INTRODUCTION

Parents who support vouchers and other forms of school choice desire the best education possible for their children, which many parents argue public schools are not providing. Testing by the Nation’s Report Card, also known as the National Assessment of Educational Progress, showed that private school students score higher on achievement tests than their public school peers. Further testing by the Nation’s Report Card showed that the same achievement gap also existed among minority students attending private schools versus public schools. Without “school choice” and the freedom for minority students to attend private schools, true educational parity cannot exist.

Private schools have a community-like structure that is beneficial to minority students. With a community behind them, parents are more involved in their children’s lives. The community aspect, which is reflected in a compassionate, secure and discipline-conscious environment, aids children who have trouble at home. Minority students may “come from communities where, for whatever reason, neither traditional family nor educational excellence is...
The community structure of private schools, many of which are sectarian, is linked to higher achievement among minority students. However, a majority of low-income students come from minority families who do not have the financial resources to send their children to private schools that offer a better education. As a result, the chance for achieving educational equality is low without school choice.

Parents’ use of state aid to send children to religious schools does not violate the Establishment Clause. If parents have the right to direct where the monies go, the government is not establishing a position on any type of religion. Parents are not using the money to promote or establish a religion; rather, they are using the money to provide a better education for their children. The United States Supreme Court has routinely held that state aid that indirectly flows to religious institutions does not violate the Establishment Clause. Even though the Supreme Court has held that indirect aid to religious schools does not violate the Establishment Clause, challenges at the state constitutional level still remain. Religion has little, if anything, to do with the choice.

Part I of this note briefly examines the history of school choice in the United States. Part II continues to discuss the importance of school choice for minority student achievement, with an emphasis on private schools and the subset of Catholic schools. Part III discusses the need for school choice to ensure equal opportunities and educational equality. Part IV tackles a
discussion of why state aid to sectarian schools does not violate the Establishment Clause.\textsuperscript{13} Building on Part IV, Part V features a discussion of why the Blaine Amendment in state constitutions are not violated by state aid to sectarian schools.\textsuperscript{14}

**I. BACKGROUND OF SCHOOL CHOICE**

School choice allows parents to pick the best available educational setting for their children. The general term, “school choice,” is used to embody a variety of concepts. Common variations of choice include government vouchers, individual tax credits, and general tax credits.\textsuperscript{15}

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\textsuperscript{13} U.S. CONST. amend. I, § 1; See cases cited supra note 9.

\textsuperscript{14} Many state constitutions contain Blaine Amendments that restrict the use of state to religious schools. See infra Parts IV and V.

\textsuperscript{15} Frank R. Kemerer, *A Legal Perspective on School Choice*, in *HANDBOOK OF RESEARCH ON SCHOOL CHOICE* 55, 71 (Mark Berends et al. eds., 2009).
School choice was first used to maintain segregation, which is very different from its use today of aiding diversity. Economist Milton Friedman is known as the father of school choice because of his voucher proposal idea and the publication of his scholarly paper, “The Role of Government in Education” in 1955. Friedman’s work became the starting point for the school choice debate. The idea, “[i]n the simplest of terms, . . . means letting every parent send their child to the school of their choice regardless of where they live or income. Parents choose schools based on their child’s needs, not their address.” He contends that vouchers would “widen the range of choices available to parents by permitting . . . a wider variety of schools and choice among them.” Friedman argued that neighborhood schooling is school choice. Families may choose where to live and thus, where their children go to school, but families only live in neighborhoods they can afford. Higher income families can choose to live in neighborhoods where there usually are better schools. Choice in neighborhood schooling only applies when parents can afford to pay for a private school or move to a more affluent area.

Opponents of school choice argue that the idea undermines public schools and that the use of vouchers and other methods of choice are constitutionally suspect. Critics of choice fear

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16 Id. at 55. “In the 1960s, freedom of choice was used in the South to maintain decades of prior racial segregation in public schools and then later through magnet schools to promote school integration.”
20 BRIGHOUSE, supra note 18, at 27.
21 Id.
22 Id. at 23.
23 Id.
24 Id. at 32.
that choice among schools would funnel money away from lower performing public schools.\footnote{26} In reality, choice programs save school district money because schools only lose a portion of the money it would have received for the students.\footnote{27} Plus, fewer students further reduce the districts’ operating expenses.\footnote{28} In fact, a number of studies on school choice programs have shown that these programs saved schools approximately $22 million at the state level and $422 million at the local school district level.\footnote{29} Still, opponents fear that the brightest students will leave public school and choose to attend private school.\footnote{30} However, contrary evidence suggests that vouchers provide encouragement to improve performance because the school districts are aware that students will leave if not satisfied.\footnote{31} Empirical studies in Milwaukee, Florida, and Washington, D.C., showed that voucher programs do not harm public schools.\footnote{32}

The U.S. Supreme Court holds\footnote{33} that the directing of state funds by parents to private schools is not constitutionally suspect and does not violate the Establishment Clause.\footnote{34} A more thorough discussion of Establishment Clause\footnote{35} issues follows in Part IV infra.

\section*{II. THE PRIVATE SCHOOL DIFFERENCE WITH AN EMPHASIS ON CATHOLIC SCHOOLS}

As the number of single-parent families in the United States rises, the need for school choice rises as well. During the last three decades of the twentieth century, the number of single-
In 2007, U.S. Census statistics showed that twenty-three percent of White children, 65 percent of African American children, 49 percent of American Indian children, and 37 percent of Hispanic children lived in single-parent homes. The minority groups have significantly higher percentages of single-parent households, which directly affect the academic performance of each group. While 74 percent of White children live in two-parent homes, only thirty-five percent of African-American children have the two-parent status. Children living with two parents attain higher test scores in schools than their single-parent counterparts.

Academic achievement parallels the amount of family support a child receives, which does not necessarily depend on family financial resources. Non-financial parental support “include[s] setting time limits on watching TV, reading to children, and making sure they get to school.” While these support techniques do not cost any money, single parents often have more difficulty being involved with the school and home activities that benefit their children’s school performance due to a lack of time and energy. Single parents have half of the parent hours available as in a two-parent household. Additionally, single parents have difficulty with taking

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39 Id. at 11.
40 Id. at 9.
41 Barton & Coley, supra note 38, at 14; Tyrone C. Howard & Rema Reynolds, Examining Parent Involvement in Reversing the Underachievement of African American Students in Middle-Class Schools, EDUCATIONAL FOUNDATIONS 79, 83 (Winter-Spring 2008).
42 Barton & Coley, supra note 38, at 14.
a more active role by volunteering in their children’s school because they cannot afford to take time off work.\footnote{44} 

In a two-parent household, 58 percent of children have a mother who is highly involved in their school. That same child has a parent volunteer 56 percent of the time in kindergarten to fifth grade and 36 percent of the time in sixth to eighth grade.\footnote{45} Compare that with single mothers who are highly involved only 48 percent of the time and who can volunteer only 35 percent of the time in kindergarten to fifth grade and 22 percent of the time in sixth through eighth grade.\footnote{46} 

[S]tudents who grow up with only a single parent invariably find school more of a struggle than do those who grow up with both biological parents. The job of keeping after children to do their homework, or taking them to libraries, historical sites and cultural events, is daunting to many moms who exhaust themselves just putting food on the table.\footnote{47} 

Children in single-family homes, who statistically are minorities,\footnote{48} would benefit from schools providing support and encouragement.

Research has shown that private school students receive higher test scores than public school students. For example, the National Assessment of Educational Progress tests showed the average private school fourth-grader scored 14.7 points higher in reading and 7.8 points higher in math than the average public school fourth-grader.\footnote{49} In 2003, the National Assessment of Educational Progress evaluations showed that Black and Hispanic private school students had higher scores in math and reading in fourth grade, as well as higher math scores in eighth grade.

\footnote{44} Barton & Coley, supra note 38, at 14. 
\footnote{45} Loechner, supra note 43. 
\footnote{46} Id. 
\footnote{47} Cleary, supra note 6, at 3. 
\footnote{48} See supra note 37. 
\footnote{49} Braun, supra note 3, at iii.
than fourth and eighth grade public school students.\textsuperscript{50} Furthermore, the average private school eighth-grader scored 18.1 points higher in reading and 12.3 points higher in math than the average public school counterpart.\textsuperscript{51} This discrepancy is evident in statistical research showing that in 2006-2007, 98 percent of private high school students graduated, with 65 percent of graduates attending four-year colleges.\textsuperscript{52} However, in 2002-2003, only 73.9 percent of public high school students graduated.\textsuperscript{53}

The environment in private schools is described as more compassionate and secure with a greater emphasis on discipline, which has been linked to higher scores.\textsuperscript{54} This type of environment is more akin to a community, which can be beneficial to many single-parent and minority students. Private school students “reported fewer absences, more homework, fewer fights, more demanding courses, and greater teacher interest and concern than did public-school students.”\textsuperscript{55}

Children end up with a better educational experience when parents and schools work together.\textsuperscript{56} Three important things parents can do to ensure their child gets the most out of their education is: getting their children to school, attending parent/teacher conferences and checking homework.\textsuperscript{57} Testing by the National Assessment of Educational Progress showed a direct

\textsuperscript{50} See supra note 4, at 15. Black fourth grade public school students averaged scores of 197 in reading and 216 in math. Their private school counterparts received average scores of 210 in reading and 221 in math. Black eighth grade public school students averaged scores of 252 in math while Black private school students averaged 260. Hispanic fourth grade public school students averaged scores of 199 in reading and 221 in math. Their private school counterparts received average scores of 220 in reading and 231 in math. Hispanic eighth grade public school students averaged a score of 258 in math while Hispanic private school students averaged 274.

\textsuperscript{51} Braun, supra note 3, at iii-iv.


\textsuperscript{53} Marilyn Seastrom et al., The Averaged Freshman Graduation Rate for Public High Schools From the Common Core of Data: School Years 2001-02 and 2002-03, NCES 2006-601 (U.S. Dep’t of Educ. 2005).

\textsuperscript{54} HENIG, supra note 25, at 126.

\textsuperscript{55} Id.

\textsuperscript{56} Barton & Coley, supra note 38, at 32.

\textsuperscript{57} Id.
The correlation between eighth grade math scores and the number of missed school days.  Additionally, the number of absences is a predictor of high school completion. As the curriculum increases in difficulty, absences will have the greatest negative impact on the low-achieving students. School choice is demonstrably the way for higher achievement of minority and low-income students.

A. Catholic Schools

The sheer number of private schools with a religious affiliation makes finding a non-sectarian private school difficult. A study detailing the 2007-2008 school year showed that roughly 70 percent of all private schools had a religious orientation and enrolled 80.6 percent of all private school students. The most common denomination of sectarian schools is Catholic. Parochial schools, such as Catholic schools, are private schools that teach religion along with normal school curriculum and have been in the United States since colonial times. Catholic schools in the United States enroll approximately 2.3 million students. In addition to the sheer number of students, religious institutions generally have the lowest tuition of private schools. The average cost of Catholic elementary school tuition is approximately $2,900, while the average cost of nonsectarian elementary school tuition is approximately $6,400. Parents are

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58 Id. (zero days absent, score of 284; one – two days absent – 280; three – four days absent – 270; five – ten days absent – 265; over ten days absent – 250).
59 Id at 34.
60 Id.
61 Broughman, supra note 52, at Table 2. (Similar figures abound in other research. About 80% of US private schools have religious orientation, Catholic schools most common religion; enroll about 60% of private school students. See HENIG, supra note 25, at 68; Weil, supra note 1, at 101).
62 Broughman, supra note 52, at Table 2.
63 Id.
64 Marks, supra note 7, at 479.
65 Id. at 481.
67 Id.
not choosing sectarian schools because they are religious. Rather, parents are choosing these schools because of their lower cost and prevalence.

Tests conducted by the National Assessment of Educational Progress show that Catholic school students have higher scores than public school students and often other private school students. 68

“The perception that Catholic schools are educationally effective and efficient in their operations . . . has drawn the attention of researchers and policymakers interested in comparing their performance and organization with that of public schools.” 69 Unfortunately, the draw to Catholic schools, due to the promise of higher test scores, has also caused Establishment Clause issues. 70 More importantly, students in sectarian and nonsectarian private schools outperform their public school counterparts and are more likely to score at the proficient level or above in all subjects. 71 Almost all Catholic high school students graduate, 97 percent go onto some form of post secondary school education, and about 80 percent go on to four-year colleges. 72

“Catholic schools tend[] to organize themselves as communities.” 73 The characteristics of such organization produce more teacher satisfaction and higher student involvement and success. 74 Researchers attribute higher performance of Catholic schools “to their character as a ‘functional community,’ in which social norms are broadly shared and consistently reinforced among students, parents, teachers, and school authorities.” 75 This environment appears to set a

68 Marks, supra note 7, at 479.
69 Id.
70 U.S. CONST. amend. I, cl. 1; Kemerer, supra note 15, at 66.; Refer to infra Part V.
71 Marks, supra note 7, at 493.
72 Id. at 479.
73 Id. at 487.
74 Id.
75 HENIG, supra note 25, at 127.
high bar for student achievement by means of challenging academics and an emphasis on course work.\textsuperscript{76}

“These values and practices contribute to a normative environment that works to reduce the disadvantaging aspects of students’ social and academic backgrounds on achievement, accounting for Catholic schools’ particular success with students of lower SES.”\textsuperscript{77} Helen M. Marks, Professor of Educational Policy and Leadership at the Ohio State University, offered the following commentary comparing Catholic and public schools:

Teachers’ caring and instructional quality were perceived as significantly higher in Catholic schools, and staff problems, according to the principles, were fewer. Catholic and public schools also differed in their disciplinary and academic climates with the differences favoring Catholic schools. Fewer discipline problems, greater fairness in disciplinary practice, and a safer environment distinguished Catholic from public schools. Catholic schools ranked significantly higher on academic press, student time spent on homework, the positivity of students toward academics, academic courses taken, and the lack of curricular differentiation.\textsuperscript{78}

Catholic schools also offer a chance for diversity, which provides meaningful benefits to schoolchildren. Substantial numbers of non-Catholic and minority students attend Catholic schools.\textsuperscript{79} Fourteen percent of Catholic school students are non-Catholic, while 25 percent of Catholic school students are from minority groups.\textsuperscript{80} Of the minority students, Hispanics are the largest group at 12 percent, with African Americans at around 8 percent and Asians at around 5 percent.\textsuperscript{81} Testing by the National Assessment of Educational Progress showed higher minority

\textsuperscript{76} Marks, \textit{supra} note 7, at 487.
\textsuperscript{77} \textit{Id.} See generally Socioeconomic Status, North Central Regional Educational Library, available at http://www.ncrel.org/sdrs/areas/issues/students/earlycld/ea7lk5.htm (last visited Dec. 4, 2009) (Socioeconomic Status or SES “is based on family income, parental education level, parental occupation, and social status in the community . . . Poor families also may have inadequate or limited access to community resources that promote and support children's development and school readiness”).
\textsuperscript{78} Marks, \textit{supra} note 7, at 486.
\textsuperscript{79} \textit{Id.} at 497.
\textsuperscript{80} \textit{Id.} at 481.
\textsuperscript{81} \textit{Id.}
achievement in private schools than in public schools. The same testing also showed slightly higher or equal achievement scores in Catholic schools as compared with non-sectarian private schools.

The private school environment provides benefits for minority children. The community aspect of private schools helps fill the void left by many single-parent families. Private schools’ more rigid structure and caring environment provide the extra push felt by many minority children. The achievement scores of private school students when compared with the scores of public school students are evidence that without school choice there is little chance of educational equality.

III. THE CASE FOR SCHOOL CHOICE

A 2006 study by the National Center for Children in Poverty revealed that 18 percent of American children live in poor families and 39 percent of American children live in low-income families. The same study showed that 26 percent of White children, 61 percent of Black children, and 61 percent of Hispanic children live in low-income families. These

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83 Id.

84 HENIG, supra note 25, at 126.

85 NATIONAL CENTER FOR CHILDREN IN POVERTY, LOW-INCOME CHILDREN IN THE UNITED STATES: NATIONAL AND STATE TREND DATA, 1995-2005 (Colombia University Mailman School of Public Health September 2006). See Table 1. (Poor families are defined as those whose income is below the poverty threshold. The federal poverty level for a family of four with two children was $19,350 in 2005).

86 Id.

87 Id at 8. See Table 3. (Low-income families are defined as those whose income less than twice the federal poverty threshold or approximately $38,700 in 2005).

88 Id. at 26. See Table 21.

89 Id. at 28. See Table 23.

90 Id. at 30. See Table 25.
statistics support the proposition that private schooling, without school choice, is not a viable option for more than half of Black and Hispanic families. 

School choice aids both parents and their children by leading to better school outcomes and increased efficiency.\footnote{See Marks, supra note 7, at 497; BRIGHOUSE, supra 18, at 30.} Choice programs give lower-income families a chance to control more aspects of their children’s education.\footnote{BRIGHOUSE, supra 18, at 32.} Children in lower-income families go to overcrowded public schools with untrained, inexperienced teachers and are largely unchallenged by their classes.\footnote{KEVIN G. WELNER, NEO VOUCHERS: THE EMERGENCE OF TUITION TAX CREDITS FOR PRIVATE SCHOOLING 8 (Rowman & Littlefield 2008).} These children need school choice options the most because neighborhood schooling is providing an inadequate education, as evidenced by the National Assessment of Educational Progress test scores.\footnote{See supra notes 45-50.} Choice would enable lower-income minority students to attend private schools.

In addition, school choice aids student achievement by enabling diversity from a wider variety of students. Racial diversity in educational settings produces real and tangible benefits.\footnote{Derek Black, The Case for the New Compelling Interest: Improving Educational Outcomes, 80 N.C. L. REV. 923, 945-47 & n.153-56 (2002).} These benefits extend to minority and non-minority students alike and include “better teaching and learning, improved civic values, increased employment opportunities, . . . higher achievement and more educational opportunities.”\footnote{Id. at 943-45.} Diversity, fostered in elementary school, produces both educational and lifestyle benefits.\footnote{See id. at 945-47 & n.153-56.} Research has shown that early exposure to diversity breaks down stereotypes easier, promotes increased interaction and friendship, and creates an overall more pleasant learning experience.\footnote{Id.} Desired educational outcomes are...
directly achieved through racial diversity.\textsuperscript{99} Exposure to individuals from diverse backgrounds leads to improving civic values, promulgating the break down of racial stereotypes, and promoting racial harmony and interaction.

School choice is also important to promote equality. A system that affords choice only to wealthy parents is inequitable.\textsuperscript{100} School choice would put all children on an equal playing field; no child would get a lesser quality of education due to the location of their parents’ neighborhood. “Equality, more generally conceived, attempts to ensure that different people have roughly equal resources available to them over the course of their full lives, with inequalities permissible only when they reflect the greater effort of the beneficiaries.”\textsuperscript{101} Diversity is a compelling interest because enrolling a critical mass of minority students encourages the breakdown of stereotypes and enables a better racial understanding.\textsuperscript{102} This result from diversity translates to higher learning outcomes and better preparation for an increasingly diverse society.\textsuperscript{103}

The statistics referenced previously in Part II of this Note support the proposition that private schooling, which would be only available to many students through school choice programs, greatly improves minority achievement scores. School choice is the only way to experience true educational equality.

\textsuperscript{99} Id. at 971.
\textsuperscript{100} BRIGHOUSE, supra 18, at 32.
\textsuperscript{101} Id. at 114-15.
\textsuperscript{103} Id.
IV. U.S. CONSTITUTIONAL PERSPECTIVES: ESTABLISHMENT CLAUSE ISSUES

A. Brief Overview of Applicable Constitutional Law

The First Amendment to the United States Constitution contains a clause that states, "Congress shall make no law respecting an establishment of religion." The principle behind the Establishment Clause is to insulate religious decisions from the government and leave religious decisions up to individuals. If a government policy has an indirect or incidental effect of promoting or advancing religion, the policy may not violate the Establishment Clause depending on the surrounding circumstances. An Establishment Clause question is raised when government funds are disbursed to religious schools. However, a distinction exists between direct government aid to religious schools and government aid that goes to parents who then divert the aid to religious schools.

In deciding Establishment Clause cases, courts apply the Lemon Test. Government action “should have the minimum possible effect on religion, consistent with achievement of the government’s legitimate purposes.” The Lemon Test consists of three prongs: “First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; and finally, the statute must not foster ‘an excessive government entanglement with religion.’” In the simplest terms, government action should have a secular purpose that minimally affects religion. The United States Supreme Court gradually started to focus on neutrality and choice and to reject the notion that religious

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106 Henig, supra note 25, at 69.
107 Id.
institutions have to be excluded from public benefits based solely on the language of the Establishment Clause.\textsuperscript{111}

“In a nation in which tax deductions for religious contribution and the G.I. Bill are sacrosanct, the notion that allowing parents to use their children’s public education funds at the school of their choice ‘establishes religion’ borders on the absurd.”\textsuperscript{112} The United States Supreme Court has heard many different cases regarding state financial aid flowing to religious schools and institutions. The Court has “consistently held that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge just because sectarian institutions may also receive an attenuated financial benefit.”\textsuperscript{113}

\textbf{B. Application of Constitutional Law to Specific Instances}

The most recent United States Supreme Court case dealing with the Establishment Clause and government aid to sectarian schools is \textit{Zelman v. Simmons-Harris}.\textsuperscript{114} The \textit{Zelman} Court held that the Ohio Pilot Project Scholarship Program (hereinafter “PPSP”) was “a program of true private choice, consistent with \textit{Mueller, Witters, and Zobrest},\textsuperscript{115} and thus constitutional.”\textsuperscript{116} The program was neutral with regard to religion; its purpose was general and comprehensive.\textsuperscript{117} The PPSP provided educational aid “directly to a broad class of individuals defined without reference to religion . . . [and] permit[ed] the participation of all schools within the district,

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\item\textsuperscript{111} McConnell, \textit{supra} note 105, at 847-48.
\item\textsuperscript{112} Clint Bolick, \textit{Voucher Law; in HANDBOOK OF RESEARCH ON SCHOOL CHOICE} 281, 282 (Mark Berends et al., eds., 2009).
\item\textsuperscript{113} Zobrest, 509 U.S. 1, 8 (1993).
\item\textsuperscript{114} Zelman, 536 U.S. 639, 639 (2002).
\item\textsuperscript{115} Mueller, 463 U.S. 288, 388 (1983); Witters, 474 U.S. 481,481 (1986); Zobrest, 509 U.S. at 1. (The programs challenged in all three of these cases did not violate the Establishment Clause because they were programs of true individual choice where the state directed the aid the individuals and then the individuals then directed the funds to sectarian schools. Furthermore, the benefits were available to all individuals with no qualifications. The state funds did not advance or inhibit religion nor did the funds foster excessive entanglement between the state and religion).
\item\textsuperscript{116} Zelman, 536 U.S. at 653.
\item\textsuperscript{117} \textit{Id}.\end{multicols}
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religious or nonreligious.‖ Benefits of the PPSP were available to all eligible families with a preference for low-income families (i.e. 200% below the poverty line). These low-income families could receive more assistance (i.e. 90% of private school tuition up to $2,250) than families that were not defined as low-income. The program did not have any financial incentives to encourage families to choose religious schools; in fact, families choosing religious school were disadvantaged in the form of parental tuition co-pays.

As evidenced by the cases above, the United States Supreme Court has routinely held that distribution of monies to parents who use that aid to send their children to religious schools does not violate the Establishment Clause. If a program provides a neutral, true choice for parents between public and private, secular and non-secular schools, the program will not offend the Establishment Clause. A multifaceted program that encompasses a wide variety of choices and offers true choice to parents will not face any Establishment Clause problems. Although a program’s monies may eventually flow to religious education, that program does not necessarily have the purpose or effect of promoting religion, nor will the program necessarily involve excessive entanglements between religion and government. Therefore, the choice of secular or non-secular education should be left solely to the preference of parents and their children. The figure below illustrates the Supreme Court’s current view.

118 Zelman, 536 U.S. at 653.
119 Id.
120 Id. at 646.
121 Id. at 654.
122 McConnell, supra note 105, at 859.
V. THE STATE CONSTITUTION HURDLE

The United States Supreme Court held that indirect aid to religious schools could be constitutional. The next hurdle to overcome is at the state constitution level. The most common obstacle in state constitutions is the Blaine Amendment. This amendment was originally proposed in 1875 by Congressman James G. Blaine as an amendment to the United States Constitution. The amendment proposed that "no tax funds shall be used for the 'support of any school ... under the control of any religious or anti-religious sect, organization, or denomination, or wherein the particular creed or tenets shall be read or taught.'" The Blaine Amendment was never ratified as an amendment to the United States Constitution, but between 1877 and 1913, thirty-three states adopted similar amendments to their own constitutions. The

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124 Id. at 68.
126 Id.
Blaine Amendments stand in the way of true school choice. The Arizona Supreme Court in *Kotterman v. Killian* found the Blaine Amendments to be “a clear manifestation of religious bigotry, part of a crusade manufactured by the contemporary Protestant establishment to counter what was perceived as a growing ‘Catholic menace.’” The Blaine Amendments amount to little more than religious persecution.

Pennsylvania and Delaware are two states whose constitutions contain a form of the Blaine Amendments. Article III, Sections 15 and 29 of the Pennsylvania Constitution announce that no money raised for public schools may be used for religious schools and no scholarship or grant may be given for theological studies. In Article X, Sections 3 and 4 of the Delaware Constitution, similar language restricts the use of state funds to non-sectarian schools and the use of the Public School Fund to free public schools only. “The biggest obstacle to limiting choice to nonreligious private schools is the contention that [the Blaine Amendment] discriminates against religion under both federal and state constitutions, as well as denies religious private schools equal protection of the laws.” In *Mitchell v. Helms*, the Supreme Court announced that “the exclusion of pervasively sectarian schools from otherwise permissible

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127 Bolick, supra note 112, at 284.
129 Bolick, supra note 112, at 284.
130 PA. CONST. art. III, § 15. "No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school." (emphasis added); PA. CONST. art. III, § 29. "No appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denominational and sectarian institution, corporation or association: Provided, that appropriations may be made for pensions of gratuities for military service and to blind persons twenty-one years of age and upwards and for assistance to mothers having dependent children and to aged persons without adequate means of support and in the form of scholarship grants or loans for higher educational purposes to residents of the Commonwealth enrolled in institutions of higher learning except that no scholarship, grants or loans for higher educational purposes shall be given to persons enrolled in a theological seminary or school of theology." (emphasis added).
131 DE. CONST. art. X, § 3. "No portion of any fund now existing, or which may hereafter be appropriated, or raised by tax, for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian, church or denominational school; provided, that all real or personal property used for school purposes, where the tuition is free, shall be exempt from taxation and assessment for public purposes." (emphasis added);
DE. CONST. art. X, § 4. "No part of the principal or income of the Public School Fund, now or hereafter existing, shall be used for any other purpose than the support of free public schools."
132 Kemerer, supra note 15, at 68.
aid programs” is not required by the Establishment Clause and is barred by other doctrines of the Court.133 “This [exclusion], born of bigotry, should be buried now.”134

Most state constitutions have provisions requiring state spending to benefit a public purpose.135 However, this purpose cannot be construed as only spending on public schools. This public purpose includes funding for education within public, private, religious, or non-religious schools. Regardless of the form of educational aid—vouchers, tax credits, or scholarships, —the focus should be on how the aid is going toward the students’ education, not the religious institutions.136 “A full-blown voucher system would in effect channel school funding to parents who then use the money to select the public or private school of their choice.”137 “Education, whether provided by elite, private schools or taxpayer-subsidized institutions is a ‘special, deeply political, almost sacred, civic activity.’”138

The public purpose would be served by allowing parents to choose top quality education for their children at the school of their choosing. Furthermore, a compelling public purpose would be served by enabling minority students to attend private schools, which in turn would increase their achievement. The benefits of greater achievement in elementary school are more likely to carry into adulthood.139 Plus, greater achievement enables the pursuit of higher education and can result in the advantages of a more diverse job market.140 The outcome is

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134 Id. The Chapter 2 program distributed state funds in Jefferson Parish, Louisiana, that were used to lend materials and equipment to public and private schools meeting certain enrollment conditions. Id. at 802. The program was challenged due to an alleged Establishment Clause violation. Id. at 803-04. The Court held that the Chapter 2 program did not violate the Establishment Clause by dispensing educational aid to both private and public schools. Id. at 801.
135 Kemerer, supra note 15, at 69.
136 Bolick, supra note 112, at 285.
137 Kemerer, supra note 15, at 56.
139 Black, supra note 95, at 951-52.
140 Black, supra note 95, at 952.
educated young people and adults who are more apt at serving the needs of their communities. This outcome is the most ideal public purpose of all.

VI. CONCLUSION

Testing by the National Assessment of Educational Progress provides concrete and substantial support establishing the strong conclusion that private school education increases minority student achievement. These increases in achievement are significant because of the wide achievement gap between White and minority children in public schools. The community aspect of private schools aids all minority children, but is especially helpful to children of single-parent households, who statistically are minorities. The children of single-parent households benefit from this community aspect of private schools mainly because they receive encouragement and structure at school that is not provided at home.

The government does not restrict the use of grants and federal aid to college students using the monies to attend religious colleges. “There is no reason to suppose that the Establishment Clause of the First Amendment imposes a different answer in the case of primary and secondary schooling.”141 Parents are choosing religious schools because they are the easiest and most cost effective way to exercise school choice. Sectarian schools are more abundant and a cheaper alternative to secular private schools. Parents are not choosing sectarian schools for the purpose of advancing religion. Thus, the flow of federal monies to these religious institutions does not violate the Establishment Clause. The Supreme Court has accepted and uses this reasoning today. Consequently, this reasoning should have no problem transitioning to the state level.

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141 McConnell, supra note 105, at 858-59.
School choice is an absolute necessity for educational equality. Minority students cannot achieve their fullest potential if they are not privy to the opportunities that choice can provide. There can be no education parity without school choice.