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The Legalization of School Choice and Its Implications for Public Education and Democratic Citizenship

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Abstract: *The author examines the expansion of education vouchers and school choice policies in the United States, tracing their legal evolution and public policy impact. Following pivotal Supreme Court rulings such as Zelman v. Simmons-Harris (2002) and Carson v. Makin (2022), constitutional Establishment Clause protections separating church and State have diminished, enabling public taxpayer funds to subsidize private religious education. Using Indiana's Choice Scholarship Program as a primary illustrative case study, the paper demonstrates how targeted initiative programs originally designed for low-income families can rapidly expand into universal voucher systems accessible to all households regardless of wealth. Framing school choice within the historical perspectives of Horace Mann and John Dewey, an argument is presented that aggressive privatization undermines the common school ideal, reduces essential public school funding, and ultimately threatens democratic citizenship.*

Keywords: *School Choice; Education Vouchers; Public Education; Establishment Clause; Indiana Choice Scholarship Program; Democratic Citizenship*

UN Sustainable Development Goals (SDGs): *SDG 4: Quality Education; SDG 16: Peace, Justice, and Strong Institutions*

INTRODUCTION

The school choice debate has been in existence for decades. From the perspective of advocates of school choice, which can be manifested in several ways, the primary focal point has been individual choice. This libertarian ethos, that parents should have the right to select schools for their children even if the cumulative choices can be harmful to other citizens, has profound implications for public education in the United States. While school choice proponents emphasize the choice dimension in their outward, public-facing advocacy, their ultimate objective is fundamentally conflicting for those who support the common school ethos, for there is a universal desire to shift education resources from the public schools to private and/or parochial schools. The common school is worthy of preservation in the twenty-first century as it is an institution of fundamental importance, just like it was when it was created in the nineteenth century.

School Choice in the Contemporary Era

Libertarians and those who support privatization have supported school choice for several generations. In the twentieth century, conservative philosophers such as Friedrich Hayek, Leo Strauss, and Milton Friedman extolled the virtues of the free market system (Fife, 2016, 9). Friedman provided the foundation for the modern school choice movement. He was a member of the Economic Policy Advisory Board under President Ronald Reagan (Fife, 2016, 10).

Today, advocates of expanded school choice (e.g., Donald Trump, Linda McMahon, and Betsy DeVos) are focused primarily on empowering parents' choice, but not on the outcomes of that choice (Laitsch, 2016). In public policymaking, unintended consequences almost always occur (Karapin & Feldman, 2016). Understanding the implications of school choice on public education is essential, and pretending that school choice has no discernible impact on traditional public schools is not reasonable. As Friedman himself suggested many years ago, choice proponents must consider the outcomes of choice programs (Laitsch, 2016).

Today, choice can be manifested in numerous ways (charter schools; education vouchers; virtual education; and homeschooling). Charter schools are nontraditional public schools. They are publicly funded like traditional public schools. However, they are not bound by some of the same rules, regulations, and laws that typically apply to traditional public schools, in exchange for a different accountability system than traditional public schools. The details of this arrangement are delineated in the charter, or contract, between officials on behalf of the charter school and the authorizing body. The basic paradigm with charters is that school choice advocates believe that they will outperform traditional public schools in two fundamental ways: promoting competition between and among schools for students and the development of innovative teaching practices. Charter schools started in Minnesota in 1991 (Minnesota Legislative Reference Library, 2026). According to the Center for Education Reform, a charter school advocacy group, forty-three states and the District of Columbia have enacted charter school laws. The states that do not have charter school laws include Kentucky, Montana, Nebraska, North Dakota, South Dakota, Vermont, and West Virginia (Center for Education Reform, 2025).

Though charter schools are public schools, the fact that they do not have the same procedural requirements poses a fairness issue. Why should some rules apply to traditional public schools, but not charter schools? They are both in the public domain, but they are not treated the same. Are advocates of choice attempting to set traditional public schools to fail, at least in terms of public perception? There are implications of choice (e.g., segregation and differential admissions criteria which may be harmful to children with special needs and whose native language is not English) (Fife, 2013, 159-62).

There is still an ongoing debate about the relative effectiveness of charter schools versus traditional public schools, at least in terms of standardized test scores. Evaluators at the Center for Research on Education Outcomes at Stanford University have presented three different studies since 2009: Study 1 (2009); Study 2 (2013); and Study 3 (2023).

In Study 1, researchers concluded that 46 percent of all charter school students had testing results that were no different from those of students in traditional public schools. Seventeen percent of charter school students outperformed their comparative counterparts, but 37 percent did measurably worse (Stanford University, 2009). Four years later, the results of Study 2 were published. Overall, there were no statistically significant differences between students who attended charter schools as compared to traditional public schools (Stanford University, 2013). A very different conclusion, however, was rendered in Study 3 in 2023. Researchers reported that between 2009 and 2023, learning gains for students enrolled in charter schools were significant compared to children in traditional public schools (Stanford University, 2023). These findings, however, were refuted by the Network for Public Education (2023) and the National Education Policy Center at the University of Colorado (2023).

The emphasis on individual choice without considering the consequences of those collective choices is the essence of the school choice movement. Homeschooling and virtual schooling are other contemporary forms of school choice. This philosophical approach emphasizing individual choice is reminiscent of another era, when the U.S. Supreme Court justices determined in *Brown v. Board of Education of Topeka, KS* (1954) that segregated public schools were unconstitutional and that the initial response from some school district officials, freedom of choice plans, was insufficient to provide equal protection to all public-school students under the Fourteenth Amendment (*Green v. County School Board of New Kent County, VA* (1968)). While the approaches to school choice have contributed to the demise of the public school as it was envisioned over 150 years ago, the most egregious approach to school choice is education vouchers, which will be the primary focus of this overview of contemporary public policy attempts to diminish and harm public education. As the American educator Jonathan Kozol explained, "I believe that vouchers are the single worst, most dangerous idea to have entered education discourse in my adult life" (Shepherd Express, 2009). In this century, several states (primarily, but not exclusively, red states) have launched programs that permit the use of public taxpayer funds to promote religious education, something that the founders of the American republic rejected outright. For most of U.S. history, Americans adhered to this education doctrine until this century, when Thomas Jefferson's vision of religion and the public sector was effectively nullified by a simple majority of the justices on the Supreme Court.

Thomas Jefferson and the Separation of Church and State Doctrine

Thomas Jefferson and the early founders of the republic in the United States believed in a secular state, where citizens could worship the religion of their choice in a free and open manner. At the same time, they supported separation between church and State (Thomas Jefferson's Monticello, 2025). The framers of the Constitution (excluding Jefferson, as he was not at the Philadelphia Convention in 1787) did not include important religious terms in the Constitution (e.g., God and Jesus). After the controversial presidential election of 1800, where the election was thrown into the U.S. House of Representatives as Jefferson and his running mate, Aaron Burr, tied in the Electoral College, as the framers did not envision the evolution of political parties and party tickets, the House ultimately selected Jefferson on the thirty-sixth ballot on February 17, 1801 (National Archives and Records Administration, 2025). Hamilton used his political influence to help Jefferson prevail in the final House vote (Williams, 2018). Consequently, in a classic illustration of cutting one's losses after a political defeat, Hamilton chose to sway sufficient House members to support Jefferson for president instead of Burr. Both Hamilton and Jefferson organized the first political parties (Federalist and Democratic-Republican, respectively). Hamilton believed in a strong national government and a broad interpretation of the federal Constitution. Jefferson was an advocate of the doctrine of states' rights and a strict interpretation of the Constitution. While having stark differences of opinion on questions of federalism and public policy, Hamilton nevertheless understood Jefferson to be a person of character. He did not hold Burr in the same regard. Ironically, Burr would become vice president in the first Jefferson administration, and he killed Hamilton in a duel on July 11, 1804.

During the 1800 election, the Federalists accused Jefferson of being an atheist, a charge that he felt he needed to address in a proactive manner. One of his efforts, a brief letter years

later, would become a focal point in the modern debate over the separation of church and State. In his letter to the Danbury Baptists on January 1, 1802, Jefferson declared that:

> Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for this faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties (Library of Congress, 2025).

Jefferson's wall of separation of church and State had a profound impact on the Supreme Court justices in two cases adjudicated after World War II.

The Precedent Established in *Everson v. Board of Education of the Township of Ewing* (1947)

In *Everson*, the justices determined that taxes could not be utilized by governments to support religious activities or institutions, regardless of the form. A New Jersey law stipulated that local school district officials could make rules and contracts for the transportation of school children to and from schools. The Board of Education in the township of Ewing authorized reimbursement costs to parents for money spent on the bus transportation of their children on the public system to Catholic parochial schools. In a 5-4 decision, the justices ruled that a government cannot promote religion, but at the same time, government cannot punish individuals for their faith. As Justice Hugo Black wrote for the Court's majority:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities and/or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State (*Everson v. Board of Education of the Township of Ewing).*

In upholding the New Jersey law, the Court's majority concluded that the law in question did not violate the wall of separation. Black declared that: "The First Amendment has erected a

wall of separation between church and State. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here" (*Everson v. Board of Education of the Township of Ewing*).

One of the dissenters in *Everson*, Wiley Rutledge, believed that the funds used to reimburse parents were obtained through taxes, so they could not be given to parents who sent their children to parochial schools:

> Two great drives are constantly in motion to abridge, in the name of education, the complete division of religion and civil authority which our forefathers made. One is to introduce religious education and observances into the public schools. The other, to obtain public funds for the aid and support of various private religious schools…In my opinion both avenues were closed by the Constitution. Neither should be opened by this Court. The matter is not one of quantity, to be measured by the amount of money expended. Now, as in Madison's day, it is one of principle, to keep separate the separate spheres as the First Amendment drew them; to prevent the first experiment upon our liberties; and to keep the question from becoming entangled in corrosive precedents. We should not be less strict to keep strong and untarnished the one side of the shield of religious freedom than we have been of the other (*Everson v. Board of Education of the Township of Ewing*).

Though some of the justices rendered different conclusions about whether the New Jersey law violated the wall of separation, there was a consensus that the wall itself was necessary due to the Establishment Clause.

The Subsequent Case of *McCollum v. Board of Education of School District No. 71, Champaign County, Illinois* (1948)

The justices resolved another Establishment Clause issue the following year. In addition, *McCollum v. Board of Education of School District No. 71, Champaign County, IL* entailed the Equal Protection Clause of the Fourteenth Amendment as well. *McCollum* involved a dispute about "released time," where class time was set aside for religious instruction in public schools. The members of the Champaign County Board of Education approved a program where religious teachers were hired by private third parties to provide weekly religious instruction in public schools. The classes were not mandatory for students. Vashti McCollum, an atheist, believed that her son was ostracized for not attending these religious classes, and sued the Board of Education on constitutional grounds. The justices agreed with her by an 8-1 vote. Black penned the majority opinion again in this case:

> To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a government hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion. For the First Amendment rests upon the premise that both religion and government can best

> work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the *Everson* case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable. Here, not only are the State's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the State's compulsory public school machinery. This is not separation of Church and State (*McCollum v. Board of Education of School District No. 71, Champaign County, IL*).

Justice Stanley Reed was the lone dissenter. He disagreed with the broad interpretation of the Establishment Clause by his colleagues:

> Devotion to the great principle of religious liberty should not lead us into a rigid interpretation of the constitutional guarantee that conflicts with accepted habits of our people. This is an instance where, for me, the history of past practices is determinative of the meaning of a constitutional clause, not a decorous introduction to the study of its text (*McCollum v. Board of Education of School District No. 71, Champaign County, IL*).

Until the twenty-first century, with some very specific exceptions, the *Everson* precedent was largely intact in Supreme Court doctrine for over 50 years. That would change, however, in a dramatic manner in the early 2000s.

The Political Opportunity to Establish Education Vouchers: *Zelman v. Simmons-Harris* (2002)

Political science instructors regularly remind students that elections have consequences, which may be perceived as favorable to some, unfavorable to others, and perhaps a fair amount of indifference as well. This truism was witnessed in the decision of *Zelman v. Simmons-Harris* in 2002. The Court had become more conservative at that time than in previous eras, a trend that has accelerated even further in that ideological direction at present. In 1995, the state legislators in Ohio launched the Pilot Project Scholarship Program to provide a limited number of education vouchers so that children in Cleveland could attend private schools as well as those operated by religious organizations. The lawmakers justified the creation of the program due to underperforming public schools in Cleveland. The vouchers first became available in the 1996-1997 school year and allowed up to $2,250 per student. Once admitted into the program, students could continue to receive vouchers through eighth grade, subject to the availability of state funding (Case Western Reserve University, 2025; Fife, 2004). At the time of the Zelman decision, voucher programs existed in four other states besides Ohio (Wisconsin, Florida, Vermont, and Maine), though the vouchers in Vermont and Maine were used in a secular manner (Fife, 2004, 74-76).

The Cleveland voucher program was like the program created a few years earlier in Milwaukee, Wisconsin, but with one fundamental difference. The Cleveland program was the first to allow participation of religious schools. The national school choice movement, touted by conservatives, Republican politicians, think tank analysts, religious leaders, and donors such as

the industrialist David Brennan in Akron, determined that it was time to establish a program that permitted the use of taxpayer funds for religious education. Cleveland was designated as an experimental city. Not surprisingly, the constitutionality of the program was challenged in early 1996 by the American Civil Liberties Union and other groups. Several years of State and federal cases resulted in the justices of the U.S. Supreme Court agreeing to hear the case in 2001. Oral arguments ensued on February 20, 2002 (Case Western Reserve University, 2025).

Shortly before the justices recessed for the summer on June 27, 2002, the decision in *Zelman* was announced. Chief Justice William Rehnquist wrote the majority opinion, and those concurring with Rehnquist included Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, and Clarence Thomas. All the justices in the majority were appointed by Republican presidents (Rehnquist was appointed as an associate justice by Richard Nixon and was subsequently elevated by Ronald Reagan. O'Connor, Scalia, and Kennedy were Reagan appointees as well; George H.W. Bush appointed Thomas). More than 3,700 students participated in the voucher program at the time of the case. Ninety-six percent of the voucher students attended religiously affiliated schools. Rehnquist determined that the Court over the last generation had distinguished between government programs that provide aid directly to religious schools and programs of true private choice. The three precedents he cited were *Mueller v. Allen* (1983), *Witters v. Washington Department of Services for the Blind* (1986), and *Zobrest v. Catalina* (1993). In *Mueller*, a Minnesota program was upheld that authorized tax deductions for educational expenses, including private school tuition, even though 96 percent of beneficiaries were parents of children in sectarian schools. The justices upheld the use of a vocational scholarship program in *Witters*, which provided tuition aid to a student studying at a religious school to become a pastor. In *Zobrest*, the justices endorsed a federal program that allowed sign-language interpreters to assist deaf students enrolled in religious schools. The impact of these cases on public education in the United States was of a limited nature. The same cannot be said about *Zelman*, however.

In his majority opinion, Rehnquist presented the following judicial reasoning based on these three precedents:

> *Mueller*, *Witters*, and *Zobrest* thus make clear that where a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause. A program that shares these features permits government aid to reach religious institutions only by way of the deliberate choices of numerous individual recipients. The incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual recipient, not to the government, whose role ends with the disbursement of benefits (*Zelman v. Simmons-Harris*).

The Court's majority created a new standard for establishment law cases:

> In sum, the Ohio program is entirely neutral with respect to religion. It provides benefits directly to a wide spectrum of individuals, defined only by financial need and residence in a particular school district. It permits such individuals to exercise

> genuine choice among options public and private, secular and religious. The program is therefore a program of true private choice. In keeping with an unbroken line of decisions rejecting challenges to similar programs, we hold that the program does not offend the Establishment Clause (*Zelman v. Simmons-Harris*).

The four dissenters had a very different view of the separation of church and State. The dissenters included John Paul Stevens (appointed by a Republican president, Gerald Ford), David Souter (appointed by Republican George H.W. Bush, and Ruth Bader Ginsburg and Stephen Breyer (both appointed by Democratic President Bill Clinton). Souter was direct in his dissent regarding case precedent, and subsequent events over the last quarter century reflect this reality:

> How can a Court consistently leave *Everson* on the books and approve the Ohio vouchers? The answer is that it cannot. It is only by ignoring *Everson* that the majority can claim to rest on traditional law in its invocation of neutral aid provisions and private choice to sanction the Ohio law. It is, moreover, only by ignoring the meaning of neutrality and private choice themselves that the majority can even pretend to rest today's decision on those criteria (*Zelman v. Simmons-Harris*).

The reality in *Zelman* is that the justices overturned the *Everson* ruling just as Souter indicated when the decision was announced. To suggest that the wall of separation ends when parents, when afforded the opportunity to send their children to private (including parochial) or public schools, opt for parochial schools, thereby absolving government officials of not endorsing, or refuting, any particular religious group, is unique in the post-*Everson* era. In concluding his dissent, Souter made a prophetic statement:

> If the divisiveness permitted by today's majority is to be avoided in the short term, it will be avoided only by action of the political branches at the state and national levels. Legislatures not driven to desperation by the problems of public education may be able to see the threat in vouchers negotiable in sectarian schools. Perhaps even cities with problems like Cleveland's will perceive the danger, now that they know a federal court will not save them from it. My own course as a judge on the Court cannot, however, simply be to hope that the political branches will save us from the consequences of the majority's decision. *Everson's* statement is still the touchstone of sound law, even though the reality is that in the matter of educational aid the Establishment Clause has largely been read away. True, the majority has not approved vouchers for religious schools alone, or aid earmarked for religious instruction. But no scheme so clumsy will ever get before us, and in the cases that we may see, like these, the Establishment Clause is largely silenced. I do not have the option to leave it silent, and I hope that a future Court will reconsider today's dramatic departure from basic Establishment Clause principle (*Zelman v. Simmons-Harris*).

Five justices on the Supreme Court overturned a half-century of Establishment Clause precedent. They did so by declaring that *Everson* was still intact, but that taxpayers' money could be used for religious instruction if the parents were given private and public school choice. The Court's majority was unfazed by the fact that almost all vouchers allocated in Cleveland at that time went for parochial education.

Voucher Programs in the American States (2025) and Case Selection

At present, thirty-one states and the District of Columbia have education voucher programs, and they are listed in Table 1 (Economic Policy Institute, 2024).

Table 1: Education Voucher Programs in the United States (Source: Economic Policy Institute, 2024)

N	State	Universal or Limited
1	Alabama	Universal
2	Arizona	Universal
3	Arkansas	Universal
4	District of Columbia	Limited
5	Florida	Universal
6	Georgia	Limited
7	Indiana	Universal
8	Iowa	Universal
9	Kansas	Limited
10	Louisiana	Limited
11	Maine	Limited
12	Maryland	Limited
13	Mississippi	Limited
14	Missouri	Limited
15	Montana	Limited
16	Nebraska	Limited
17	Nevada	Limited
18	New Hampshire	Limited
19	North Carolina	Universal
20	Ohio	Universal
21	Oklahoma	Universal
22	Pennsylvania	Limited
23	Rhode Island	Limited
24	South Carolina	Limited
25	South Dakota	Limited
26	Tennessee	Limited
27	Utah	Universal
28	Vermont	Limited
29	Virginia	Limited
30	West Virginia	Universal
31	Wisconsin	Limited
32	Wyoming	Limited

In addition, there is also a voucher program in Puerto Rico (EdChoice, 2025). Vermont's voucher program is the oldest in the nation, and it started in 1869. Maine established its program in 1873, and both are known as town tuitioning (University of Vermont, 2025). As rural states, both programs were launched to provide elementary and secondary students living in areas without educational institutions access to schools outside their towns of residence. These programs were not launched due to a particular ideological mindset, but rather out of pragmatism in that it was not economically feasible to build schools in every small town. For generations, vouchers in Vermont and Maine could only be used in a secular manner and could not directly support religious education. This requirement evolved in recent years due to a U.S. Supreme Court ruling.

Maine had a law that banned public tuition assistance funds from being used for tuition at private, religious high schools. Some parents challenged the constitutionality of the law, and they prevailed in *Carson v. Makin* (2022). By a 6-3 decision, the Supreme Court justices ruled that the law was an unconstitutional violation of the Free Exercise Clause of the First Amendment, as the law excluded religious private schools but allowed funds to be utilized by non-religious private schools (Connecticut General Assembly, 2022). The six Republicans on the Court voted to overturn the state law (Chief Justice John Roberts and Justices Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett). The three Democrats dissented (Stephen Breyer, Sonia Sotomayor, and Elena Kagan). In the majority opinion, Roberts declared that: "Maine's "nonsectarian" requirement for its otherwise generally available tuition assistance payments violates the Free Exercise Clause of the First Amendment. Regardless of how the benefit and restriction are described, the program operates to identify and exclude otherwise eligible schools on the basis of their religious exercise" (*Carson v. Makin*). In dissent, Breyer countered with this declaration:

> Maine wishes to provide children within the State with a secular, public education. This wish embodies, in significant part, the constitutional need to avoid spending public money to support what is essentially the teaching and practice of religion. That need is reinforced by the fact that we are today a Nation of more than 330 million people who ascribe to over 100 different religions. In that context, state neutrality with respect to religion is particularly important. The Religion Clauses give Maine the right to honor that neutrality by choosing not to fund religious schools as part of its public school tuition program. I believe the majority is wrong to hold the contrary (*Carson v. Makin*).

The *Carson* ruling extended to Vermont, so the two New England states are now compelled to use public money to fund religious education. Another state in the region, New Hampshire, also has a town tuitioning program, but it was just enacted in 2017 and was amended before *Carson* to include religious schools (EdChoice, 2025; The Keene Sentinel, 2023).

Among the states that have some form of voucher program, Maine, New Hampshire, and Vermont are generally blue states, at least in presidential elections. Of the remaining non-tuitioning voucher states, only the District of Columbia, Maryland, Rhode Island, and Virginia are in this electoral category. The remaining states are either red (N=20) or purple (Arizona, Nevada, North Carolina, Pennsylvania, and Wisconsin). An examination of Indiana's voucher program,

which has been in existence for fifteen years and is universal in nature, is illuminating, both in terms of education policy as well as politically.

Indiana was selected for illustrative purposes in this legal-historical analysis. There are other universal programs in existence (see: Table 1). Indiana was selected because it encompassed several political realities: a longstanding supermajority in the state legislature and governor's mansion; a state Supreme Court ruling defending vouchers; and an expansion of a very small, inexpensive program targeted to indigent families that evolved in a short period of time to a universal program which increased exponentially in terms of state education funding. The governor's office has been controlled by the Republicans since 2005; the state Senate has had a Republican majority since 1979; and the Indiana House has been controlled by the Republicans since 2011 (Ballotpedia, 2026). Indiana is a concrete study of one-party rule in public policy terms.

Citizens need to fully comprehend the implications of participating and not participating in the electoral process. Those who choose to vote in elections collectively impact all citizens who cannot vote because they are not old enough, are not citizens, have felony convictions, or choose not to vote voluntarily (Pew Research Center, 2024). In the 2024 presidential election, there were 156.8 million ballots counted in the United States. The voting-age population was 264.8 million at the time, meaning that over 108 million Americans did not register their votes (University of Florida, 2026). The implications of voting and nonvoting in a democratic republic have long been debated in political science literature for generations (e.g., Ferejohn & Fiorina, 1974; Ladd, 1978; Sigelman, 1982; and Wattenberg, 2002).

Indiana and Education Vouchers

Republicans in Indiana justified the creation of a voucher program initially based on the stated premise that the program would be small and only the poorest families in the State would be eligible. In 2011, the Indiana General Assembly launched a voucher program at the urging of Governor Mitch Daniels, a former director of the Office of Management and Budget for President George W. Bush. Daniels determined that the creation of vouchers in the State would be akin to providing social justice in education in the State (StateImpact Indiana, 2016). Daniels maintained that: "If they tried the public school and believe they are not serving their child well, they will not be forced to continue in those schools just because they don't have a high enough income" (StateImpact Indiana, 2016). During the same legislative session in 2011, Indiana legislators also created the State's A-F system, and teacher evaluations were required, based on student performance on standardized tests (StateImpact Indiana, 2016).

The contention used by conservative leaders in Indiana was that all students should have access to educational opportunities. In the first year of implementation of the program (2011-12), less than 4,000 students participated, and the total expenditure by the State was $15.4 million. The program has always been controversial, as in Indiana public schools, money follows the students (in this context from public to private/parochial schools) (StateImpact Indiana, 2016). The voucher program expanded greatly under successive Republican governors: Mike Pence (2013-17) and Eric Holcomb (2017-25). By 2023-24, over 70,000 students received vouchers, involving 357 schools, and costing over $439 million (see Table 2).

Table 2: Indiana Choice Scholarship Program (Source: Indiana Department of Education, 2025)

School Year	Student Enrollment Count	School Count	Total Spending
2011-12	3,911	241	$15,414,024.60
2012-13	9,139	289	$36,042,923.03
2013-14	19,809	313	$78,593,339.80
2014-15	29,148	314	$112,707,313.24
2015-16	32,686	316	$131,514,681.68
2016-17	34,299	313	$142,193,570.25
2017-18	35,458	318	$151,377,354.18
2018-19	36,290	329	$158,837,889.53
2019-20	36,707	326	$169,339,335.01
2020-21	35,698	324	$167,305,213.85
2021-22	44,376	330	$236,570,885.24
2022-23	53,262	343	$311,814,031.70
2023-24	70,095	357	$439,051,453.84

Clearly, the intent of state legislators has evolved, from a program targeted at the most indigent families in the State to a universal program which covers about 98 percent of all school-aged children in the State. In 2011, a child's family could either receive 90 percent of the state tuition support for children in families who qualified for federal free or reduced-price lunches or 50 percent of state tuition support if the child in question belonged to a household with an annual income not more than 150 percent of the amount required to qualify for free or reduced-price lunches (Indiana General Assembly, 2011). Effective June 29, 2023, a student is eligible for a Choice Scholarship if she or he meets the following criteria:

- the student must have legal residence in Indiana;
- the student must be at least 5 years old by October 1 of the school year and less than 22 years old; and
- the student must be a member of a household with an annual income of not more than 400 percent of the amount to qualify for the federal free and reduced-price lunch program (Indiana Department of Education, 2025).

The voucher program has expanded greatly in Indiana over the span of just over one decade. This ascendancy was made possible by the Indiana Supreme Court. In fact, the next biennium budget for Indiana was signed into law by Republican Governor Mike Braun in April, 2025. The income limit to be eligible for vouchers has now been eliminated. Starting with the 2026-27 school year, all Hoosier families will be eligible for a voucher. Families of four with an annual income of $220,000 currently qualify; in August 2026, all families in Indiana, even the most affluent, can send their children to parochial schools at state expense (*Indianapolis Star*, 2025). This expansion in the program has not come without controversy, for millions of taxpayers' dollars are now being channeled to religious schools (Mencimer, 2016).

The constitutionality of Indiana's Choice Scholarship Program was adjudicated by the Indiana Supreme Court in *Meredith v. Pence* (2013). The case addressed three aspects of the Indiana Constitution:

- Article I—Bill of Rights (Section 4): No preference shall be given, by law, to any creed, religious society, or mode of worship; and no person shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent.
- Article I—Bill of Rights (Section 6): No money shall be drawn from the treasury, for the benefit of any religious or theological institution.
- Article 8—Education (Section 1): Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all (Indiana General Assembly, 2025).

Under Article 7 of the State's Constitution, there are five members of the Indiana Supreme Court (one chief justice and four associate justices). The five members of the Supreme Court of Indiana at the time of the case are delineated in Table 3.

Table 3: Indiana Supreme Court Justices in *Meredith v. Pence* (2013) (Source: Indiana Supreme Court, 2025)

Justice	Appointing Governor	Political Party of Appointing Governor	Year of Appointment
Brent Dickson (Chief Justice)	Robert Orr	Republican	1986
Robert Rucker	Frank O'Bannon	Democratic	1999
Stephan David	Mitch Daniels	Republican	2010
Mark Massa	Mitch Daniels	Republican	2012
Loretta Rush	Mitch Daniels	Republican	2012

Four of the members, including the chief justice, were appointed by Republican governors. Brent Dickson was the senior member of the Court at the time and was also the chief justice. He had originally been appointed in 1986. Three of the members (Justices David, Massa, and Rush) were appointed by Mitch Daniels, a leading figure in the effort to begin vouchers in the State. The only member of the Court that a Democratic governor appointed was Robert Rucker, who was appointed by Frank O'Bannon in 1999. O'Bannon served as governor from 1997-2003 and died in office in his second term. His successor, Joe Kernan, was the last Democratic governor in Indiana, leaving office at the end of O'Bannon's second term in 2005.

All five justices determined that the Indiana Choice Scholarship program was fully compliant with the Indiana Constitution on all three challenges (Indiana University, 2015). Chief Justice Dickson wrote the opinion on behalf of the Court. In his decision, he offered the following commentary about vouchers:

> As a preliminary matter, we emphasize that the issues before this Court do not include the public policy merits of the school voucher program. Whether the Indiana program is wise educational or public policy is not a consideration germane to the narrow issues of Indiana constitutional law that are before us. Our individual policy preferences are not relevant. In the absence of

> constitutional violation, the desirability and efficacy of school choice are matters to be resolved through the political process (*Meredith v. Pence*, 2013).

In upholding the constitutionality of the law, the justices paved the way for the program to be expanded by the legislature, and that evolution is evident in Table 2. A critique of this opinion concluded that the justices incorrectly interpreted the text of the Indiana Constitution, departed from Indiana precedent, were out of line with most other states with similar constitutional provisions, and that the Court's decision would have a devastating impact on Indiana public schools (O'Connor, 2015).

Horace Mann and the Whig Vision of Common Schools in the United States

Horace Mann (1796-1859) and education reformers who came before and after him shared a vision for education in the United States (Messerli, 1971). They viewed education as a public good, not a private commodity. To critics of public education during his time, Mann offered the following prophecy:

> It is known, too, that our noble system of free schools for the whole people is strenuously opposed by a few persons in our own State, and by no inconsiderable numbers in some of the other states of this Union; and that a rival system of "parochial" or "sectarian schools" is now urged upon the public by a numerous, a powerful, and a well-organized body of men. It has pleased the advocates of this rival system, in various public addresses, in reports, and through periodicals devoted to their cause, to denounce our system as irreligious and anti-Christian. They do not trouble themselves to describe what our system is, but adopt a more summary way to forestall public opinion against it by using general epithets of reproach, and signals of alarm (Mann, 1891, Volume 4, 298).

Some privatization of services is intuitive. At times, governmental entities contract various services with private companies because it is advantageous to do so, particularly from the perspective of efficiency. Some issues, however, do not lend themselves to privatization, and education is one of them. In a constitutional republic, government officials have the responsibility to provide quality education, in this context, at a reasonable cost. This is the essence of public service and stewardship, for we expect public sector employees to promote the greater common good in the performance of their tasks. The founders of this republic, and those who followed them, including Mann, understood this important reality. School-aged children are obviously reliant upon adults for the provision of K-12 education. Mann and the common school advocates of the nineteenth century believed that public sector employees would be best equipped to deliver education to the nation's children, following standards that would mostly be created at the state and local levels of government. The imparting of knowledge, though the fundamental essence of public education, was not the only objective pursued by Mann and Whig reformers in the nineteenth century (Groen, 2008). They sought to ensure that a diverse society would share some common experiences and cultural mores. The students would learn about being citizens in a republican form of government. Consequently, children from different social classes, religious, and cultural backgrounds would ultimately learn

to coexist in the American democratic experiment peacefully. The governing body of the schools would be held accountable for their decisions, policies, and the educational experience that was created for children. The operative terms to emphasize are accountability and transparency. This type of accountability does not exist in the private sector. Privatization is not advisable when it comes to K-12 education, for its impact may be particularly harmful to disadvantaged students (Ravitch, 2014).

On the centennial of Mann becoming the first secretary of education in the United States (in Massachusetts), the educator Joy Elmer Morgan, a former editor of the *Journal of the National Education Association*, offered the following insight:

> In 1837, when Horace Mann came to the secretaryship of the Massachusetts newly-created Board of Education, a financial panic dominated the nation. Fear, greed, and confusion were everywhere. Unemployment, misery, and distress prevailed. Schools were poor, teachers unprepared and underpaid. The well-to-do were sending their sons and daughters to private schools. They felt little or no concern for the public schools, which they thought only good enough for paupers. In such a time people needed especially to place a higher value upon themselves—to attach more importance to the homely virtues and to thinking as a way of life. In 1837 the time had come for an educational revival. Horace Mann—himself up from the soil—came forward to express the needs of the people in a language so clear that his writings are an important part of the national culture (Morgan, 1936, vii).

Public education must be perpetuated for future generations. The establishment of vouchers in some states, especially universal programs such as the one in Indiana, is a radical departure from the democratic norm of establishing free, secular schools for America's children. Mann sought to alter the *status quo* in his time, where mostly children from affluent families received formal education. He and his colleagues succeeded in this noteworthy endeavor. Now, contemporaries are reversing this pillar of democracy and promoting the use of public monies for parochial education, even for children whose parents can already afford to send them to private and/or parochial schools if they so desire. This is an astounding reversal in American education history.

John Dewey and Public Education

John Dewey (1859-1952) was a progressive education philosopher who was influenced by both Jefferson and Mann (Cremin, 1957, 4; Cohan and Howlett, 2019). Dewey espoused public education at the beginning of the twentieth century. To him, education during the Progressive Era was the result of the active participation of students, parents, and teachers who focused on how public schooling could enhance the democratic way of life in the United States during an era of rapid industrialization (Cohan and Howlett, 2019; Ye and Shih, 2021).

Dewey's *Democracy and Education: An Introduction to the Philosophy of Education* was originally published in 1916. It remains the best-known work in philosophy and education by an American author, and it is still in print over a century later (Chambliss, 2003; Williams, 2017; and Renier, 2016). As Hinchey (2018) noted:

> Dewey has relevant ideas, the most critical perhaps evident in the title linking *democracy* and *education*. While teachers worry about explaining iambic pentameter and administrators worry about staffing every classroom with a teacher (or even just a warm body), everything happening in the classrooms and schools is shaping tomorrow's citizens—either consciously in line with some philosophy, or else willy-nilly. This is particularly dangerous with the advent of commercial providers of "education." Such providers are increasingly offering online programs and ending daily face-to-face interaction among young community members, who have less and less chance to interact with others unlike themselves. Moreover, when schools are run by corporations pursuing profit to educate students capable of becoming corporate whistleblowers, critical consumers, or innovative artists that a healthy democracy needs (pp. xvii-xviii).

Dewey envisioned, over time, the development of an egalitarian society, where formally educated citizens could be well situated to participate in the political process (Dewey, 2018, 9-12). Indeed, a practical application of his theoretical beliefs in the twenty-first century suggests that his educational philosophy has particular importance today for educating children in today's democratic society (Ye and Shih, 2021, 888).

Hinchey (2018) emphasized the crucial connection between democracy and education. In Dewey's own words:

> Upon the educational side, we note first that the realization of a form of social life in which interests are mutually interpenetrating, and where progress, or readjustment, is an important consideration, makes a democratic community more interested than other communities have cause to be in deliberate and systematic education. The devotion of democracy to education is a familiar fact. The superficial explanation is that a government resting upon popular suffrage cannot be successful unless those who elect and who obey their governors are educated. Since a democratic society repudiates the principle of external authority, it must find a substitute in voluntary disposition and interest; these can be created only by education. But there is a deeper explanation. A democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience. The extension in space of the number of individuals who participate in an interest so that each has to refer his own action to that of others, and to consider the action of others to give point and direction to his own, is equivalent to breaking down the barriers of class, race, and national territory which kept men from perceiving the full import of their activity (Dewey, 2018, 93).

As Ye and Shih (2021) aptly note, the educational process that Dewey espouses is imperfect (p. 888). The U.S. democratic republic needs structural reforms, one of which is a more interested, knowledgeable, and participatory citizenry (Fife, 2023). Mann and Dewey had a vision for public education, one that would make the United States more democratic in ways that they may not have envisioned in the context of their respective time periods. Abandoning this

democratic institution at this time in U.S. history needs a careful and extended national debate that is inclusive and transparent in nature.

CONCLUSION

Zelman has clearly impacted the common school movement and further stratified American society when it comes to education. Voucher programs have been largely created in red (Republican) states due to the skillful emphasis on choice, disregarding its consequences, gerrymandering, and the rise of money raised and spent in federal and State elections in the aftermath of *Citizens United v. Federal Election Commission* (2010). A host of other factors have made it possible to create and expand vouchers even in areas where they are not popular in terms of majoritarian public opinion. Indiana is a foreshadowing of the possibilities that exist once a statewide voucher program is created. Under the right political conditions, as elections have consequences in all aspects of public policymaking, a majority of the Supreme Court's justices facilitated the creation of voucher programs by state legislatures based on a unique and novel interpretation of the Establishment Clause. A generation has passed since that decision was rendered. Given what has transpired in many states since 2002, one could speculate that vouchers will continue to expand in the United States, especially in states with a conservative political culture. Whether from the perspective of jurisprudence or public policy impact, it is suspected that the late Justice Souter would have found little solace in the knowledge that his understanding of the Court's majority opinion had been quite astute.

As a singular case study, the experience in Indiana is both informative and limited. More research regarding the other voucher states will enhance citizen, practitioner, and scholarly knowledge regarding education vouchers in the United States.

The United States is on a perilous trajectory when it comes to public education. The founders of this republic did not aspire to have an official church or religion; they did not seek to establish a theocracy. Though Protestant values were incorporated into the curriculum of the common schools in the mid-nineteenth century and beyond, educators shifted in response to evolutionary thought on the separation of church and State and as a reaction to Supreme Court Establishment Clause jurisprudence. The impact of *Zelman* may be minimal in some states, but heed the example of Indiana. Under certain political conditions, a small program affecting a limited number of students can grow exponentially in a relatively short period of time. The likely outcome is that the funding for traditional K-12 public education will be cut while state legislatures expand access to parochial schools at public expense. This predictable stratification is exactly what Mann and his associates sought to avoid. Just because five justices on the Supreme Court decided it was necessary to alter precedent in 2002 does not mean that over 150 years of education history must be adversely affected. For citizens of this republic, continued support for this pillar of democracy should be encouraged, with vigilance and without hesitation, on behalf of the nation's children. Little is likely to be achieved in addressing the educational needs of America's schoolchildren in an increasingly diverse society through a radical social experiment conducted under the guise of "choice."

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