



CRC Memorandum

STATE BALLOT ISSUES: PROPOSAL 00-1 – SCHOOL CHOICE

This CRC *Memorandum* is a summary of a more detailed analysis available as *Report No. 331* (20 pages). The detailed report is available on the CRC website, www.crcmich.org, or may be ordered by contacting CRC as noted elsewhere in this publication.

Proposal 00-1 is on the November 7 statewide ballot as the result of initiative petitions circulated by Kids First! Yes! and would amend Article VIII of the 1963 Michigan Constitution to remove the prohibitions against indirect aid by the State to nonpublic schools; require legislative adoption of a system of elementary-secondary school vouchers; require a program of teacher testing in academic subjects; and update the constitutional floor under per pupil state-local operating revenue.

Background

Indirect Aid to Nonpublic Schools. Beginning in 1929, legislative policy in Michigan ran counter to *direct* support of nonpublic schools. In 1939, however, the original school transportation law permitted *indirect* aid to nonpublic schools for transportation and in 1963 that form of aid was required. In 1965, indirect assistance to nonpublic schools was extended to auxiliary services such as health and nursing services and services to mentally and physically handicapped children.

Direct Aid. Attempts to provide *direct* aid to nonpublic schools had been unsuccessful until Public Act 100 of 1970 provided that the state would pay to an eligible nonpublic school a sum not to exceed 50 percent of the salaries of certified lay teachers teaching secular subjects.

Proposal C of 1970. In early 1970, several groups, coming together as the Council Against Parochialism, circulated peti-

tions to amend the Michigan Constitution to prohibit both direct and indirect aid to nonpublic schools. After a lengthy legal challenge to the wording of the petition, the Michigan Supreme Court ordered the proposal placed on the November 1970 ballot as Proposal C. The voters, by a margin of 56.8 percent to 43.2 percent, approved Proposal C.

Proposal C amended Article VIII, Section 2 of the Michigan Constitution to prohibit direct or indirect aid to any private, denominational, or other nonpublic, pre-elementary, elementary, or high school. Specifically prohibited were payments; credits; tax benefits, exemptions or deductions; tuition vouchers; subsidies; and grants or loans of public monies or properties.

Most of Proposal C was upheld by the Michigan Supreme Court in March of 1971 and it has conditioned financial relations between the State and private education since then.

Proposal 00-1

Proposal 00-1 would amend the Michigan Constitution to substantially reduce the scope of the prohibitions enacted in Proposal C of 1970.

Provisions. The proposal would do five things:

1. *Remove general prohibition against indirect aid.* It would amend Article VIII, Section 2, to remove the *general* prohibition against action by the legislature or a subdivision of the state to provide *indirect* aid to private, denominational, or other nonpublic schools. The prohibition against *direct* aid would remain.

2. *Remove specific prohibitions against certain forms of aid.* It would amend Article VIII, Section 2, to remove *specific* prohibitions against—

- Payments
- Credits
- Tax benefits, exemptions, or deductions
- Tuition vouchers
- Subsidies
- Grants
- Loans of public property or money

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3. *“Section 10” Vouchers.* It would amend Article VIII, Section 2, and add a Section 10 to require a program of educational choice, to be implemented by law, in which pupils resident in either a “qualified” district or an “approving” district could receive vouchers for “actual elementary and secondary school tuition to attend a nonpublic elementary or secondary school.”

Qualified school districts have a four-year graduation rate of less than two-thirds as reported by the Department of Education for the 1998-99 school year and certified by the Superintendent of Public Instruction.

Approving school districts are those that adopt the voucher program by—

- A vote of the elected school board, or
- A vote of the electors as the result of initiative petitions signed by a number of registered electors, not less than 10 percent of the total number of electors casting ballots for school board at the last preceding election at which members of the school board were elected.

Vouchers called for in Section 10 are to be limited to the lesser of—

- One-half the average per-pupil state-local public school operating revenue in the preceding fiscal year, or
- Actual tuition paid per pupil at a nonpublic elementary or secondary school.

The voucher amount may be supplemented for pupils requiring special education services.

Before the end of each calendar year, the State Treasurer is to certify the average per-pupil state-local operating revenue for the fiscal year concluding in that calendar year.

4. *Funding Guarantee.* It would amend Article VIII, Section 2, to require the State to guarantee that total state-local per-pupil operating revenue for each district shall not be less than in Fiscal Year 2000-01, provided that the district does not levy an operating millage less than it levied in 2000.

5. *Teacher Testing.* It would amend Article VIII, Section 2, to require that, subject to the provisions of Article I, Section 4, of the Michigan Constitution (religious liberty), the legislature is to provide for regular testing of the knowledge in academic subjects of teachers in public schools and in nonpublic schools that redeem vouchers under Section 2.

Financial Impact. The initial impact of the proposal would probably come from the implementation of Section 10 vouchers. Greater long-term impact could result from legislatively-initiated programs that would be permitted.

Section 10 Voucher Implementation. Section 10 vouchers would be available to parents in two kinds of districts:

1. *Qualified.* Qualified districts are those with four-year graduation rates (not defined in the proposal) for 1998-99 of less than 2/3. The current procedure, used by the Department of Education since 1989-90, involves multiplying single-year retention rates for each of the four high school grades

by each other to get an “expected,” not actual, graduation rate.

The Department of Education has released unaudited four-year graduation rates for 1998-99 and, in contrast to an average of 35 districts in 1996-97 and 1997-98, only seven districts are calculated to have graduation rates of less than 2/3.

The data upon which these rates were calculated are questionable and, should Proposal 00-1 be adopted, changes in the list of qualified districts may be made before certification by the Superintendent of Public Instruction.

Once a district becomes a qualified district, there appears to be no procedure that could be made available to reverse that status.

2. *Approving.* Districts that have 1998-99 graduation rates of two-thirds or above may become eligible for vouchers through either a vote of their elected school boards or through voter initiative.

School board elections tend to attract relatively low turn-outs, so the signature requirements necessary to place the question on the ballot will, in most districts, be correspondingly low and should not pose a significant obstacle to extension of vouchers to approving districts.

In contrast to the situation with quali-

<i>District</i>	<i>1998-99 Four-Year Graduation Rate</i>	<i>1998-99 Enrollment</i>
Mackinaw City	54.4	253
Coleman	52.3	1,106
Holton	54.3	1,257
Vanderbilt	60.6	324
Buena Vista	51.8	1,745
Detroit	46.0	173,557
Inkster	20.5	1,749

Source: *Michigan Department of Education*

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fied districts, it appears that the Legislature could provide for a means of reversing a decision made by local districts to adopt the voucher plan.

Section 10 Voucher Amounts. The proposal provides that Section 10 vouchers are to be limited to the lesser of 1/2 of “average per pupil state and local revenue for operating purposes in the preceding year” or actual tuition paid per pupil at a nonpublic elementary or secondary school. The proposal does not define “revenue for operating purposes,” and, while the average foundation amount may be the most likely figure, it could be defined to include all non-debt revenue.

If the definition of “revenue for operating purposes” is determined to be the 2000-01 average foundation grant (\$6,636), Section 10 vouchers would be limited to one-half that amount, or \$3,318, or actual tuition, if lower. If all non-debt revenue were included

this figure would increase to approximately \$3,955.

Calculation of Fiscal Impact. Although the list of presumptive qualified districts has been announced, it is not known which districts will actually be certified as qualified; which districts will subsequently approve voucher participation; how many nonpublic spaces will be made available; or what the actual voucher limit will be. Enough is known, however, that some idea of the potential fiscal dimensions of the Section 10 voucher plan can be gained by making a few assumptions noted in Table 2. It is recognized that these assumptions may not be verified in actual practice should the proposal be adopted.

Legislatively-Initiated Programs. Although the initial activity under Proposal 00-1 would almost certainly be implementation of the Section 10 vouchers, over time it is likely that

more activity would occur as a result of legislatively-initiated programs, which could include: Tuition tax credits; tax exemptions and deductions; loans or grants; or an alternative voucher plan not subject to the limits imposed in Section 10 of the proposal.

Funding Guarantee. The funding guarantee is an update of virtually identical language placed into Article IX, Section 11, of the Michigan Constitution by Proposal A of 1994, which set the base year as FY1996. Experience under the existing guarantee indicates that between FY1996 and FY2001, the average per pupil foundation allowance has increased by 16.7 percent and has not decreased from one year to the next during that time.

Teacher Testing. Michigan law requires that teaching certificates shall be issued only to persons who have passed appropriate examinations. Examinations are conducted in basic

Table 2
Potential Fiscal Impact of Vouchers Under Section 10 of Proposal 00-1
Alternative Utilization Assumptions, Fiscal Year 2001-02

Estimated—	Statewide public K-12 enrollment, 2001-02	1,708,000
	Average per pupil foundation allowance, 2000-01	\$6,636
	Voucher limit	\$3,318
	Average per pupil foundation allowance, 2001-02	\$7,013

	Estimated Impact (in millions of dollars)		
	<i>Qualified Districts</i>	<i>1/2 of Total Enrollment</i>	<i>Statewide</i>
Existing nonpublic pupils	\$66.1	\$251.9	\$503.7
Public school transfers	16.5	63.0	125.9
Total voucher cost	\$82.6	\$314.9	\$629.6
Foundation allow. reduction	32.8	133.1	266.2
Net cost to state	\$49.8	\$181.8	\$363.4

(For comparison purposes it is assumed that vouchers could be implemented statewide in the first year. This would, of course, be nearly impossible and it might be that vouchers would never be available in every district in the state.)

Assumptions

1. Schools now enrolling 80 percent of the total number of existing nonpublic pupils will accept pupils with vouchers.
2. Participating schools can absorb a 25 percent increase in enrollment.
3. All slots available to be filled by pupils transferring from public schools will be filled.
4. Qualified districts (graduation rates below 2/3) will be the 7 presumptive districts, with 10.5 percent of total public K-12 enrollment.
5. In any given area, public schools will comprise 90 percent of total K-12 enrollment.
6. The voucher limit will be one-half of the average foundation grant for 2000-01.

Sources: State Budget Office, Department of Management and Budget; State Policy Center, Wayne State Univ.; CRC calculations.

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skills, subject areas, and elementary certification. All applicants must pass the examination in basic skills; secondary teachers must also pass the examination in their respective subject area; elementary teachers must pass the examination in elementary certification. There are, however, no “regular” tests in “academic subjects” administered subsequent to passage of the initial examinations.

Proposal 00-1 does not define terms in its provision relating to teacher testing, so the Legislature would be left with the task of determining how frequently tests would be administered and what constitutes an “academic subject.”

Constitutional Issues. About 92 percent of nonpublic pupils in Michigan attend sectarian schools. As a result, should Proposal 00-1 be adopted, the future of the amendment would turn on whether aid to nonpublic sectarian schools would be permissible under the First Amendment to the U. S. Constitution.

In 1971, the U. S. Supreme Court put forth a three-part test relative to the permissibility of state aid to sectarian schools (*Lemon v. Kurtzman*). To be constitutional under that test: 1) A statute must have a secular legislative purpose; 2) Its principal or primary

effect must be one that neither advances nor inhibits religion; 3) It must not foster excessive government entanglement with religion. Supreme Court decisions in this area in the last three decades have attempted to fit various forms of aid within this framework and have adjusted the test.

The Court has not ruled directly on the issue of the constitutionality of vouchers redeemed at sectarian schools, but recent cases exhibit a trend toward permitting greater public support of education in religious schools. In *Mitchell v. Helms* (2000), for example, the Court held that federal aid may be used to provide educational materials and equipment to religious schools. Four of the six justices in the majority held that, although public aid might be diverted to religious uses, it should be permissible if it is 1) neutral, making a broad array of schools eligible without regard to their religious affiliation or lack thereof and 2) allocates that aid based on the private choices of students and parents as to which schools to attend. A case regarding the constitutionality of the Ohio voucher program may result in a direct ruling on vouchers for sectarian schools.

Implementation Issues. Two of the more significant issues that would need to be considered by the Legisla-

ture in implementing Proposal 00-1 are accountability and conditions for participation.

Accountability. The kind of accountability that would be required for the expenditure of voucher dollars would depend on whether the State determines that the nature of voucher dollars changes from public to private when they pass through the hands of independently-acting private individuals to nonpublic schools, or whether it determines that the State must require information from participating nonpublic schools sufficient to at least assure the taxpayers that the expenditure of those funds has been consistent with the educational purposes for which they were appropriated.

Conditions for Participation. The State may also determine that it should place certain conditions on the redemption of vouchers by nonpublic schools, such as random assignment of pupils, certificated teachers, or acceptance of pupils with special needs. Moreover, the question of what constitutes an acceptable curriculum could arise. Depending on the nature of certain schools proposing to redeem vouchers, it could become necessary for the State to make determinations as to the appropriateness of public funds being used to underwrite attendance at those schools.