

Nos. 15-556, 15-557, 15-558

IN THE
Supreme Court of the United States

FLORENCE DOYLE, et al.,
Petitioners,

v.

TAXPAYERS FOR PUBLIC EDUCATION, et al.,
Respondents.

**On Petitions for Writ of Certiorari to the
Supreme Court of Colorado**

**BRIEF OF THE FRIEDMAN FOUNDATION FOR
EDUCATIONAL CHOICE, INC., AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONERS**

GEOFFREY SLAUGHTER
Counsel of Record
RUSSELL MENYHART
TAFT STETTINIUS & HOLLISTER LLP
One Indiana Square
Suite 3500
Indianapolis, Indiana 46204
(317) 713-3500
gslaughter@taftlaw.com

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INTEREST OF *AMICUS CURIAE*¹

The Friedman Foundation for Educational Choice, Inc. (Foundation) is a 501(c)(3) nonprofit and non-partisan organization founded in 1996 by Milton and Rose Friedman to promote their vision of school choice for all children. The Foundation’s goal is to advance a K-12 education system in which all parents, regardless of race, origin, or family income, are free to choose a learning environment—public or private, religious or secular, near or far—that is best for their child. As a national leader in school-choice research, policy development, and educational training and advocacy, the Foundation continues its founders’ mission of promoting school-choice as the most effective and equitable way to improve the quality of K-12 education in the United States. The Foundation urges the Court to grant the three petitions in this matter (Nos. 15-556, 15-557, 15-558) and determine whether a provision of the Colorado constitution can, consistent with the First Amendment’s Religion Clauses, be used to invalidate the Douglas County School District’s Choice Scholarship Program.

¹ Pursuant to Rule 37.6, no counsel for any party authored this brief, in whole or in part, and no party or counsel for a party made a monetary contribution to fund the preparation or submission of this brief. No entity or person, aside from the *amicus curiae*, made any monetary contribution for the preparation or submission of this brief. Pursuant Rule 37.2(a), counsel for the parties received timely notice of this filing. All parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

Milton Friedman's revolutionary idea for public education in the United States was to have the government pay for a child's compulsory education without necessarily providing it. Friedman believed that choice would both deliver a better education and save money. Milton Friedman, *Capitalism and Freedom* 89 (1962). In the half-century since Friedman published his influential book outlining his economic philosophy, a majority of states have enacted some form of school choice.

As the number of school-choice programs and participants has grown, the body of empirical research on such programs has grown, too. The quantitative studies reviewed below in Section III show the value of school choice. The survey data in Section IV show consistently high levels of public support for school choice from practically all demographic categories. Studies of choice programs throughout the United States reflect a common conclusion: choice has led to measurable educational benefits for some students; it has been neutral for others; and it does no harm to students or schools.

With such a proven track record, school choice is likely to garner continued interest from policymakers looking to enhance educational opportunities for all families. Providing the best possible education for all students—and thus ensuring the next generation is well prepared to serve their families and communities—is a critical issue, often *the* issue, for state and local officials.

Yet the Colorado Supreme Court’s decision undermines the chance to provide more educational options for children in Douglas County and exacerbates the prevailing uncertainty over whether so-called state “Blaine amendments” can be used to invalidate a school-choice program that includes religious-school options. The Douglas County Choice Scholarship Program is similar to many other school-choice programs that have successfully raised the level of education, and family control over educational options, across the country. Its purpose is educational, not sectarian. The Douglas County program provides funding to enable children to access a wider range of educational options, letting families choose the school that best fits their needs.

State constitutional provisions like article IX, section 7 in Colorado, born of religious bigotry, should not invalidate otherwise neutral school-choice programs that allow parents to choose religious schools among many educational options for their children. Despite abundant empirical evidence of increased academic achievement and public support for school choice, state and local policymakers are likely to be deterred from implementing the most effective education reforms because of prevailing legal uncertainty.

The Foundation urges the Court to grant the petitions and provide needed clarity for state and local officials who wish to provide a mix of educational options for their constituents, while not running afoul of the law. Such officials now must thread a moving needle, as different courts interpret and apply this Court’s prevailing First Amendment case law differently. Those who seek to implement meaningful—and

lawful—education reforms in their respective communities need the authoritative resolution of these issues that only this Court can provide.

ARGUMENT

I. By granting the petitions, the Court can remove the prevailing uncertainty over using state constitutional provisions to thwart school-choice reforms, which have been shown in numerous empirical studies to enhance student achievement.

School choice seeks to use market forces and parental choice to improve education across the board. School choice is a powerful concept rooted in established competition theory (Section II, *infra*), a proven policy tool (Section III, *infra*), and one that much of the population views favorably (Section IV, *infra*).

State and local governments have adopted school-choice programs in increasing numbers in recent years: to date, 28 states and the District of Columbia have enacted 58 school-choice programs. *Our Resources: Fast Facts*, Friedman Found. for Educ. Choice, <http://www.edchoice.org/our-resources/fast-facts/> (last visited Nov. 24, 2015).² In 2005, there were only 15 school-choice programs in 11 states, plus the District of Columbia; in 1995, there were six programs in six states. *America's School Choice Programs by Dates Enacted and Launched*, Friedman Found. for

² The programs include 24 voucher programs in 13 states, 20 tax-credit scholarship programs in 16 states, five education savings account (ESA) programs in five states, five individual tax-credit programs in five states, and four individual tax-deduction programs in four states. *Id.* Detailed explanations of the different varieties of school-choice programs are beyond the scope of this brief but available at the Foundation's website.

Educ. Choice, <http://www.edchoice.org/school-choice/enacted-and-launched-table/> (last visited Nov. 24, 2015). Despite the acceptance and empirical validation of education reforms discussed in this brief, the increasingly uncertain legality of using state constitutional provisions to invalidate religious-school options risks dissuading policymakers from giving school choice due consideration.

As Petitioners explain in detail, there is deep and lingering confusion among lower federal and state courts concerning whether the First Amendment's Religion Clauses tolerate the exclusion of religious-school options under an otherwise neutral, generally available student-aid program in which parents decide where their children will attend school. As this Court's jurisprudence under the Religion Clauses has evolved, seemingly irreconcilable tensions have emerged between the federal constitution and the application of Blaine amendments found in many state constitutions.

The conflict is shown most clearly in Douglas County. As noted by one petitioner, the Colorado Supreme Court's plurality opinion interpreted article IX, section 7 of its state constitution as *mandating* hostility toward religion, by barring public dollars from going to schools with a religious affiliation. *Petition for Writ of Certiorari of Douglas County School Board* at 25 (No. 15-557). The implications of the decision below go well beyond school-choice programs. As noted by the dissent, "under the plurality's decision, any program that provides an incidental benefit to certain schools—for example programs for public infrastructure and safety—will be constitutionally suspect because the schools rely upon the services to operate." Appendix to *Petition of Douglas County School Board*, App.52.

Given the tension between the Colorado decision and this Court's First Amendment jurisprudence, state and local education policymakers may be chilled in pursuing the kind of ambitious, innovative school-choice reforms they believe to be most effective. This rift between state and federal constitutions has emerged just as empirical research, based on years of implementation, has shown school choice to be an important option for state and local officials who have traditionally set education policy in the United States.

If the legal uncertainty surrounding state Blaine amendments is not resolved, the patchwork of inconsistent lower-court decisions will likely grow and deter education policymakers from implementing many of the far-reaching measures found to work in other jurisdictions, including universal school choice. Ultimately, the petitions should be granted because the Colorado Supreme Court's decision—in which a deeply-divided court invalidated a local educational initiative because the alternatives to public schools included religious-school options alongside non-religious-school options—risks undermining needed education reforms, not just in Douglas County, but across the United States.

The brief review of the theory, empirical data, and public opinion of school choice discussed below underscores the urgency of settling these constitutional tensions now.

II. Educational choice benefits all students.

A. Choice empowers parents to hold public schools accountable for the education they provide their students.

Education reformers like Milton and Rose Friedman designed school choice to bolster the quality of American public schools. School choice “gives parents a meaningful way to hold schools accountable for performance.” Greg Forster, *A Win-Win Solution: The Empirical Evidence on School Choice* 4 (3d ed. 2013) (2013 Forster Report), available at <http://www.edchoice.org/wp-content/uploads/2015/07/2013-4-A-Win-Win-Solution-WEB.pdf>. Without parental choice, “schools lack the healthy, natural environment of client empowerment that is essential to producing better performance in most other types of service institutions.” *Id.*; see also Matthew Carr, *The Impact of Ohio’s EdChoice on Traditional Public School Performance*, 31 *Cato J.* 257, 258 (2011) (describing the theoretical benefits of competition in the education sphere), available at <http://object.cato.org/sites/cato.org/files/serials/files/cato-journal/2011/5/cj31n2-5.pdf>. Competition, in other words, “force[s] the government schools to shape up or close down.” *The Friedmans on School Choice*, Friedman Found. for Educ. Choice, <http://www.edchoice.org/The-Friedmans/The-Friedmans-on-School-Choice> (last visited Nov. 24, 2015) (quoting Rose Friedman).

School-choice programs open students to a wider array of educational opportunities and increase the likelihood they will receive an education that best serves their individual needs. Many of the problems associated with modern education are attributed to the public-school monopoly. Monopoly schools—those that serve all students within a particular geographic

territory—often have little incentive to improve, given the ready supply of customers (students) within the established school district and the steady flow of taxpayer dollars that accompany their enrollments. Many students lack meaningful alternatives to these neighborhood schools, as their families cannot afford to pay twice for education—once in taxes and again in private-school tuition.

B. Choice enables less affluent families to enjoy the same control over their children’s education enjoyed by more affluent families.

If scholarships are made available regardless of where parents send their children, a wide variety of schools will spring up to meet the demand. With school choice, families can express their views about a given school by “voting with their feet” and enrolling elsewhere. When dollars follow the student, schools have a powerful incentive to provide the quality and variety of educational options parents demand. Without choice, underperforming schools continue to receive dollars for students who would rather be elsewhere but may be unable to afford the tuition charged by a private school.

Before publicly funded school-choice programs became available, the power to choose was limited to families with the means to pay private-school tuition or the opportunity to relocate to a different school district. Particularly for low-income families, however, options were few and left much to be desired: students could remain in a failing neighborhood school; or possibly could move to a community with a better public school (although moves are costly); but very few could afford the tuition charged by a private school.

As in other fields, competition works in education. As school-choice programs have grown, academic studies validating the effectiveness of these programs have emerged. As illustrated by the academic research outlined below, competition is likely to be far more effective in meeting consumer demand than the current monopoly structure that limits competitive forces.

III. Quantitative studies show that voucher programs have positive effects on student achievement.

Greg Forster, Ph.D., is a senior fellow with the Foundation and a widely published author on the subject of school choice in public education. In addition to conducting his own research, Dr. Forster periodically surveys and reports on the results of other empirical research on the effects of school choice. His most recent (2013) report provides a thorough overview of existing research results, including studies of academic outcomes for students who participate in school-choice programs and those of public schools exposed to such programs. *See generally* 2013 Forster Report. As summarized below, the available empirical research³ demonstrates that school choice has a positive impact in both categories.

³ Dr. Forster's reporting does not cherry-pick studies favorable to school choice. For the effects of choice on students' academic outcomes, Dr. Forster reports on the "large body of studies using the 'gold standard' method of random assignment"; for the effects of choice on public schools, he reports on "all available empirical studies using any scientific method." 2013 Forster Report at 3. While Dr. Forster's work was supported by the Foundation, it expects the research it supports to adhere to "rigorous procedural rules of science [to] prevent a researcher's motives, and an organization's particular orientation, from pre-determining results."

A. “Gold-standard” research demonstrates that school choice improves academic outcomes for participating students.

The “gold standard” for reliable scientific research is the random-assignment method, in which subjects are randomly assigned to a treatment group (which receives the “treatment” being studied, whether it be a new cancer therapy or a school-choice voucher) or a control group (which does not). *Id.* at 5. Because the assignment of subjects to each group is made at random, any difference in subsequent outcomes (cancer survival rates or academic performance) can be attributed to the treatment. *Id.* at 7. Unlike most education policies, school choice can be, and has been, studied by the random-assignment method. *Id.*

When there are more applicants for a choice program than there are available slots, a random lottery is often used to determine who may participate. This creates a naturally occurring random-assignment research design. Students who win the lottery and are offered choice can be compared to students who lost the lottery and were not offered choice. If any systematic (i.e. non-random) differences between the outcomes of the two groups are observed, these differences can be attributed to the offer of choice, because nothing separates the groups but the offer of choice and randomness.

Id.

Id. at 34. “If research adheres to proper scientific and methodological standards, its findings can be relied upon no matter who conducted it.” *Id.*

Dr. Forster found 12 random-assignment studies conducted between 1998 and 2012 examining the effect of school choice on the academic achievement of participating students. *Id.* Of these, six studies found that all students offered a choice of schools improved academically; five found that some students offered choice improved while others experienced no effect; and one study found that school choice had no visible impact on academic performance. Dr. Forster found no empirical study concluding that school choice had a negative effect on student performance. *Id.* at 1, 7-8; see also Greg Forster, *A Win-Win Solution: The Empirical Evidence on School Vouchers* (2d ed. 2011) (2011 Forster Report), available at <http://www.edchoice.org/wp-content/uploads/2015/07/3-2011-Win-Win-National-Study.pdf>.

For example, a 1998 random-assignment study of a Milwaukee school-choice program found that students who used vouchers⁴ from 1990 to 1993 scored six points higher in reading and 11 points higher in math than students who were not offered vouchers. 2011 Forster Report at 9-10.⁵ In 2001, a researcher studying the effect of school choice in a privately funded voucher program in Charlotte, North Carolina, found that after one year, voucher students scored six points higher on

⁴ Any distinction between school vouchers and the disputed “scholarships” at issue here appears to be merely semantic. Vouchers typically describe any program where the funds that otherwise would have gone to a student’s public-school district may be directed instead to one or more alternative schools at the parents’ discretion.

⁵ Citing Jay Greene, Paul Peterson & Jiangtao Du, *School Choice in Milwaukee: A Randomized Experiment*, in *Learning from School Choice* 357 (Paul Peterson & Bryan Hassel, eds. 1998).

combined reading and math tests. *Id.* at 10.⁶ In 2008, another researcher reanalyzed the data from the Charlotte study, using a different method of accounting for students who were offered school choice but declined to exercise it. The 2008 study found that after one year, the voucher students outperformed the control group by eight points in reading and seven points in math. *Id.*⁷

As noted, Dr. Forster found that not every random-assignment study of student achievement has concluded that *all* students offered school choice improve academically. For example, in 2001, a random-assignment study of the effect of school choice in a privately funded voucher program in New York City found a nine-point increase for black students after three years on a combined reading and math test, but no visible effect among non-black students. *Id.* at 11.⁸ The New York City data were reanalyzed a year later by other researchers, who found that students (regardless of race) who used vouchers to leave low-quality public schools improved by five points on math tests after one year. *Id.*⁹ A second reanalysis of the 2002 New York City data changed the way students

⁶ Citing Jay Greene, *Vouchers in Charlotte*, Educ. Next, Summer 2001, at 55.

⁷ Citing Joshua Cowen, *School Choice as a Latent Variable: Estimating the 'Compiler Average Causal Effect' of Vouchers in Charlotte*, Pol'y Stud. J., May 2008, at 301.

⁸ Citing William Howell & Paul Peterson, *The Education Gap: Vouchers and Urban Schools* (2d ed. 2006) at 146.

⁹ Citing John Barnard, Constantine Frangakis, Jennifer Hill & Donald Rubin, *Principal Stratification Approach to Broken Randomized Experiments: A Case Study of School Choice Vouchers in New York City*, J. Am. Stat. Ass'n, June 2003, at 299.

were classified by race, using a scientifically questionable methodology, according to Dr. Forster. 2011 Forster Report at 11-12.¹⁰ This was the only one of the 12 random-assignment studies that found no visible impact on academic achievement from school choice. *Id.* at 12. A further reanalysis of the same data in 2010 confirmed the 2003 finding of academic gains from school choice among students leaving low-performing public schools. 2013 Forster Report at 8.¹¹

The most recent study reported in the 2013 Forster Report was a 2012 study of a privately funded voucher program for low-income elementary school students in New York City in the late 1990s. This long-term study by the Brookings Institute and Harvard University found that black students who were offered vouchers in elementary school were 20 percent more likely to attend college within three years of their expected high-school graduation date, 25 percent more likely to attend college full-time, and 130 percent more likely to attend a selective four-year college. The study found no visible impact on the student population as a whole. *Id.* at 8.¹² The available empirical evidence using gold-

¹⁰ Citing Alan Krueger & Pei Zhu, *Another Look at the New York City School Voucher Experiment*, Am. Behav. Scientist, January 2004, at 658.

¹¹ Citing Hui Jin, John Barnard & Donald Rubin, *A Modified General Location Model for Noncompliance with Missing Data: Revisiting the New York City School Choice Scholarship Program Using Principal Stratification*, J. Educ. & Behav. Stat., April 2010, at 154.

¹² Citing Matthew Chingos & Paul Peterson, *The Effects of School Vouchers on College Enrollment: Experimental Evidence from New York City* (2012). In this study the rate at which black students attended college within three years of expected high-school graduation increased by 7.1 percentage points, full-time enrollment increased by 6.4 points, and enrollment in selective

standard research methods strongly supports Douglas County's decision to offer school choice to families who seek educational alternatives for their children.

The research shows that some, if not all, students who transfer schools under a school-choice program improve their academic performance, while no identifiable group of students who accessed school choice is negatively affected. Such outcomes are the hallmark of a responsible public policy aimed at a valid educational purpose. Significantly, the same is true even of students who remained in the public schools where school-choice opportunities were offered.

B. Empirical data also show improved academic outcomes for the public schools exposed to school choice.

A philosophical underpinning of school choice is that competition and free choice work—they combine to boost efficiencies and increase the quality of goods or services in any market, including the market for educational services. When public schools know that students have a choice and can use school-choice funding to enroll elsewhere, those schools have a powerful incentive to improve their performance so students want to stay put.

Several scientific studies show that this theoretical benefit actually produces real-world results—improving not only the academic outcomes of students provided a choice, but also the academic performance of public schools whose students are offered the choice to attend elsewhere.

four-year colleges increased by 3.9 points (from a baseline of three percentage points, hence the 130 percent increase).

In 2013, Dr. Forster found 23 empirical studies using scientific methods to examine how school-choice programs affect public schools whose students are offered a choice.¹³ Of those, 22 studies found that choice improved the academic performance of the public schools. The other study (of a Washington, D.C. voucher program that protected public schools from competition by allocating additional funds to school systems that lost voucher students to other schools) found no visible effect on public-school performance. 2013 Forster Report at 11, 13; *see also* 2011 Forster Report at 25.¹⁴

Six different studies of the Milwaukee voucher program conducted between 2001 and 2009 found that school choice improved academic achievement in Milwaukee public schools. 2011 Forster Report at 15-16, 24. One, from 2002, used regression analysis to examine how public schools' academic performance varied with the percentage of students eligible for vouchers. This study concluded that greater school choice yielded greater year-to-year improvements in public-school academic performance. The size of this effect indicates that, over a four-year period, a school in which *all* students were eligible for choice could be expected to outperform a school in which *half* of the

¹³ These studies did not use the random-assignment method discussed above. But this presents less of a problem when studying the effect of choice on public schools, because those studies only need to compare schools whose students were offered a choice with schools whose students are not, "which is usually an easier methodological barrier to overcome." 2013 Forster Report at 11.

¹⁴ Citing Jay Greene & Marcus Winters, *An Evaluation of the Effects of D.C.'s Voucher Program on Public School Achievement and Racial Integration After One Year* (2006).

students were eligible by 15 percentile points. *Id.* at 16.¹⁵

This result—greater exposure to choice yields greater improvement in public-school academic outcomes—was confirmed in a 2007 study of Florida’s school-choice programs. Florida grades its schools A through F. Students at a school receiving an F in two or more of the preceding four years were eligible to apply for vouchers. *Id.* at 18. In the 2007 study, a school that had received exactly one F in the past four years was categorized as *Voucher Threatened*, and a school with two or more Fs as *Voucher Eligible*. Using regression analysis to compare year-to-year gains in academic performance, researchers found that school choice had the greatest impact on public schools most exposed to it. For example, comparing math scores, *Voucher Eligible* schools made improvements 15 points higher than other Florida public schools; *Voucher Threatened* schools were nine points higher; schools graded D in each of the preceding years were four points higher; and schools with at least one D and at least one higher grade (but no Fs) were two points higher. *Id.* at 19.¹⁶

In a similar vein, a recent study of Florida’s tax-credit scholarship program found that the greater the threat that a public school would lose students to nearby private schools, the better its students performed on state math and reading tests. David Figlio & Cassandra M.D. Hart, *Does Competition Improve Public Schools? New Evidence from the Florida Tax-*

¹⁵ Citing Jay Greene & Greg Forster, *Rising to the Challenge: The Effect of School Choice on Public Schools in Milwaukee and San Antonio* (2002).

¹⁶ Citing Jay Greene & Marcus Winters, *Competition Passes the Test*, *Educ. Next*, Summer 2004, at 66.

Credit Scholarship Program, Educ. Next, Winter 2011, 74, 76, available at <http://educationnext.org/does-competition-improve-public-schools/>. The effects increased over time, likely due to the increased competitive pressure caused by growing awareness of the program. *Id.* at 80. In Texas, researchers determined that one school district faced with a large, privately funded voucher program surpassed 85 percent of Texas school districts in performance gains, even after controlling for demographics and resources. Jay Greene & Greg Forster, *Rising to the Challenge: The Effect of School Choice on Public Schools in Milwaukee and San Antonio* (2002), available at http://www.manhattan-institute.org/pdf/cb_27.pdf.

Two commonly expressed fears about school choice are “cream skimming” (that students with higher socio-economic status will use vouchers disproportionately) and “negative selection” (that students who are low-performing in public schools also will use vouchers disproportionately). Cream skimming tends to lower the average academic caliber of students remaining in a public school, while negative selection raises it. The net effect in any given case depends on which effect is more prevalent. A recent study of a long-running school-choice program in Milwaukee found “little evidence” of wide-scale cream skimming or negative selection, based on student achievement and parent surveys. David Fleming *et al.*, *Similar Students, Different Choices: Who Uses a School Voucher in an Otherwise Similar Population of Students?*, 47 Educ. & Urban Soc’y 785, 805 (2015).

Thus, any concerns are misplaced that school choice in Douglas County will push public schools lower on the scale of academic achievement, cause some children to be “left behind” in failing schools, or result

in any other harm to the schools. The empirical evidence demonstrates that exposure to school choice improves the academic outcomes of both the students offered choice and the public schools exposed to it. School choice is not designed to harm public schools, or even to leave them unaffected, but rather to raise the level of education overall. Empirical evidence shows this to be true. In devising and implementing the Choice Scholarship Program, Douglas County adopted a win-win solution to improve its primary and secondary public-education system, while expanding opportunities for those families who seek a wider variety of educational options.

C. A long-term study of Milwaukee's school-voucher program showed some positive effects and no negative effects in the nation's longest-running school-voucher program.

A noteworthy longitudinal study of the nation's longest-running school-voucher program is helpful to understanding the impact of school choice. The Milwaukee Parental Choice Program ("MPCP") began in 1990. The Wisconsin Supreme Court held that the MPCP did not violate the U.S. Constitution's Establishment Clause or Wisconsin's own Blaine provision, finding that even if benefits might accrue to religious institutions, advancing religion was not the program's "primary effect." *Jackson v. Benson*, 578 N.W.2d 602, 620, 622 (Wis.), *cert. denied*, 525 U.S. 997 (1998). In its current form, the MPCP provides vouchers for families earning up to 300 percent of federal poverty guidelines, making more than 58% of Milwaukee families eligible. Wis. Stat. §§ 119.23-.235. In 2015-16, 27,619 students attend 117 private schools through the program, receiving a maximum voucher of \$7,860. Wis.

Dept. of Pub. Instruction, *Milwaukee Parental Choice Program (MPCP) Facts and Figures for 2015-2016*, <https://sms.dpi.wi.gov/sites/default/files/imce/sms/pdf/MPCP%20Sept%20Facts%20and%20Figures%202015-16.pdf> (last visited Nov. 24, 2015).

Given its duration, MPCP enables researchers to conduct in-depth studies of the effects of the program. From 2006 to 2011, the nonpartisan School Choice Demonstration Project (SCDP) of the University of Arkansas conducted a longitudinal evaluation of the MPCP that included 31 topical reports analyzing the program comprehensively and involved academics who were both proponents and skeptics of school choice. See generally Patrick J. Wolf, *The Comprehensive Longitudinal Evaluation of the Milwaukee Parental Choice Program: Summary of Final Reports*, SCDP Milwaukee Evaluation Report #36 (Feb. 2012), available at <http://www.uaedreform.org/downloads/2012/02/report-36-the-comprehensive-longitudinal-evaluation-of-the-milwaukee-parental-choice-program.pdf>.

The researchers found that the effects of school choice in Milwaukee ranged from neutral (no significant difference between MPCP recipients and public school students) to positive (a clear benefit to MPCP recipients). *Id.* at 4. Positive trends included a four-percentage-point increase in high-school graduation and four-year college enrollment by high school MPCP participants; a six-percentage-point increase in college persistence (remaining enrolled through the first year); higher performance by public-school students, attributable to competitive pressure from the school-choice program; and increased reading scores for some MPCP students. *Id.* at 4-7, 11. However, the research also found similar math scores for MPCP and public-school students; lower overall math scores for MPCP

students when compared to public-school students with similar income disadvantages; and similar overall achievement growth rates for MPCP students when compared to public-school students. *Id.* at 4, 6, 8, 10. Overall, the final report emphasized that having examined “virtually every way” school choice could affect people, schools, and neighborhoods, “we have found no evidence of any harmful effects of choice.” *Id.* at 4.

IV. Public opinion indicates strong support for school vouchers.

Finally, the empirical research showing positive effects of school choice on academic achievement no doubt explains some of the growing interest among policymakers in enacting various school-choice reforms. Another important driver is constituent interest in increased educational options for their children.

In addition to analyzing policy trends and the results of school-choice programs, the Foundation conducts an annual survey of public opinion on school choice and other educational issues. In the most recent national survey, conducted in April-May 2015, one in six respondents (17%) said “education” was the most important issue facing the country right now, and 60% said K-12 education is on the “wrong track”.¹⁷ Paul DiPerna, *2015 Schooling in America Survey: Perspectives on School Choice, Common Core, and Standardized Testing* 11, 13 (June 2015), available at <http://www>.

¹⁷ The national survey consisted of 1,002 telephone interviews in April-May 2015, with a margin of sampling error for the national sample of ± 3.1 percentage points. The related Latino study included 125 interviews from the national sample plus 407 from additional sampling, providing a margin of sampling error of ± 4.2 percentage points.

edchoice.org/wp-content/uploads/2015/07/SIA-Poll-Full-Report-WEB-6-29-15.pdf. Many parents expressed a preference for private schools, with a plurality of Americans (41%) choosing private school as the first option for their child. *Id.* at 23. Thirty-six percent said a regular public school was their first choice, while 12% chose a public charter school and 9% homeschooled. *Id.* Despite these preferences, about 85% of K-12 students attend public schools, and only 8% enroll in private school. *Id.*

When it came to school choice, six in ten Americans (61%) said they support vouchers. *Id.* at 39. This preference crossed many demographic boundaries, with more than half of respondents supporting school vouchers among Republicans and Democrats, suburbanites and urbanites, low-income and high-income earners, and young and middle-age adults. Only seniors (49%) were below fifty percent in their support of vouchers. *Id.* at 40. The most often cited reasons for supporting vouchers were “access to schools having better academic outcomes” (38%) and “more freedom and flexibility for parents” (28%). *Id.*

School-choice proponents often argue that a key benefit of school choice is providing low-income and traditionally underserved populations with the same access to educational options that exists for the rest of the population. The Foundation’s 2015 survey intentionally oversampled Latinos to allow for a separate study of Latino opinion of education issues. Paul DiPerna, *Latino Perspectives on K-12 Education & School Choice* 4 (Sept. 2015), available at <http://www.edchoice.org/wp-content/uploads/2015/09/Latino-Perspectives-Report-FINAL-9-8-152.pdf>. This allowed a targeted assessment of the views of a traditionally underserved population that often has particular

educational needs due to children being raised in Spanish-speaking households. More than one in five Latino respondents (22%) said “education was the most important issue facing the country”. *Id.* at 8. Forty-six percent said they would select a private school as their first choice for their child, signaling a disconnect with actual Latino enrollment patterns: about 92 percent of Latino K-12 students in the United States attend public school. *Id.* at 11.

Seven in ten Latinos said they favor school vouchers, with only 24% opposing them. This is a significantly higher figure than the national average of 61%. *Id.* at 13. All demographics within the Latino survey expressed highly positive views of vouchers, with the largest margins (between positive and negative views) among small-town residents, young Latinos, Republicans, suburbanites, and low-income earners. *Id.* at 14. African Americans sampled in the overall study said they support school vouchers in similar proportions as Latinos (70% in favor and 25% opposed). *Id.* at 15.

When asked what state governments could do to intervene in low-performing schools, a majority of Latino respondents (53%) said supplying vouchers/scholarships to families would be useful. *Id.* at 18. This was preferred over other options, such as converting district schools to charter schools (33%), dismissing school personnel (28%), or closing a school (25%). *Id.* Both Latinos (53%) and African Americans (55%) are significantly more likely than white respondents (35%) to say that “supply[ing] a voucher, scholarship, or ESA [educational savings account]” is more useful to families than other options for dealing with low-performing schools. *Id.*

In addition to the widespread support from individuals, private schools have also indicated strong interest in participating in school-voucher programs. The Foundation has conducted polls of private schools to investigate supply-side interest in participating in such programs. In a recent poll conducted in Colorado, two-thirds of responding private-school administrators said “yes” or “probably yes” when asked if they would participate in a voucher program similar to the one in Douglas County. Twenty-one percent said “maybe”, and only 13 percent said “no” or “probably not”. Andrew Catt, *Exploring Colorado’s Private Education Sector* 9 (Oct. 2015), available at <http://www.edchoice.org/wp-content/uploads/2015/10/2015-10-CO-State-Survey.pdf>.

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Despite empirical evidence of increased academic achievement and popular support for school choice, policymakers are likely to be deterred in implementing effective education reforms because of legal uncertainty described in the petitions. The Court should provide needed clarity for state and local officials seeking to offer meaningful educational options for their constituents.

CONCLUSION

The petitions for a writ of certiorari should be granted.

Respectfully submitted,

GEOFFREY SLAUGHTER
Counsel of Record
RUSSELL MENYHART
TAFT STETTINIUS & HOLLISTER LLP
One Indiana Square
Suite 3500
Indianapolis, Indiana 46204
(317) 713-3500
gslaughter@taftlaw.com