I services to be offered at public school sites, at leased neutral sites, in mobile units parked near sectarian schools, or by means of computer-assisted instruction (CAI) on the premises of sectarian schools. The costs of compliance were significant. Since the 1986-87 school year, the board has spent over \$100 million providing CAI, leasing sites and mobile units, and transporting students.

In October and December 1995, the board and a group of parents of eligible parochial school students filed motions in the district court seeking relief from the

PERRY A. ZIRKEL is Iacocca Professor of Education, Lehigh University, Bethlehem, Pa.

permanent injunction under *Aguilar*. The district court recognized that the plaintiffs were seeking a procedurally sound vehicle to get the issue back before the Supreme Court, and it denied the motions. On appeal, the Second Circuit affirmed.

On 23 June 1997, the Supreme Court voted 5-4 in *Agostini v. Felton* to reverse *Aguilar*.¹ While rejecting two of the three grounds argued by the plaintiffs — the costs of compliance and the dicta of five of the justices in favor of reconsidering or overruling *Aguilar*² — the majority decision relied on the significant change in the legal landscape represented by the Court's establishment clause decisions since *Aguilar*. More specifically, the majority concluded that more recent rulings have so undermined *Aguilar* and its companion case, *School District of Grand Rapids v. Ball*,³ that they are no longer good law.

First, in *Zobrest v. Catalina Foothills School District*,⁴ in which the Court held that providing an interpreter for a deaf student on the premises of a sectarian school did not violate the establishment clause, the Court refused to accept the assumption that the placement of public employees on parochial school grounds inevitably results in state-sponsored religious indoctrination or constitutes a symbolic union between government and religion.

Second, in *Witers v. Washington Department of Services for the Blind*,⁵ in which the Court held that the establishment clause did not bar a state from issuing a vocational tuition grant to a blind person for religious education, the Court invalidated the assumption that any and all public aid that directly aids the educational function of religious schools impermissibly finances religious indoctrination.

Finally, *Zobrest* also undid the "excessive entanglement" argument, which was an essential assumption underlying the *Aguilar* finding. The Court's logic in *Agostini* was as follows: "Since we have abandoned the assumption that properly instructed public employees will fail to discharge their duties faithfully, we must also discard the assumption that pervasive monitoring of Title I teachers is required."

In thus overruling both *Aguilar* and *Ball* as inconsistent with "our current understanding of the Establishment Clause," the majority of the Court expressly held that "a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not [unconstitutional] . . . when such in-

struction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards such as those present here."

The four dissenters took issue on both substantive and procedural grounds. Substantively, they criticized the majority for exaggerating the meaning of *Aguilar* and *Ball* while ignoring the limited scope of *Zobrest* and *Witers*, thus repudiating the long-standing principles against direct and substantial subsidization. Procedurally, they interpreted the applicable federal rules as requiring deferral of reconsidering *Aguilar* until a future case.

THE FINDING in *Agostini* represents one of the Supreme Court's rare reversals.⁶ It was all the more unusual because it happened within the confines of the same case. It reveals the importance of the membership of the Court, which reflects the interaction of individual and societal values and which is particularly crucial for church/state issues.⁷ As illustrated by the change in votes from 5-4 against to 5-4 for, it was a close call, but the current bent on the Court is toward lowering the metaphorical wall of separation in establishment clause cases. Factual variations can be significant, however. Thus the U.S. Department of Education has already issued guidelines to spread the "safeguards" referenced in *Agostini*.⁸ The most proximate legal issue in the schools, which concerns the provision of services to special education students in parochial schools, is now somewhat clearer; *Agostini* seems to suggest that doing so on the premises of parochial schools is constitutionally permissible. But the new amendments to the Individuals with Disabilities Education Act appear to effectively eliminate the individual statutory entitlement.⁹

Moreover, *Agostini* does not necessarily change the legal landscape in states, such as Washington, that have a higher church/state barrier in their state constitutions than that of the First Amendment establishment clause.¹⁰

In any event, one can safely predict more church/state litigation, with results that defy safe predictions. School officials, without the aid of state-sponsored prayers, can only continue trying to discharge their First Amendment duties "in good faith."

1. *Aguilar v. Felton*, 473 U.S. 402, 414 (1985).
2. 117 S. Ct. 1997 (1997).

3. Although their individual expressions were merely dicta in *Board of Education of Keyes-Joel School District v. Gramer*, 512 U.S. 687 (1994), because the issue was distinctly different in that case, the same five justices — O'Connor, Kennedy, Rehnquist, Scalia, and Thomas — constituted the majority in *Agostini*.

4. 473 U.S. 373 (1985). The Court's decision in *Ball*, which similarly concerned an on-premises remedial program, rested on the second prong (primary religious effect) of the tripartite test. Both *Aguilar* and *Ball* passed the first prong (secular purpose), while *Aguilar* fell on the third prong (excessive entanglement).

5. 509 U.S. 1 (1993). See, for example, Perry A. Zirkel, "Is the 'Wall of Separation' Like the Walls of Jericho?" *Phi Delta Kappan*, September 1993, pp. 88-90.

6. 474 U.S. 481 (1986).

7. There are only two other examples in the elementary/secondary school context: *West Virginia State Board of Education v. Barnette* (1943), which reversed *Minersville School District v. Gobitis* (1940); and *Brown v. Board of Education*, 373 U.S. 483 (1954), which reversed *Gong Lum v. Rice* (1927). For a summary of these decisions, see Perry A. Zirkel, Sharon Malbone Richardson, and Steven S. Goldberg, *A Digest of Supreme Court Decisions Affecting Education*, 3rd ed. (Bloomington, Ind.: Phi Delta Kappa Educational Foundation, 1995).

8. For analyses of the Supreme Court's establishment clause jurisprudence in terms of the members of the Court, see Julie Underwood and Julie Mead, "Establishment of Religion Analysis," *Journal of Law and Education*, Winter 1996, pp. 55-82; and Perry A. Zirkel and Faith MacMurtre, "A Scalogram Analysis of Supreme Court Establishment Clause Cases in Education," *West's Education Law Reporter*, 16 October 1986, pp. 1-10.

9. Mark Walsh, "ED Gives Advice on Title I Aid to Church Schools," *Education Week*, 6 August 1997, p. 26.

10. See, for example, *Cefalu v. East Baton Rouge Sch. Dist.*, 117 F.3d 166 (5th Cir. 1997).

11. See, for example, *Witers v. Washington Dep't of Serv. for the Blind*, 771 P.2d 1119, cert. denied, 493 U.S. 850 (1989). K

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This case pertains to Chapter 2, The Church-State Distinction.

AGOSTINI v. FELTON

65 U.S.L.W. 3605 (1997).

NATURE OF CASE: Appeal of decision affirming the denial of a motion seeking relief from a permanent injunction (barring a school board from sending public school teachers into parochial schools to provide remedial education to disadvantaged children).

GENERAL RULE OF LAW: Under certain circumstances, public school teachers may provide remedial education to parochial students on parochial school grounds without violating the Establishment Clause of the First Amendment.

PROCEDURE SUMMARY:

Plaintiffs: The New York City Board of Education (headed by its Chancellor, Betty-Louise Felton), and parents (P) of disadvantaged parochial school students.

Defendants: Rachel Agostini (D) and five other federal taxpayers.

U.S. District Court Decision: Denied plaintiffs' request for relief from injunction issued in *Aguilar v. Felton*.

Second Circuit Court of Appeals Decision: Affirmed denial of relief.

FACTS: The Board of Education of the City of New York (P), a local educational agency (LEA) under Title I of the federal Elementary and Secondary Education Act of 1965 (the Act), 20 U.S.C., §§ 6301 et seq., has been required to provide "full educational opportunity" to every school-age child, regardless of his or her economic background, under the terms of the Act. Title I channeled federal funds, through the states, to LEAs, which in turn used the funds to provide remedial education, guidance, and job counseling to eligible children. The intended goal was that of assisting these children in meeting state student performance standards.

LEAs were not prohibited from providing services to children enrolled in private schools within its jurisdiction; however, the provision of services under such circumstances was subject to several restrictions. Services were required to be provided on a per-pupil, rather than schoolwide, basis. Ad-

ditionally, the services were required to be "secular, neutral and nonideological in nature," and to be provided through public employees or others who were independent of private schools/religious institutions. Finally, each LEA was required to retain complete control over funds as well as title to all educational materials.

Within the jurisdiction of the NYC Board of Education (the Board), 10% of the total number of students eligible for services under the Act went to private schools; 90% of those private schools were secular in nature. Originally, the Board arranged to bus Title I-eligible students to public schools for after-school remedial education. When that program failed for logistical reasons, the Board then moved the after-school instruction directly onto private school campuses. The remedial instructors were all public employees, as contemplated by the Act, and were specifically admonished not to introduce any religious matter into their teaching or become involved in any way with the religious activities of the private schools.

In 1978, six federal taxpayers (P) sued the Board in federal district court, asserting that the Board's Title I program violated the Establishment Clause of the First Amendment to the U.S. Constitution. They sought an injunction prohibiting the Board from pursuing its remedial education plan (placing public employees in private religious schools).

The district court permitted the parents of several Title I-eligible parochial students to join the Board as defendants in the lawsuit and thereafter denied the plaintiffs' request for an injunction. The federal Second Circuit Court of Appeals overturned the district court's decision.

The U.S. Supreme Court, in *Aguilar v. Felton*, 473 U.S. 402, 413, affirmed the federal appellate (circuit) court, holding that the Board's Title I program necessitated an "excessive entanglement of church and state in the administration of [Title I] benefits." 473 U.S., at 414. The Court then remanded the case to the district court, which promptly enjoined the Board from using public funds for any program that authorized public

EDUCATION LAW • 1997 SUPPLEMENT

school teachers and counselors to provide services on the premises of sectarian schools.

In response to the injunction, the Board modified its program so that it could continue to serve Title I-eligible private school students. It once again provided instruction at public schools (as it had originally but unsuccessfully) as well as at leased sites and in vans it converted into classrooms in the vicinity of the sectarian schools. Computer-aided instruction was offered on private school premises since this program did not require public employees to be physically present at the sites.

Between the 1986-87 and 1993-94 school years, the Board spent approximately \$93 million complying with the Act, as modified under the injunction issued in *Aguilar v. Felton*. These funds were deducted from the entire grant of money available under Title I of the Act, before any of it was passed on to Title I-eligible students throughout the United States. The *Aguilar* costs thus reduced the amount of funds provided to all LEAs for remedial education. In plain terms, 20,000 disadvantaged children from New York City, and 183,000 such children nationwide, experienced a decline in Title I services.

In late 1995, the Board and a new group of parents of disadvantaged parochial school students (P) filed a motion in federal district court seeking relief from the Supreme Court's *Aguilar* decision, claiming that the Court's decisional law had changed to the point that what once had been determined to be illegal was now legal. Both the district court and the Second Circuit Court of Appeals, while recognizing that Establishment Clause decisional law had indeed changed over the years, nevertheless upheld the denial of the motion for relief.

ISSUE: Is the *Aguilar* decision, which held that permitting public school teachers to provide remedial education to disadvantaged parochial school children on the grounds of their private schools has the improper effect of advancing a religion with public funds, still valid law?

HOLDING AND DECISION: No. The *Aguilar* decision is no longer valid law. Permitting public school teachers to provide remedial education to disadvantaged parochial school children in the case's context is no longer seen to have the improper effect of advancing a religion.

Implicit in the decision to overturn *Aguilar* are the following points:

1. The general principles used to evaluate whether government aid violates the Establishment Clause have *not* changed since *Aguilar* was decided. The Court continues to ask whether the government acted with the purpose of advancing or inhibiting religion, just as it continues to explore whether government aid has the "effect" of advancing or inhibiting religion.

2. However, what *has* changed is the Court's understanding of the criteria used in assessing whether government aid to religion has an impermissible effect of advancing religion. Cases decided by the Court after *Aguilar* have modified its approach to assessing establishment cases in two significant respects:

a. First, the presumption (developed in *Ball* and *Meek*) that placement of public employees on parochial school grounds "inevitably results in the impermissible effect of state-sponsored indoctrination [of a religion]" is abandoned. Put another way, no longer will it be presumed that any public employee who works on the premises of a religious school inculcates religion in his or her work. Here, the Court cites the *Zobrest v. Catalina Foothills School District* case for its holding "expressly disavowing the notion that 'the Establishment Clause [laid] down [an] absolute bar to the placing of a public employee in a sectarian school.'" *Agostini*, 1997 ___ U.S. ___, 117 S.Ct. 1997, 2010 (1997), citing *Zobrest*, 509 U.S. 1, 13. In *Zobrest*, the Court refused to presume that a publicly employed interpreter for the deaf would be pressured by pervasively parochial surroundings to inculcate religion by adding to or subtracting from the lectures being translated. Instead, it decided that in the absence of evidence to the contrary, the interpreter would dutifully discharge his or her duties as a full-time public employee by accurately translating what was said.

b. Second, no longer will it be presumed (as it was in *Ball*) that all government aid that directly aids the educational function of religious schools is invalid. Specifically relying on its 1986 holding in *Witters v. Washington Dept. of Servs. for Blind*, 474 U.S. 481, in which the Establishment Clause was found not to bar a state from is-

EDUCATION LAW -1997 SUPPLEMENT

suing a vocational tuition grant to a blind person who wished to use her grant to attend a Christian college, where the tuition grants in question were "made available generally without regard to the sectarian-nonsectarian or public-nonpublic nature of the institution benefited" (*Witters*, 474 U.S. 481, 487 (1986)), the Supreme Court reasoned that the Title I funding that "benefited" the parochial schools in *Agostini* must be viewed in the same light — i.e., that the funding was an incidental benefit to parochial schools that came about only because disadvantaged students happened to attend parochial schools within the Board's jurisdiction, just as funding indirectly benefiting the Christian college at issue in *Witters* came about merely because a recipient of the funding wished to attend that particular college. In each case, the indirect funding benefit to parochial institutions came about through the "genuinely independent" and private choices of individuals. (Remember, none of the Title I funds at issue in *Agostini* were disbursed directly to parochial schools.)

c. Aside from looking at the criteria by which an aid program identifies its beneficiaries for purposes of determining whether the state is responsible for subsidizing religion, it is also necessary to look at whether the criteria by which a program identifies its beneficiaries creates a financial incentive to undertake religious indoctrination. ___ U.S. ___, 117 S.Ct. 1997, 2014 (1997). Such an incentive cannot be present if aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to religious and secular beneficiaries on a nondiscriminatory basis. *Id.* Applying such reasoning to the NYC Board's Title I program, it is apparent that remedial services to disadvantaged students are allocated on the basis of criteria that neither favor nor disfavor religion. All children who meet the program's eligibility requirements may avail themselves of services, no matter where they go to school or what their religious beliefs may be.

3. Finally, *Aguilar's* conclusion that the NYC Title I program resulted in an excessive entanglement between church and state is no longer valid law. The *Aguilar* court had specifically noted that the NYC program (1) required pervasive monitoring by public employees to insure no governmental inculcation of religion, (2) required administrative

cooperation between the Board and parochial schools, and (3) potentially increased the risk of political divisiveness. Under the current understanding of the Establishment Clause, the last two considerations do not, by themselves, create an "excessive" entanglement anymore, given that they are present wherever Title I services may be offered, in both parochial and non-parochial school settings. The assumption underlying the first consideration has been undermined; after *Zobrest*, the Court will no longer presume that public employees will inculcate religion simply because they happen to be in a sectarian environment.

COMMENT: The Court summarized its majority decision with the following: "We therefore hold that a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the Establishment Clause when such instruction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards such as those present here." ___ U.S. ___, 117 S.Ct. 1997, 2016 (1997). This decision has already been applauded by those commentators who decried the fact that the *Aguilar* injunction had essentially forced the Board to spend upwards of \$100 million to rent vans for use as classrooms — merely to avoid the appearance of public teachers setting foot in religious schools. Others who believe in the strict separation of church and state have yet to weigh in, but it is likely that a few, at least, will see this decision as eroding the principle underlying the Establishment Clause (prohibiting the government from establishing a religion) while giving only a minor nod to those favoring the Free Exercise Clause (guaranteeing the free exercise of religion to all). Query whether the two clauses are necessarily at odds with one another.

School administrators will see the decision as beneficial, but it remains to be seen — and given the somewhat confusing nature of this opinion, certainly cannot be predicted — whether this decision signals a continuing relaxation of strict Establishment Clause criteria.

The Blaine Amendment
State Constitutional School Provision

prepared by D. Harvey McIntyre
Archdiocese of Seattle Canon Lawyer

A movement away from sectarian schools toward the common or public elementary schools had been developing at the local and state government levels in many parts of the country since the early part of the 19th century. The original common school movement, while opposing sectarian religious instruction, openly supported teaching basic community values which were obviously Christian and implicitly Protestant. Many Roman Catholic immigrants desirous of protecting their own religious and ethnic traditions found the common schools totally unacceptable and sought a share of the public education funds to support their own schools. As a result many advocates of the common schools opposed these Catholic efforts by adopting legal and constitutional restrictions against the use of any public funds for sectarian schools and sectarian control of public schools.

The federal government joined the campaign for a free non-sectarian school system in 1875 when President Ulysses S. Grant called for a constitutional amendment requiring all states to establish such public schools. His proposal was stricter than the common school movement by prohibiting all religious instruction in such schools. Soon Republican Congressman James G. Blaine, himself a longtime advocate of extending federal Establishment restrictions to the states, introduced during the same year a constitutional amendment into the House of Representatives. However, unlike President Grant's call, the Blaine amendment, while prohibiting state support for sectarian religion, specifically protected Christian instruction: "This article shall not be construed to prohibit the reading of the Bible in any school or institution." The Blaine Amendment passed the House in 1876 by a vote of 180 to 7 and fell only two votes short of the required Senate two-thirds majority. For the next decade Blaine continued to support a constitutional amendment without success. In 1889 Senator William W. Blair introduced a similar amendment and expressed his support for a restrictive public school provision in the Enabling Act for the admission of new states. For Blair also the prohibition of sectarian instruction in public schools was conditioned by a requirement that such schools educate their students in "virtue, morality, and the principles of the Christian religion." Beginning in the previous year of 1888 the intent of the unsuccessful constitutional amendment effort had shifted to the insertion of the public school provision into Enabling Acts for the admission of new states. The bill began in the house as H.R. 8566 and was passed in the Senate as S. 185 in 1889 to enable the admission of the states of North and South Dakota, Montana and Washington.

The Washington Constitutional Convention of 1889 was composed of a comfortable majority of Republican delegates who were undoubtedly Blaine Republicans. The Republican delegates from the earlier Washington Territory to the National Republican Convention had solidly backed Blaine for President three times as did the state delegation in 1892. These delegates also supported Blaine's well-known views on religious establishment and common schools. The Constitutional Convention discussion was remarkably parallel to congressional debate on the Blaine Amendment and Blair's comments on the Enabling Act's public school provision.

It should be no surprise therefore to discover that Washington State's establishment clauses are remarkably similar to those found in the Blaine amendment.

Application of the school provision sections of our state constitution should consider the framers distinction between religion and sectarianism which mirrored the national common school movement: they saw religion as a positive moral force for society and a positive influence for students. The repeated failure of the federal constitutional amendment and the inclusion of the public school provision in only the last third of the states admitted, explains why only some states prohibit financial support for students in sectarian schools, and why federal policy requires an equitable distribution of federal funds to sectarian, and independent private as well as common school students.

Note: This summation is based on the excellent article co-authored by Robert F. Utter and Edward J. Larson in the Spring, 1988 edition of the Hastings Constitutional Law Quarterly, "Church and State on the Frontier: The History of the Establishment Clauses in the Washington State Constitution."

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 22, 1999

TONY KNOWLES, GOVERNOR

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Re: Constitution Issues Raised by SSHB 5

Dear Representative Dyson:

You have asked for a quick response from the Attorney General to questions raised in your Committee regarding the constitutionality of a proposed school voucher program. SSHB 5 would establish an educational voucher program which would provide a voucher equal to the cost of private school tuition to the parents of students enrolled in private schools. We agree with the conclusion of the January 22, 1999, Opinion Memorandum of Legislative Counsel Michael F. Ford, that "the proposed voucher system suffers serious constitutional problems."

The SSHB 5 proposal to provide reimbursement of private school tuition appears to clearly violate Article VII, section 1 of the Alaska Constitution, as interpreted by the Alaska Supreme Court. Art. VII, sec. 1, in pertinent part, states:

No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

In *Sheldon Jackson College v. State*,¹ the Alaska Supreme Court directly considered the application of Article VII, sec. 1, to a state tuition grant program which was enacted by the Alaska legislature in 1976. Under that grant program, each state resident who attended a private college within the state was eligible for a state grant in an amount equal to the difference between the tuition charged by the private school and the tuition charged by a public college in the same area. The state payment was made directly to the student, not to the college. In interpreting Article VII, sec. 1, the Alaska Supreme Court decision set out several distinct principles or factors which were

¹ 599 P.2d 127 (Alaska 1979).

found applicable to that tuition voucher program, and which we believe would apply directly to the proposal of SSHB 5 as well. The Court concluded:

First, the class primarily benefited by the tuition grant program consists only of private colleges and their students. Though the appellants characterize the statute as merely equalizing the positions of private and public university students, effectively the chief beneficiaries are the private colleges themselves.²

Further:

the public funds expended under AS 14.17.776 constitute nothing less than a subsidy of the education received by the student at his or her private college, and thus implicate the core concern of the direct benefit provision.³

In regard to the fact that no direct payment was made by the state to the private schools under that program, the Court held:

Finally, though the tuition grants are nominally paid from the public treasury directly to the student, the student here is merely a conduit for the transmission of state funds to private colleges. Before the state will deliver the check to the student, the latter must certify under oath and under penalty of perjury that he or she will pay it over to the college. AS 14.40.786. Simply interposing an intermediary "does not have a cleansing effect and somehow cause the funds to lose their identity as public funds. . ."⁴

Article VII, sec. 1, of the Alaska Constitution unquestionably applies to elementary and secondary schools as well as to colleges and universities. We believe that under the express holdings of the *Sheldon Jackson* decision, the SSHB 5 proposed private school voucher program would be held unconstitutional.

The SSHB 5 proposal for vouchers to home schooling families raises constitutional implications from the establishment clause prohibitions of the state and federal constitution,⁵ which have been uniformly interpreted to deny expenditures of public funds for sectarian educational programs and materials. We can also foresee challenges to the home schooling vouchers under the public purpose doctrine of the Alaska Constitution⁶ due to the extremely broad category of costs and fees which appear to be compensable by the state under that section.

² *Sheldon Jackson*, supra at 131.

³ *Sheldon Jackson*, at 131.

⁴ *Sheldon Jackson*, supra at 132.

⁵ U.S. CONST. amend. I; Alaska CONST. art. I, sec. 4.

⁶ Alaska CONST. art. IX, sec. 6.

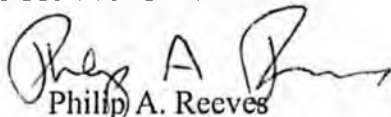
Honorable Fred Dyson
Co-Chair, House HESS Committee

February 22, 1999
Page 3

In summary, the private school voucher proposal of SSHB 5 appears to be fundamentally at odds with Art. VII, sec. 1 of the Alaska Constitution and we believe would be invalidated under the *Sheldon Jackson* analysis of the Alaska Supreme Court. In addition, the home schooling vouchers raise significant constitutional concerns under both the establishment clause and the public purposes clause of the Alaska Constitution.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Philip A. Reeves
Assistant Attorney General

PAR:ebc

cc: Honorable John Coghill, Alaska State House

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The New Accountability

*If schools can't do a better job of educating all students,
parents will opt out of public education altogether*

BY MARC S. TUCKER AND CHARLES S. CLARK

When school officials vow to resign or take pay cuts if students' test scores don't rise, you can be sure the age of accountability in education is here. One example of the new accountability is Swanton, Ohio, Superintendent Roger Barnes, who has promised to resign if test scores fail to improve. Another is Philadelphia Superintendent David Hornbeck, whose contract stipulates that he will receive a \$16,000 annual bonus if test scores go up but an \$8,000 pay cut if scores stay low. Similarly, Alexandria, Va., Superintendent Herbert Berg stands to receive a bonus of up to \$30,000 if enough elementary and middle school student pass the state's new Standards of Learning examination.

Why is this happening now? Is it yet another fad that will once again draw the attention of managers and policy makers away from instruction, which is what really matters? Or is it somehow at the heart of the matter?

To find the answer, educators might look at some lessons from the business world—in particular, the transformation Xerox Corp. went through in the early 1980s. At the time, Xerox was among the world's most widely admired industrial corporations. Yet just as David Kearns was becoming the new chief executive officer, he found out that Japanese competitors were learning how to design copiers and build them in a fraction of the time it took Xerox to design and build comparable machines. He also learned that these machines were of substantially higher quality than Xerox mod-

els and—worst of all—that the Japanese were able to sell them to consumers for less than it cost Xerox just to build a comparable machine. The challenge was simple, if daunting: to make enormous improvements in quality and time to market and, at the same time, to greatly reduce cost. Xerox was forced to learn to produce more (or better) for less. And it did.

That is precisely the challenge faced by American education. The economic facts of life have dramatically changed in recent decades, and the facts of American education have not kept pace. Since 1950, the proportion of American jobs available to people with limited literacy and strong backs has been steadily decreasing, and the proportion requiring high-level skills and knowledge has been swiftly rising. Nevertheless, despite a slow, steady rise in the educational achievement of our high school graduates, as evidenced by the rising numbers attending college, the National Center on Education Statistics reports that half or more of the young people who leave our high schools with or without a diploma have no more than an eighth-grade level of literacy—well below what it will take to land jobs that enable wage earners to support a family above poverty level.

The only way public schools will survive is by learning how to educate virtually all of their students to a much higher standard at a cost no greater than current costs. That's why coming up with an adequate response to this challenge is no fad. It is a matter of survival. If public school districts do not muster a credible response, then those who have political power will opt out of the public school system and take as much public money with them as they can.

Paving the way

In the past, when educators have talked about accountability, they have asked, how can we produce public data on

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performance? But the public has been asking a different question: If students are not performing, who (among the professional educators) is responsible, and what should happen to them? The public is fed up with what it sees as excuses. It demands improved student performance at no increase in cost. Public educators do themselves no good by complaining. Whether we call it accountability to the public (as educators would have it) or better management (as business and government would have it), the challenge is to get much better results at no increase in cost.

In the business world, this process begins with top management being very clear as to the organization's goals, formulating those goals in measurable terms, communicating them clearly and forcefully to everyone in the organization, and demonstrating in every conceivable way that the goals are not mere rhetoric but real core values on which the actions of top management will be based every day.

It continues with devising accurate measures of performance against the goals and then constructing a system in which managers produce data on those measures and send that information directly to the people who need it. Top management then seeks to make sure that the people who are in direct contact with the customer and who are actually making the products are empowered to decide how the product will be made and how the service will be rendered. This entails cutting intervening layers of staff and management and giving real authority over budget, hiring, staffing, and so on to the people who previously were simply told what to do.

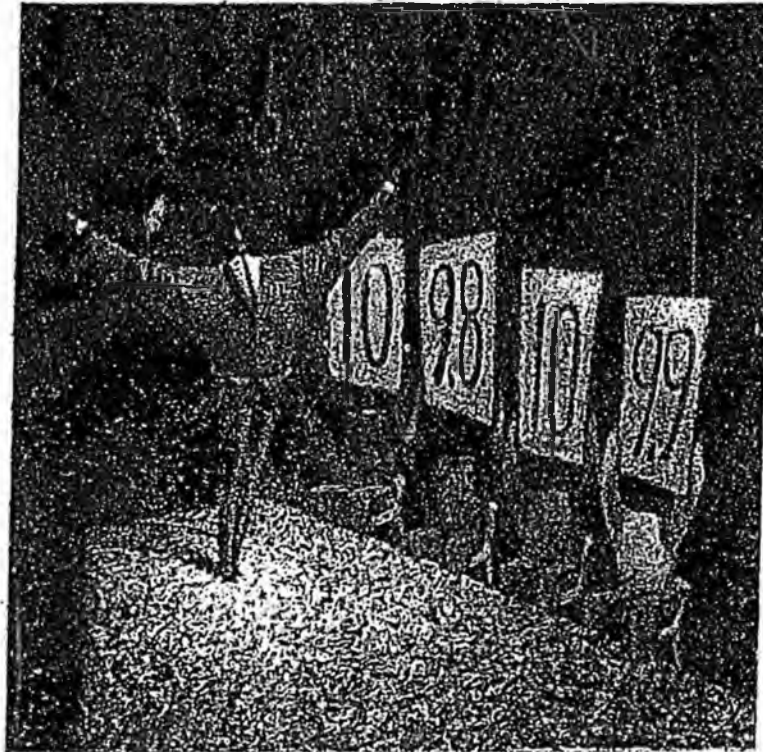
But none of this happens until the newly empowered people on the front line are given strong incentives to make every possible effort to reach the established goals. It is only by changing incentives that top management can be sure people on the front line will use their new power to benefit the organization. So systems are set up to make sure that units in the organization that make continuous improvements are rewarded and that units that do not improve face consequences.

Nowhere, we submit, are these ideas more applicable and more needed than in public education, especially since various school reform efforts over the past 20 years have helped paved the way for them.

The first such reform is site-based management, which responds to the call for pushing decisions about how to get the job done right, down to the people making the product or rendering the service. As the 1986 Carnegie report *A Nation Prepared* pointed out, the bureaucratic mode of management that dominates public education might well be replaced by something that looks more like the professional practice model that characterizes true professions such as architecture, medicine, and law. In that model, the faculty of the school would get to make the important decisions about how the needs of the students could best be met, within the

bounds determined by the standards set by the larger system. Whatever rewards came from doing a good job would be shared among the faculty, and the faculty would suffer whatever consequences came from a poor performance.

But in the real world, school boards and superintendents proved reluctant to give up power when they would still be accountable in the end. Instead, in many places, they instituted site-based councils composed typically of teachers and parents and presided over by the principal. Sadly, this conception of site-



based management produced the worst of all possible worlds. Power was not transferred from the central office to the school, because the central office did not trust the schools to do the right thing—nor did it want to give up long-held powers. Accountability, instead of being strengthened, was actually weakened. Weak principals in this system simply deferred to the site council, saying to the superintendent when something went wrong, "I knew that was the wrong way to go, but it was what the council decided to do." Strong principals spent much of their time subverting the council to get it to do what the principal thought right. The council became just another group of people who could say No but was not itself accountable.

Merit pay for teachers was the second precursor to modern accountability. Following the release of the famous federal report *A Nation at Risk* in 1983, many states decided to "get tough" on teachers and insist that their pay be related to the quality of their teaching. Tennessee took the most visible lead in this direction, but many other areas followed,

including local school districts such as the Fairfax County (Va.) Public Schools.

Teachers, however, hated this system and, in the end, successfully mobilized political power to defeat it. Many people concluded that it would never be possible to link teacher pay to student performance unless the unions were broken. That was the wrong conclusion. The reason these merit pay plans failed is that teachers perceived them as unfair. Teachers everywhere had seen principals using their power to reward those they believe to be loyal and punish those they believe to be disloyal. And the merit pay plans typically relied on principals to make the decision as to whose teaching was meritorious.

The third development that laid the groundwork for the new accountability was the move toward academic standards. From President Bush's call to governors to join him at the nation's first education summit in 1989 to President Clinton's call for "national—but not federal—standards" at the beginning of his second term, an enormous amount of work has been done by states, a consortium of states and districts, and national organizations devoted to teaching in the core disciplines.

In the eyes of many observers, however, the resulting standards vary widely in quality. Few make it clear what kind of student work will meet the standards, and few states have developed assessments that match the standards. Hence most of the standards are no more than symbolic. Teachers cannot teach to them, and few have any interest in doing so because they know their performance will be measured by the tests their districts administer—not by the standards their state has adopted.

The most important lesson from these precursors to today's accountability is how weak they are against the strength of the system they are intended to change. From one end of the nation to the other, the basic model of school system governance and organization is unvarying and deeply rooted. So was the mass production model in the business world. The only way to really change the way the organization functions is to see all these components as part of a much larger design for changing the way the system works.

Three good starts

Though no school district we know of has succeeded in creating this larger design, we believe three contemporary models of accountability are much further along than the rest. They are the systems used in Kentucky, Chicago, and Edmonton in the province of Alberta, Canada.

The landmark Kentucky Education Reform Act of 1990 established a six-part "accountability index." Every two years, student progress has been measured by statewide test scores in reading, math, social studies, and science, as well as writing performance on open-ended test questions, a problem-solving activity, and portfolios of student work. An additional score has been factored in that measures attendance and graduation rates. Schools that outperform their improvement goals on these publicly released scores receive cash awards from the state, which the faculty may

choose to put in their own pockets in the form of salary bonuses or invest in staff development or a schoolwide improvement program. In this system, the schools have been essentially competing not against each other but against their own record, trying to do better each year than they did the preceding year. The rewards have gone not to individual teachers based on a supervisor's often biased or self-interested assessment, but on the basis of the scores that students received on an externally scored assessment.

Kentucky's statewide reform is not just a story of rewards for improved performance; it is also a story of consequences for failure. Kentucky identifies schools and districts that are not improving or are actually slipping behind and makes available highly skilled educators to serve as change agents. Kentucky schools that are unfortunate enough to earn this status usually improve quickly. But those that continue to perform poorly risk being reorganized, and their staff members risk dismissal.

If rewards are one side of the accountability coin, penalties are the flip side. In Chicago, 1995 reforms that brought schools under direct control of Democratic Mayor Richard Daley have prompted the school system's CEO to place more than 100 schools "on probation." Such schools are required to get help from one of a number of providers of outside technical assistance approved by the district central office and are assigned an "academic probation officer." This officer is empowered to recommend expedited dismissal of school staff, including the principal, and must approve of the school's program plan and budget every year before they are forwarded to the district central office. Students whose performance is exceptionally poor must attend a special summer school. Scores of principals and hundreds of teachers are at risk of being dismissed in Chicago under the provisions of this plan, and their schools reengineered or reconstituted.

The drive for accountability has not been simply a story of standards, assessments, empowerment, and rewards and consequences, however. Holding people accountable also requires being clear about who is responsible for what. That is the centerpiece of the Edmonton system, which has revolutionized relations between individual schools and the central office and attracted the attention of scholars and practitioners from three continents.

Edmonton's pioneering system streamlines the organizational hierarchy so that everyone reports to just one "boss." It then allocates district resources in dollars to the schools, each of which will be held accountable for student results on benchmarked tests, as well as the results of "customer satisfaction" surveys. The schools then acquire their own professional staff, learning materials, equipment, and supplies, from textbooks to globes to art supplies. If the schools are going to be held accountable for student results, the reasoning goes, then the schools, and not the central office, should control the mix of resources needed to produce those results.

The support functions in the central office, which account for by far the greatest fraction of central office employees,

must derive their budgets from the decisions that schools make about how to spend their money to get results for the students. And the schools can choose to spend that money outside the central office for services such as transportation or psychological counseling. This shift in budget power means that central office service staffs become accountable to the schools for their performance. Poor performance results in no dollars and therefore no employment for the central office service staff.

This system, of course, is likely to lead to many negative effects unless staff members at local schools are highly motivated to make decisions about the use of their new funds on the basis of student achievement rather than the convenience or ambitions of senior staff in the central office.

In all three cases—Kentucky, Chicago, and Edmonton—control of the program and budget of the schools moved from the central office to the school itself. And in varying degrees, control over the resources has been vested in the person or body that would get the rewards for good re-

sults—or suffer the consequences if results were poor. In all of these cases, too, many or all of the rules and regulations that had been in place to determine the inputs into the educational process were swept away. In their place was put a set of incentives related to the schools' success or failure in producing results.

Putting the pieces together

What would an ideal relationship between the central office and individual schools look like under a first-class accountability system? In the box on this page we sketch such a relationship.

Almost every piece of this system is in place somewhere in the United States or in the world. But there is not yet any place where strong incentives for students to achieve have been combined with strong incentives for the professional staff to help students achieve. When these elements are finally combined, we will be watching for unprecedented gains in student performance. ❖

A comprehensive accountability model

Functions of the central office

Set the student performance standards, including and especially the requirements for a school leaving certificate set to internationally benchmarked standards for 16-year-old students. (One source is the New Standards Program of the National Center for Education and the Economy and the Learning Research and Development Center at the University of Illinois-Urbana; see www.ncee.org for information.)

Decide on the measures of student performance that will be used to assess progress toward the standards.

Decide on other common measures of results, including customer satisfaction surveys.

Decide on who the responsible individual or group will be at the school level, and the way in which individuals will be chosen and relieved of their positions.

Decide what results at the school level will be rewarded and to whom the rewards will go.

Define poor results at the school level and decide the consequences that will attend those results.

Decide on the formula to allocate resources to the schools.

Negotiate contracts with all other institutions.

Set standards for contracts, hire the people who make them, provide a strong orientation program for new teachers, and maintain a list of teachers and other staff available for employment at schools.

Publish a compendium of the rules and regulations by which the schools must abide.

Monitor and collate, for the schools, with the laws and regulations, including the rules of financial, personnel, and performance reporting systems.

Collect and publish data on performance of the system.

Provide information about the available arrangements for arranging a program of assistance for the weakest performing schools, at home or outside providers of education, or a route to schools.

Decide on an equitable assignment of students to schools that maximizes competition among public schools, while at the same time safeguarding the rights of privileged classes (meaning that individual schools are not limited to select their students based on race, gender, and ability).

ground, parents' income, handicap, or condition of religion).

Arrange for provision of any support services required by the schools, such as textbooks, maintenance, food services, and transportation.

Functions of the individual schools

Decide on a leadership team for the school and develop and implement the school goals and plan.

Decide on a code of behavior to establish order and discipline.

Add their own standards and goals to those of the central office.

Decide on the measures they will use to assess progress toward those goals and the methods they will use to track progress.

Decide, on the basis of research into best practices, on curricula and instructional programs designed to get students to the target standards.

Decide on the best staffing structure to implement the instructional program.

Decide how to organize the school, how to assign students to classes, what the master schedule will be, and whether there will be after-school, Saturday, and summer school programs.

Decide on the best way to use non-personnel resources to get their students to the standards.

Decide what skills and knowledge the staff will need to execute the plan and what professional development program best provides those skills and that knowledge.

Decide how the school wants to involve parents, school service and public health agencies, local employers, and others in the life of the school and build a plan to make extra involvement successful.

Build, based on these decisions, an operational and operating budget that will make best use of the available resources.

Implement the plan and revise it, if necessary, based on analysis of the data on student performance gathered by the school and the central office.

Decide, based on the school's own goals, what kind of school should actively recruit a body of its students and parents interested in those goals and its own instructional plan.

Provide all information required by the central office for monitoring and auditing functions.



Iowa General Assembly

422.12 Deductions from computed tax.

There shall be deducted from but not to exceed the tax, after the same shall have been computed as provided in this division, the following:

1. A personal exemption credit in the following amounts:

a. For an estate or trust, a single individual, or a married person filing a separate return, twenty dollars.

b. For a head of household, or a husband and wife filing a joint return, forty dollars.

c. For each dependent, an additional forty dollars. As used in this section, the term "*dependent*" has the same meaning as provided by the Internal Revenue Code.

d. For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who has attained the age of sixty-five years before the close of the tax year or on the first day following the end of the tax year.

e. For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who is blind at the close of the tax year. For the purposes of this paragraph, an individual is blind only if the individual's central visual acuity does not exceed twenty-two hundredths in the better eye with correcting lenses, or if the individual's visual acuity is greater than twenty-two hundredths but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

2. A tuition credit equal to ten percent of the first one thousand dollars which the taxpayer has paid to others for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216. As used in this subsection, "*textbooks*" means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and does not include books or materials for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature. Notwithstanding any other provision, all other credits allowed under this section and section 422.12B shall be deducted before the tuition credit under this subsection. The department, when conducting an audit of a taxpayer's return, shall also audit the tuition tax credit portion of the tax return.

As used in this subsection, "*tuition*" means any charges for the expenses of personnel, buildings,

equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and which do not relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

3. For the purpose of this section, the determination of whether an individual is married shall be made as of the close of the individual's tax year unless the individual's spouse dies during the individual's tax year, in which case the determination shall be made as of the date of the spouse's death. An individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance shall not be considered married.

Section History: Early form

[C35, § 6943-f12; C39, § 6943.044; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 422.12]

Section History: Recent form

83 Acts, ch 179, § 9, 10, 22; 84 Acts, ch 1305, § 32; 86 Acts, ch 1236, § 6, 7; 86 Acts, ch 1241, § 15; 87 Acts, ch 233, § 494; 88 Acts, ch 1028, §22, 23; 89 Acts, ch 296, §42; 90 Acts, ch 1248, § 9; 91 Acts, ch 159, §13; 95 Acts, ch 206, §2; 96 Acts, ch 1168, § 2

Internal References

Referred to in § 56.2, 96.3, 216B.3, 257.21, 422.5, 422.6, 422.10, 422.11A, 422.12B, 422.12C, 422.16, 422D.2, 476.6

Footnotes

1995 amendment to subsection 1, paragraph c, is retroactive to January 1, 1995, for tax years beginning on or after that date; 95 Acts, ch 206, §4 ~1996 amendment to subsection 2, unnumbered paragraph 1, retroactive to January 1, 1996, for tax years beginning on or after that date; 96 Acts, ch 1168, § 3



Iowa General Assembly



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jhf

**NEW LANGUAGE APPEARS LIKE THIS**

Stricken language appears like this

Remaining language appears like this

Reference Title: private school tuition; tax credit**AN ACT**

AMENDING SECTION 43-1021, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 43-1087 AND 43-1088; RELATING TO INDIVIDUAL INCOME TAXATION.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 43-1021, Arizona Revised Statutes, is amended to read:

43-1021 . Additions to Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be added to Arizona gross income:

1. A beneficiary's share of trust or estate income includible under section 43-1344.
2. A beneficiary's share of trust or estate deductions allowable under the internal revenue code.
3. An amount equal to the "ordinary income portion" of a lump sum distribution that was excluded from federal adjusted gross income pursuant to section 402(e) of the internal revenue code.
4. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside the state of Arizona.
5. Annuity income received during the taxable year to the extent that the sum of the proceeds received from such annuity in all taxable years prior to and including the current taxable year exceeds the total consideration and premiums paid by the taxpayer. This paragraph applies only to those annuities with respect to which the first payment was received prior to December 31, 1978.
6. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.
7. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.
8. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to the internal revenue code exceeds the adjusted basis of such property computed pursuant to this title and the income tax act of 1954, as amended. This paragraph shall apply to all property

which is held for the production of income and which is sold or otherwise disposed of during the taxable year, except depreciable property used in a trade or business.

9. The amount of depreciation or amortization of costs of any capital investment that is deducted pursuant to section 167 or 179 of the internal revenue code by a qualified defense contractor with respect to which an election is made to amortize pursuant to section 43-1024.

10. The amount of gain from the sale or other disposition of a capital investment which a qualified defense contractor has elected to amortize pursuant to section 43-1024.

11. The amount of depreciation or amortization of costs of child care facilities deducted pursuant to section 167 or 188 of the internal revenue code for which a credit is taken under section 43-1075, subsection A, paragraph 1.

12. Amounts withdrawn from the state retirement system, the corrections officer retirement plan, the public safety personnel retirement system, the elected officials' retirement plan or a county or city retirement plan by an employee upon termination of employment before retirement to the extent they were deducted in arriving at Arizona taxable income in any year.

13. That portion of the net operating loss included in federal adjusted gross income which has already been taken as a net operating loss for Arizona purposes.

14. Any nonitemized amount deducted pursuant to section 170 of the internal revenue code representing contributions to an educational institution which denies admission, enrollment or board and room accommodations on the basis of race, color or ethnic background except those institutions primarily established for the education of American Indians.

15. The amount of depreciation or amortization of costs of recycling equipment deducted pursuant to the internal revenue code for which an election is made pursuant to section 43-1076.

16. The amount paid as taxes on property in this state with respect to which a credit is claimed under section 43-1078.

17. Amounts withdrawn by the taxpayer during the taxable year from an individual medical savings account established in the taxpayer's name pursuant to:

(a) Section 43-1028, subsection F.

(b) Section 43-1028, subsection G and not transferred to a new trustee within sixty days after the withdrawal.

18. Any amount of agricultural water conservation expenses that were deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1084.

19. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1080 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

20. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1080 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1080.

21. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1081 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

22. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1081 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1081.

23. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

24. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F.

25. ANY AMOUNT DEDUCTED PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE REPRESENTING CONTRIBUTIONS TO A SCHOOL TUITION ORGANIZATION FOR WHICH A CREDIT IS CLAIMED UNDER SECTION 43-1087 OR 43-1088.

Sec. 2. Title 43, chapter 10, article 5, Arizona Revised Statutes, is amended by adding section 43-1087, to read:

43-1087 . Credit for voluntary contributions to school tuition organization: definitions

A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 1997, A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE AMOUNT OF VOLUNTARY CASH CONTRIBUTIONS MADE BY THE TAXPAYER DURING THE TAXABLE YEAR TO A SCHOOL TUITION ORGANIZATION, BUT NOT EXCEEDING FIVE HUNDRED DOLLARS IN ANY TAXABLE YEAR. THE FIVE HUNDRED DOLLAR LIMITATION ALSO APPLIES TO TAXPAYERS WHO ELECT TO FILE A JOINT RETURN FOR THE TAXABLE YEAR. A HUSBAND AND WIFE WHO FILE SEPARATE RETURNS FOR A TAXABLE YEAR IN WHICH THEY COULD HAVE FILED A JOINT RETURN MAY EACH CLAIM ONLY ONE-HALF OF THE TAX CREDIT THAT WOULD HAVE BEEN ALLOWED FOR A JOINT RETURN.

B. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS' INCOME TAX LIABILITY.

C. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY DEDUCTION PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE AND TAKEN FOR STATE TAX PURPOSES.

D. THE TAX CREDIT IS NOT ALLOWED IF THE TAXPAYER DESIGNATES THE TAXPAYER'S DONATION TO THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT BENEFIT OF ANY DEPENDENT OF THE TAXPAYER.

E. FOR PURPOSES OF THIS SECTION:

1. "QUALIFIED SCHOOL" MEANS A NONGOVERNMENTAL PRIMARY OR SECONDARY SCHOOL IN THIS STATE THAT DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN AND THAT SATISFIES THE REQUIREMENTS PRESCRIBED BY LAW FOR PRIVATE SCHOOLS IN THIS STATE ON JANUARY 1, 1997.

2. "SCHOOL TUITION ORGANIZATION" MEANS A CHARITABLE ORGANIZATION IN THIS STATE THAT IS EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501 (c) (3) OF THE INTERNAL REVENUE CODE AND THAT ALLOCATES AT LEAST NINETY PER CENT OF ITS ANNUAL REVENUE FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO CHILDREN TO ALLOW THEM TO ATTEND ANY QUALIFIED SCHOOL OF THEIR PARENTS' CHOICE. IN ADDITION, TO QUALIFY AS A SCHOOL TUITION ORGANIZATION THE CHARITABLE ORGANIZATION SHALL PROVIDE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO STUDENTS WITHOUT LIMITING AVAILABILITY TO ONLY STUDENTS OF ONE SCHOOL.

Sec. 3. Title 43, chapter 10, article 5, Arizona Revised Statutes, is amended by adding section 43-1088, to read:

43-1088. Tax credit; public school fees; definition

A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 1997, A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE AMOUNT OF ANY FEES PAID BY A TAXPAYER DURING THE TAXABLE YEAR TO A PUBLIC SCHOOL LOCATED IN THIS STATE FOR THE SUPPORT OF EXTRA CURRICULAR ACTIVITIES OF THE PUBLIC SCHOOL, BUT NOT EXCEEDING TWO HUNDRED DOLLARS.

B. THE TWO HUNDRED DOLLAR LIMITATION ALSO APPLIES TO TAXPAYERS WHO ELECT TO FILE A JOINT RETURN FOR THE TAXABLE YEAR. A HUSBAND AND WIFE WHO FILE SEPARATE RETURNS FOR A TAXABLE YEAR IN WHICH THEY COULD HAVE FILED A JOINT RETURN MAY EACH CLAIM ONLY ONE-HALF OF THE TAX CREDIT THAT WOULD HAVE BEEN ALLOWED FOR A JOINT RETURN.

C. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY DEDUCTION PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE AND TAKEN FOR STATE TAX PURPOSES.

D. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS' INCOME TAX LIABILITY.

E. FOR PURPOSES OF THIS SECTION, "EXTRA CURRICULAR ACTIVITIES" MEANS SCHOOL SPONSORED ACTIVITIES THAT REQUIRE ENROLLED STUDENTS TO PAY A FEE IN ORDER TO PARTICIPATE INCLUDING FEES FOR:

1. BAND UNIFORMS.

2. EQUIPMENT OR UNIFORMS FOR VARSITY ATHLETIC ACTIVITIES.

3. SCIENTIFIC LABORATORY MATERIALS.

Sec. 4. Department of revenue; report of fiscal impact

The director of the department of revenue shall submit a report to the governor, the president of the senate and the speaker of the house of representatives regarding the fiscal impact of the tax credit provided for donations to school tuition organizations on July 1, 1999.

APPROVED BY THE GOVERNOR APRIL 7, 1997.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 1997.

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States that Allow for School Choice Options
(Eric Hirsch, National Conference of State Legislatures, as of 9/98)

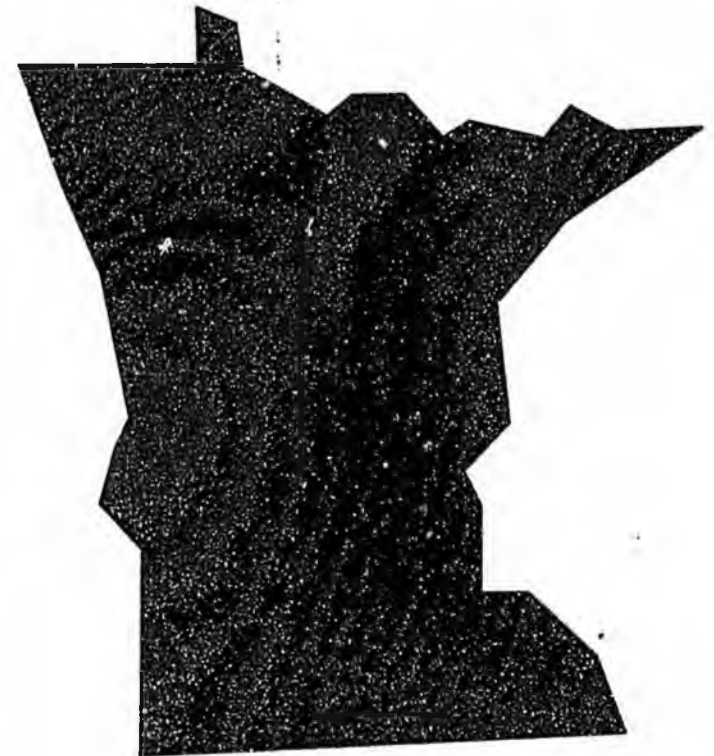
Charter Schools	Inter-District	Intra-District	Tuition Tax Credits	Vouchers
Alaska	Arizona	Alabama	Arizona	Cleveland, OH
Arizona	Arkansas	Connecticut	Iowa	Milwaukee, WI
Arkansas	California	Georgia	Minnesota	
California	Colorado	Indiana		
Colorado	Idaho	Kentucky		
Connecticut	Iowa	Maine		
Delaware	Louisiana (limited)	New York		
District of Columbia	Massachusetts	North Carolina		
Florida	Minnesota	South Carolina		
Georgia	Missouri (voluntary)	Texas		
Hawaii	Nebraska			
Idaho	New Hampshire (voluntary)			
Illinois	New Jersey (voluntary)			
Kansas	North Dakota			
Louisiana	Ohio			
Massachusetts	Oregon			
Michigan	South Dakota			
Minnesota	Tennessee			
Mississippi	Utah			
Missouri	Washington			
Nevada	Wisconsin			
New Hampshire				
New Jersey				
New Mexico				
North Carolina				
Ohio				
Pennsylvania				
Rhode Island				
South Carolina				
Texas				
Utah				
Virginia				
Wisconsin				
Wyoming				

* Puerto Rico has both charter school and inter-district school choice options.

Sources include: Education Commission of the States; the Heritage Foundation and the National Conference of State Legislatures

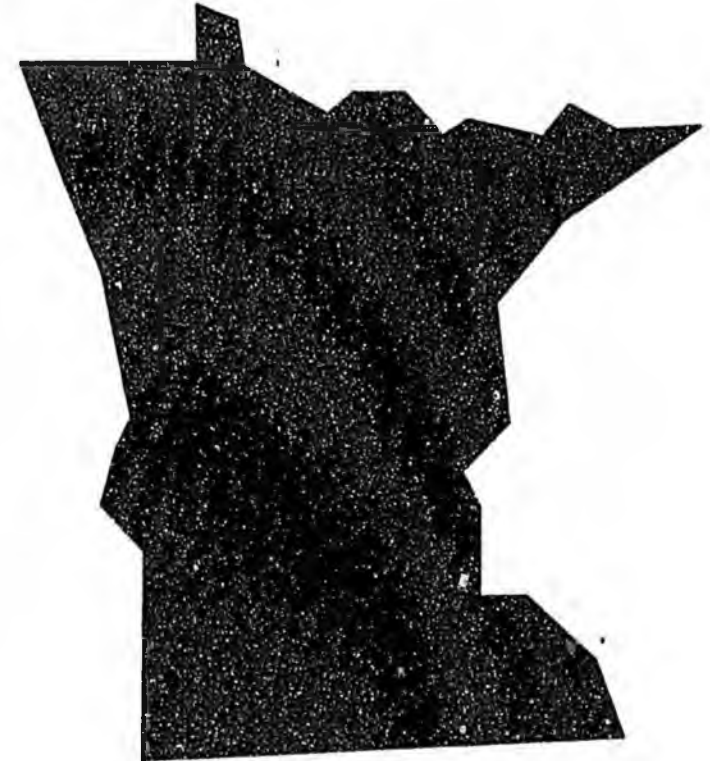
Minnesota's Tuition Tax Deduction/Credit

- Income tax deduction since 1955. Ruled constitutional in 1983.
- Deduction for tuition, textbooks and transportation: \$1,625 for each dependent K-6 and \$2,500 grades 7-12.
- Only \$200 per year per family may be deducted for computer equipment and educational software.
- Income tax credit for families with income under \$33,500.
- Tax credit limited to \$1,000 per child and may not exceed \$2,000 per family.
- Tax credit cannot be used for tuition for regular school programs and cannot be used for the same expenses as the deduction.



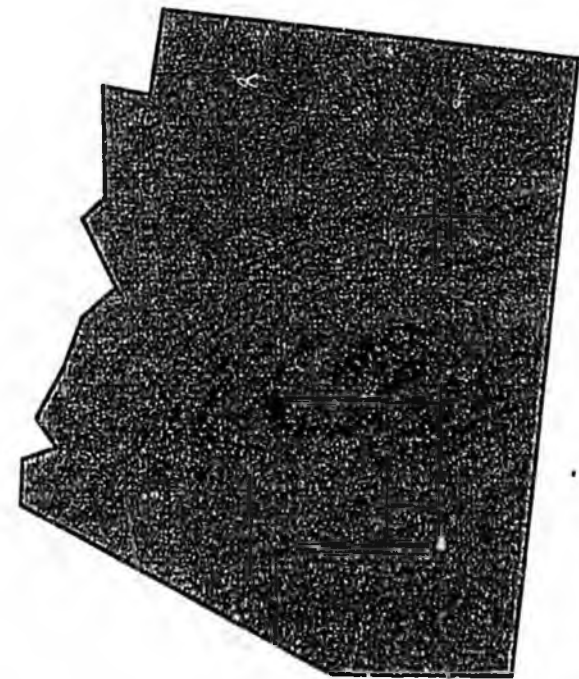
Minnesota's Tuition Tax Deduction/Credit

- The Minnesota Department of Revenue estimates that 273,000 families will claim the deduction with the average estimated amount for each family at \$185 for parents of nonpublic school students and \$85 for parents of public school students. The estimated cost to the state in foregone revenue is \$14.5 million annually.
- The DOR estimates that 192,500 will claim the credit, with an average claim of \$200. The estimated annual cost to the state in terms of foregone revenue is \$38.5 million



Arizona School Tax Credits

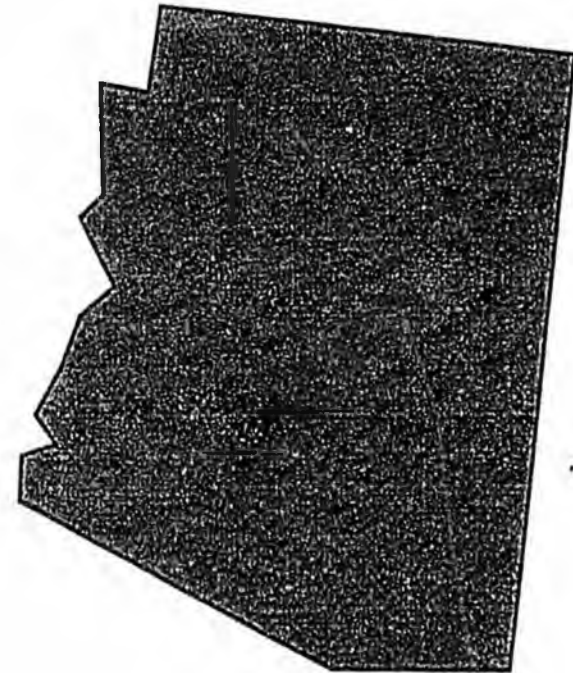
- HB 2047 established both a private and public school tuition tax credit in 1997.
- Taxpayers can claim a tax credit for up to \$500 donated to a school tuition organization (a charitable organization that allocates at least 90% of annual revenue for educational scholarships or tuition grants to children and allow them to attend any qualified school of their parents' choice
- A \$200 credit for fees paid to a public school for the support of extra curricular activities: band uniforms, equipment or uniforms for varsity athletics and science lab materials, etc.



Arizona School Tax Credits

- The Arizona JLBC estimates of the net revenue impact of the private school tuition tax credit is as follows:
- FY 1999: from a low of \$6.5 million to a high of \$20.6 million.
- FY 2000: from a low of \$9.8 million to a high of \$30.9 million.
- FY 2001: from a low of 13.1 million to a high of \$41.2 million

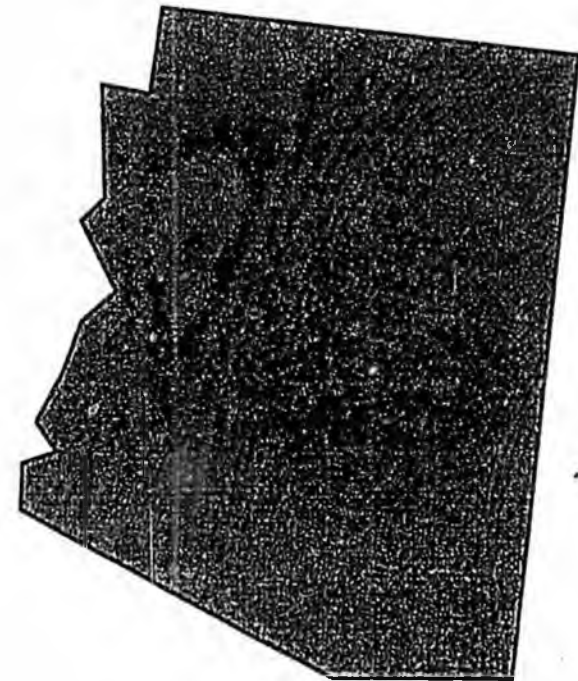
- Estimates vary based on assumptions of the total number households that would donate at various contribution levels.



Arizona School Tax Credits

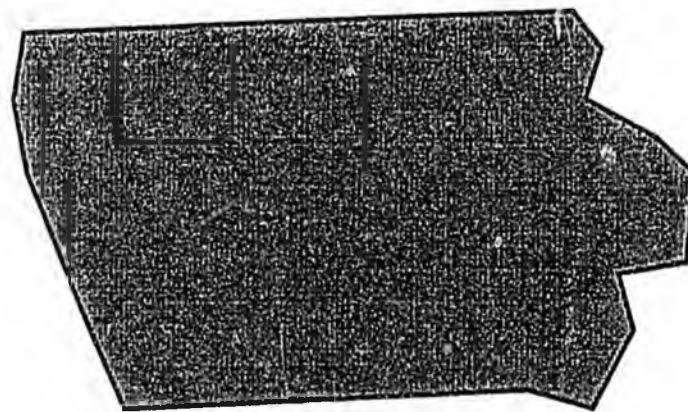
- The Arizona JLBC estimates of the net revenue impact of the public school extracurricular tax credit as follows:
- FY 1999 - from a low of \$21.3 million to a high of \$43.6 million.
- FY 2000 - from a low of \$32.3 million to a high of \$66.1 million.
- FY 2001 - from a low of \$43.4 million to a high of \$89.0 million.

- Estimates are based on changing assumptions of the number of households eligible and the amount donated.



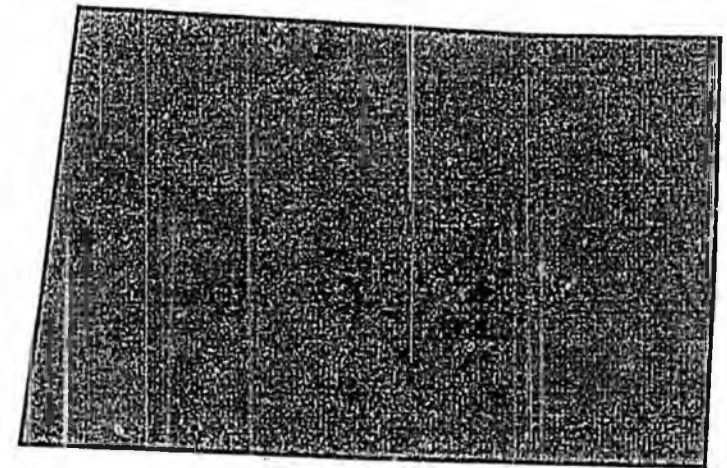
Iowa Tax Credit

- Iowa established a tuition tax credit program in 1987.
- Ruled constitutional in 1992 based on the precedent established in Minnesota.
- Parents can claim a tax credit on 25% of the first \$1,000 spent on private school tuition and non-religious textbooks.
- The plan started at 5% and was raised from 10% to its current 25% level this year.
- Original cost estimates were between \$1.5 and \$2 million, but 1987 returns came in at about \$677,000.



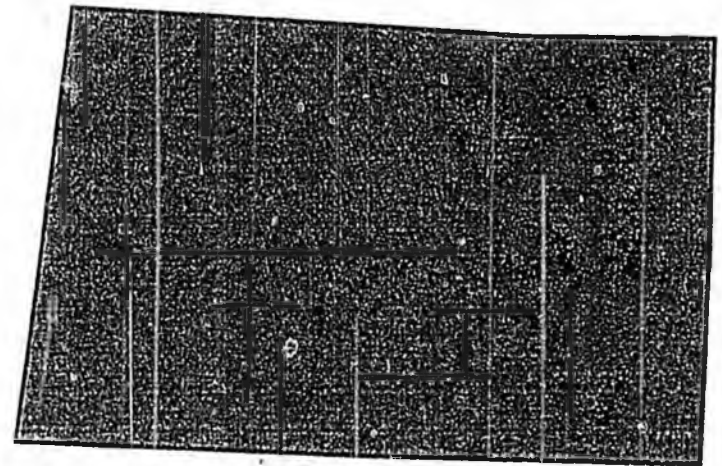
Colorado Tax Credit Ballot Initiative

- Establishes tuition tax credits based on savings for each student that leaves the public school system (currently \$4,873).
- Priority list of parents if there is not enough money for all:
 - special needs or students transferring from a below average public school
 - parents of students who transfer from other public schools.
 - parents of low-income parents of student sin private schools.
 - all other parents with students in private school.
 - parents of home school students.



Colorado Tax Credit Ballot Initiative

- The amount of the credit will not be less than 50% of yearly state average PPOR or 80% of the cost of the tuition paid in the applicable tax year, whichever is less (the current maximum would be \$3,600).
- Parents receive a reimbursement later. The amount of the credit will vary year to year based on student enrollment patterns.



State Legislative Trends

- The Illinois legislature passed a tuition tax credit bill in 1997 that was vetoed by Gov. Jim Edgar. The credit, up to \$500 a year per child, was estimated to cost the state - with almost 300,000 students attending private school - at least \$100 million.
- At least 15 states considered tuition tax credit/deduction legislation in 1998, with only an increase in the existing Iowa program passing.
- Role of the federal government and the Coverdell A+ Savings Account bill.

Legal Issues

- 1971: *Lemon v. Kurtzman*. In an 8-1 vote the court struck down laws in RI and PA that provided salary supplements for teachers in private religious schools. Established a three-part test for evaluating the constitutionality of government programs:
 - Must have a secular legislative purpose.
 - The primary effect must be one that neither advances nor inhibits religion.
 - Must not result in excessive entanglement of government in religion.
- 1973: *Committee for Public Education and Religious Liberty v. Nyquist*. The U.S. Supreme Court ruled the NY tuition reimbursement program advanced religion in a 6-3 decision.
- 1983: *Mueller v. Allen*. The court upheld Minnesota's tuition tax deduction in a 5-4 ruling, based primarily on the argument that the benefit was available to all parents.
- 1998: *Jackson v. Benson*. The Wisconsin Supreme Court upheld a 1995 state law that expanded the Milwaukee voucher program to include religious schools in a 4-2 decision.

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Lawrence F. Rossow, Editor
The University of Oklahoma

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TABLE OF CONTENTS

INTRODUCTION AND COMMENT	87
ELEMENTARY AND SECONDARY	
EDUCATION	89
Pupils	89
Constitutional Rights	89
Discrimination	90
Student with Disabilities	90
Teacher & Administrator Employment	
Dismissal, Nonrenewal, & RIF.....	91
School Boards	
Desegregation	92
Finance	92
Miscellaneous	92
TABLE OF CASES	92
ELECTRONIC CITES UPDATE	93
U.S. SUPREME COURT DOCKET	93

INTRODUCTION and COMMENT*

by Lawrence F. Rossow
University of Oklahoma

The Wisconsin Supreme Court Chooses "Choice": *Jackson v. Benson*

Last month, the editors faced a difficult decision as two cases of significance were handed down at the same time. The case we chose for last month's *Reporter* was *Lago Vista*. Fortunately, this month's most significant case is last month's runner up. Therefore, we bring you *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998).

On June 10, 1998, the Supreme Court of Wisconsin upheld the 1995 amendments to the 1989 Milwaukee Parental Choice Program (MPCP), originally enacted in 1989. The MPCP provides state aid to the parents of qualified students to be used for school tuition. This aid can be applied to either sectarian or nonsectarian private schools in the city of Milwaukee, thus enabling parents to actively participate in the type of education their children receive. Some view this decision as a clear violation of the Establishment Clause — the crumbling of the metaphoric wall that separates church and state. Others, however, agree with the Supreme Court of Wisconsin's reasoning that the MPCP is a prime example of religious neutrality at work.

In August 1995, the Milwaukee Teachers' Education Association (MTEA) and the National Association for the Advancement of Colored People (NAACP) filed two actions claiming that the amended MPCP violated both the United States Constitution and the Wisconsin Constitution. *Id.* at 602.

The Original MPCP

Enacted in 1989, the MPCP provided public funds for up to 1.5 percent of Milwaukee public school students. The MPCP gave low-income students the opportunity to attend any participating private, secular school in the city, provided the student met the eligibility requirements. However, aid

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did not extend to individuals who wanted to attend sectarian schools. The legislation required that the private schools participate in annual performance evaluations and all aid was given directly to the private schools. *Id.* at 608.

The Amended MPCP

In 1995, the legislature amended MPCP to include secular schools. In addition, the amendment increased the number of eligible students from 1.5 percent to 15 percent. The amended MPCP removed the performance evaluation requirement and required that the aid be paid directly to the participating students' parents rather than the participating schools. The amended program does not limit how the private school can use the aid. In addition, the amended program now includes an "opt-out" provision. This provision exempts students from participating in any school-related religious activity, provided that the parent or guardian submits a request in writing. *Id.* at 608-09.

The state district court held that the amended MPCP violated the Wisconsin Constitution. The court of appeals affirmed. In affirming, the court of appeals stated that the amended MPCP violated the Wisconsin Constitution because the state aid benefitted schools with religious affiliations.

The Wisconsin Supreme Court faced six key issues. The first issue addressed by the court was whether or not the amended MPCP violates the Establishment Clause of the First Amendment of the United States Constitution. In answering no, the court reluctantly relied on the *Lemon* Test established in *Lemon v. Kurtzman*, 403 U.S.602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). In a footnote, the court stated the uncertainty of applying such a test, but found no alternative. *Id.* at 612 n5.

Therefore, the court asked the following three questions: (1) Does the program have a secular purpose? (2) Does the program's primary effect advance religion? and (3) Does the program excessively entangle the state and the sectarian schools?

In regards to the first issue, the court found that the primary purpose of the amended MPCP was to provide students of lower economic backgrounds with a wider range of educational opportunities. The court reasoned, "An educated populace is essential to the political and economic health of any community, and a State's citizenry is well-educated." *Jackson*, 578 N.W.2d at 612.

As for the second part of the test, the court reasoned that the legislation neither advances nor prohibits religion. *Id.* The Establishment Clause is not violated simply because state money is given to a religious institution or because a religious institution receives indirect aid from such legislation as "...there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference." *Id.* at 614. The court added that "... state

programs that are wholly neutral in offering educational assistance directly to citizens in a class defined without reference to religion do not have the primary effect of advancing religion." *Id.* at 613. In their analysis of the second prong, the court refers to the "opt-out" provision. The court reasoned that because a student can be exempted from a sectarian school's religious activities, then the amended MPCP is religiously neutral.

Finally, the court held that total separation is not possible as entanglement is, to some degree, inevitable, and it "... must be 'excessive' before it runs afoul of the Establishment Clause." *Id.* at 619. The court reasoned that "[t]he program does not involve the State in any way with the schools' governance, curriculum, or day-to-day affairs." *Id.* at 620.

The second issue asked whether the amended MPCP violated the religious establishment provisions of Wisconsin Constitution. In order to answer this issue, the court looked at the Wisconsin Constitution. It provides the following:

The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries. *Id.* at 620.

The court invoked a "Child-Benefit Theory." The court reasoned that the prohibition is on direct aid to a religious institution. The MPCP only provides an indirect aid to a religious institution (potentially higher enrollments). The direct beneficiaries of the MPCP are low-income children.

In the interest of space, the next four issues will be briefly summarized. The court ruled that the amended MPCP was not a private or local bill enacted in violation of the procedural requirements mandated by the Wisconsin Constitution. Next, the MPCP does not violate the uniformity provision of the Wisconsin Constitution. Also, the MPCP does not violate the Wisconsin public purpose doctrine which generally prohibits the use of public funds for the support of religious institutions. The court reasoned that the program fulfilled a valid public purpose and contained sufficient and reasonable controls to attain its public purpose. Finally, children who were eligible for the

amended MPCP when this court's injunction was issued on August 25, 1995, and who subsequently enrolled in private schools, are eligible for the program if the injunction is lifted. It reasoned that the eligibility under the amended MPCP is determined on the date the injunction was issued. Therefore, those students would not be penalized by the injunction.

Also in this case the NAACP argued that the amended MPCP violated the Fourteenth Amendment to the U.S. Constitution. The NAACP argued that the amended MPCP, which included private schools, effectively included schools that had little or no racial minorities in attendance. Thus, public funds would be spent to support "white flight" to private schools. In rejecting this argument, the court noted that the statute was not enacted with the "purpose or intent to discriminate." *Id.* at 631. In fact, part of the amended program included an "anti-discrimination" provision.

Jackson was a 4-2 decision with one justice not participating. The dissent was brief. In one paragraph it addressed only the Wisconsin Constitution provision on religious establishment. Without rationale, the dissent held that the MPCP violated the Wisconsin Constitution.

This 68-page decision, while not from the United States Supreme Court, may very well wind up before our nation's highest tribunal. The *Seattle Times* called the decision "the most important ruling ever on school choice...." (William Mellor, "Was Wisconsin Supreme Court Right to Uphold School-Voucher Program?", *Seattle Times*, June 24, 1998, at B5.) The case ends, for now at the state level, after three years of challenges. Choice opponents have already announced that they will appeal to the United States Supreme Court. The Wisconsin decision does provide a model of how to deal with the Establishment Clause issue where the state perceives it to be an obstacle. The state supreme courts in Ohio, Arizona, Vermont and Maine may be considering the constitutionality of similar "voucher" programs. For Wisconsin, the expansion of the "choice" to include parochial schools will commence in September.

ELEMENTARY and SECONDARY EDUCATION

Pupils

Constitutional Rights

Doe v. New Philadelphia Pub. Sch. Bd. of Educ., 996 F.Supp. 741 [126 Educ. L. Rep. 146] (N.D. Ohio 1998). A female middle school teacher had a sexual relationship with a fourteen year-old male student that resulted in the teacher

becoming pregnant and having an abortion. The teacher ultimately pleaded guilty to two counts of sexual battery and her employment was terminated. The minor child's mother sued the defendant school district under section 1983, Title IX, and state law. Because the plaintiffs had not shown any policy or custom which caused the student's constitutional rights to be violated, the court granted the defendants' motion for summary judgment on the section 1983 claim. Evidence existed that the principal and a school psychologist had been informed by a student that the teacher had kissed another student. They decided to deal internally with the matter, and the student was suspended for making false allegations against a teacher. The principal's antenna should have been raised when she learned that the teacher had previously been seen leaving the building with the plaintiff student without permission. These two incidents may have been negligent, but did not rise to the level of a custom within the district. However, a genuine issue of material fact as to the effectiveness of the district's response to the teacher's actions was sufficient to withstand the defendants' motion for summary judgment on the plaintiffs' hostile environment Title IX claim. The defendants were not entitled to sovereign immunity on the state law tort claim.

Triplett v. Livingston Co. Bd. of Ed., 967 S.W.2d 25 [126 Educ. L. Rep. 528] (Ky. Ct. App. 1998). Parents and students who refused to take the Kentucky Instructional Results Information System (KIRIS) assessment exam brought action seeking declaratory judgment that exam and requirement to take exam violated parents' and students' constitutional rights and certain federal laws. The Court of Appeals of Kentucky held that requiring students to take the KIRIS did not violate the Hatch Amendment to the Family Educational Rights and Privacy Act. The court also stated the taking of the state exam did not violate the Establishment Clause of the Federal Constitution and its state counterpart or parents' constitutional right to direct education and upbringing of their children.

Discrimination

Wessmann v. Boston Sch. Comm., 996 F.Supp. 120 [125 Educ. L. Rep. 1214] (D.Mass 1998). The plaintiff challenged the constitutionality of the defendants' policy governing admission to Boston's three examination schools. The policy admits half of each class solely on the basis of composite score ranking. After the initial 50% cut-off at any examination school, the balance of the remaining seats at each school are awarded according to composite score rank in proportion to the racial/ethnic composition of that particular school's remaining qualified applicant pool. The composition of the second half of the class varies each year

depending upon results of the examination and the racial/ethnic makeup of the top half. The plaintiff alleged that but for the application of the policy she would have been admitted to the ninth grade at the Boston Latin School. The plaintiff, a white female, ranked 91st among the applicants to Boston Latin. If straight composite scores had been applied, students ranking between 1 and 98 would have been admitted. The application of flexible racial/ethnic guidelines resulted in the rejection of eleven white students with higher scores than black, Hispanic, and Asian students. However, all applicants were qualified, and the plaintiff's composite score was only slightly higher than the lowest admitted student. The current policy was the recommendation of a task force and replaced a 35% set-aside program for black and Hispanic students that had been held unconstitutional. In upholding the "flexible" racially and ethnically conscious admission policy, the court distinguished the case at hand from employment and university cases. The admission policy served a compelling state interest in achieving diversity within the unique context of public elementary and secondary education as well as the state's compelling interest in overcoming the vestiges of past discrimination and avoiding de facto re-segregation of the city's public schools. The policy was for a limited duration and had a built-in review provision. Therefore, it was narrowly tailored to serve these compelling state interests.

Students with Disabilities

Corey H. v. Board of Educ., 995 F.Supp. 900 [125 Educ. L. Rep. 1129] (N.D.Ill. 1998). A group of Chicago public school students and their parents brought a class action suit against the city and state boards of education alleging that the defendants systematically failed to educate children with disabilities in the least restrictive environment (LRE) as mandated by the IDEA. Following approval of a settlement agreement with the city board, the plaintiffs proceeded to trial against the state board. The court held that by inadequately monitoring the city's lack of compliance with LRE mandates and by failure to take corrective action with respect to local violations, the state defendants violated the IDEA. Placement of students in Chicago public schools based primarily on the categories or severity of their disabilities rather than by individual needs resulted in overly restrictive placements. Because state teachers were improperly trained and certified to teach by category of disability, they were unable to serve disabled children in integrated settings presumed by the LRE mandate. State funding programs created financial incentives for parents to take children with disabilities out of the public school system and place them in private, segregated schools.

The Heritage Foundation
Background

No. 1188

June 2, 1998

WHAT PEOPLE ARE SAYING ABOUT SCHOOL CHOICE

NINA H. SHOKRAI¹

President Bill Clinton recently vetoed S. 1502, the D.C. Student Opportunity Scholarship Act of 1998 passed by Congress on April 30, 1998. This \$7 million plan would have offered 2,000 District of Columbia students vouchers worth up to \$3,200 to help them attend a public, private, or religious school of choice.

Critics claimed that parents in the District did not support these scholarships. For example, Senator Edward M. Kennedy (D-MA) asserted that "D.C. parents and ministers and local leaders have made it clear that they do not want vouchers."² Senator Thomas Daschle (D-SD) observed that "All parents want their children to be able to go to the best schools possible. But . . . District voters rejected vouchers by an 8-to-1 margin in 1981."³ And Delegate Eleanor Holmes Norton (D-DC) stated, "I think I can say with confidence that the

people I represent would deeply resent the imposition of vouchers."⁴

This rhetoric, however, ignores the reality of growing bipartisan and grassroots support for vouchers. Three days after the President's veto, for example, *The Washington Post* released the results of a May 11-17, 1998, poll of District residents on this issue. Contrary to the claims of critics, the poll showed that 65 percent of African-Americans who reside in the District and have incomes under \$50,000 favor using federal dollars to send children to private or religious schools. Furthermore, 56 percent of D.C.

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1. The author would like to thank Jake Phillips, a 1998 summer intern at The Heritage Foundation and senior at Duke University, for his assistance with this paper.
 2. "District of Columbia Student Opportunity Scholarship Act of 1997," *Congressional Record*, September 25, 1997, p. S9930.
 3. "District of Columbia Student Opportunity Scholarship Act of 1997," *Congressional Record*, September 30, 1997, p. S10193.
 4. "District of Columbia Student Opportunity Scholarship Act of 1997," *Congressional Record*, October 9, 1997, p. H8801.

residents overall support school choice.⁵ Contrary to what critics have said, school choice is popular.

Congress should consider adopting choice to help District of Columbia students, whether this involves overriding the President's veto of the D.C. Student Opportunity Scholarship Act or working through some other legislative vehicle. Residents of the District, particularly low-income parents who would be eligible for such scholarships, are solidly behind vouchers, and they deserve an opportunity to send their children to schools that are most likely to help them succeed.

School choice and vouchers have attracted strong support among legislators and members of the President's own party, as well as among independent journalists, as the following quotes clearly demonstrate.

Senator Joseph R. Biden, Jr. (D-DE):

I have come to the belief that the constitutional issues involved [with school choice] are not as clear cut as opponents have argued. While lower courts have ruled that vouchers used in private religious schools violate the first amendment's prohibition on the establishment of religion, the Supreme Court has not yet weighed in on the question. In fact, the Supreme Court has ruled that State tuition tax credits for private religious school tuition are perfectly constitutional, and the Supreme Court has ruled that Pell grants—vouchers for college students—can be used in private religious colleges without violating the Constitution. . . . Even some liberal constitutional scholars have noted that vouchers to parents and children may be constitutional.

Even if vouchers were to take money away from the public schools—and I should

point out that not all voucher proposals do—that does not in and of itself mean that public schools will be harmed.

When you have an area of the country—and most often here we are talking about inner cities—where the public schools are abysmal or dysfunctional or not working and where most of the children have no way out, it is legitimate to ask what would happen to the public schools with increased competition from private schools and what would happen to the quality of education for the children who live there.⁶

Matthew Cooper, in *Newsweek*:

For [Senator John] Kerry [D-MA], the debate over schools has become mindless Kabuki ritual: while liberals want more money for public education and conservatives demand private-school vouchers, kids fall farther behind. . . . This spring, Kerry plans to commit the supreme Democratic heresy. He's considering, *NEWSWEEK* has learned, embracing school vouchers if conservatives do their part and back vastly increased resources for public education.⁷

Former Representative Floyd Flake (D-NY):

This is not a question for me about Democrats or Republicans. It is really a question about whether or not we are going to continue to let every child die, arguing that, if we begin to do vouchers, if we do charter schools, what we in fact are doing is taking away from the public system. We say, let them all stay there. Let them all die. It is like saying there has been a plane crash. But because we cannot save every child,

5. Sari Horwitz, "Poll Finds Backing for D.C. School Vouchers: Blacks Support Idea More Than Whites," *The Washington Post*, May 24, 1998, pp. F1, F7.
6. "District of Columbia Appropriations Act," *Congressional Record*, September 30, 1997, p. S10192.
7. Matthew Cooper, "The New Choirboys," *Newsweek*, May 4, 1998, p. 29.

we are not going to save any of our children; we let them all die.⁸

Senator J. Robert Kerrey (D-NE):

"If I were running a public school system, I'd sign a contract with the parochial schools—as Mayor Guiliani wanted to do in New York—and have them educate some of the poorest kids," [Senator Kerrey] told *New Yorker* magazine. "I don't see the First Amendment as so rigid that it prevents us from contracting with people who are getting the job done right."⁹

Alveda C. King, niece of Dr. Martin Luther King and senior fellow at the Alexis de Tocqueville Institution in Washington, D.C., in *The Wall Street Journal*:

The District of Columbia public school system allocates \$10,180 per student, the highest in the nation, according to the U.S. Department of Education. Yet, according to the Annie Casey Foundation, 80% of fourth-graders in the Washington public schools score below their grade on basic math skills. The National Assessment of Education Progress reports that 72% of Washington's fourth-graders test below "basic proficiency" . . . [an] appalling failure. . . .

Washington's families and teachers favor a right to choose the paths of education for their families. . . . The issue is not what families choose, but rather, that they be allowed and empowered to do so.

U.S. citizenship guarantees all parents an education for their children. This is a true civil right. Yet some children receive a better education than others due to their parents' abilities to pay for benefits that are

often missing in public schools. This inequity is a violation of the civil rights of the parents and children who are so afflicted by lack of income and by the mismanagement endemic to so many of the country's public school systems.¹⁰

Senator Joseph I. Lieberman (D-CT):

The true choice here is between preserving the status quo at all costs, which is slamming a door in the face of the parents and children who want to do better, and doing what is necessary to put those children first. In other words, asking whether the status quo of the public education orthodoxy, which is letting down so many children, is so important that we are willing to sacrifice the hopes and aspirations of thousands of children for the sake of a process, not for the sake of the children.¹¹

Representative James P. Moran, Jr. (D-VA):

I am going to . . . plead with my colleagues on the Democratic side, where the opposition to the bill lies, to set aside the suspect political motivation behind [the Student Opportunity Scholarship Act] and to put aside all that kind of lofty ideological rhetoric that partisanship can inspire. . . . Because all it is is an additional \$7 million that can only go to poor families, only poor families. . . . Why should we condemn all of these children to continue to suffer such inequity because we want to uphold our lofty principles and our traditional politics? Of course we believe in public schools. But we also believe in the intrinsic worth of every one of those children born in the District of Columbia. They have the same right as everyone else has.¹²

8. Floyd Flake, floor speech in support of low-income scholarships and charter schools, U.S. House of Representatives, 105th Cong., October 31, 1997.

9. Matthew Robinson, "Is Left Warming to Vouchers?" *Investor's Business Daily*, March 2, 1998, p. A1.

10. Alveda C. King, "Fighting for School Choice; It's a Civil Right," *The Wall Street Journal*, September 11, 1997.

11. "District of Columbia Appropriations Act, 1998," *Congressional Record*, September 30, 1997, p. S10195.