

WHAT CAN PHILLY LEARN?: A COMPARATIVE POLICY STUDY OF THE SOCIOECONOMIC EFFECTS OF VOUCHER SCHEMES IN THE UNITED STATES AND CHILE¹

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I. INTRODUCTION

School voucher programs do not increase socioeconomic equity. However, with the election of President Donald Trump, a majority Republican U.S. House of Representatives and Senate, and a federal voucher program being passed in 2025, support for voucher programs is likely to increase.² Thus, it is imperative to study the effects of such programs.

The origin of voucher programs began in the early 1950s. In *The Role of Government in Education*, the economist Milton Friedman argued for an innovation in school funding.³ He contended that education was central to democracy; however, he felt that unnecessary government intervention in the free market led to more scrutiny and control, reducing innovation for parents, schools, and teachers in education.⁴ To prevent such degradation, he argued for denationalizing schools both in terms of curricula and funding to allow a private school system to be introduced.⁵ In his model, governments would subsidize education costs for poorer families through vouchers.⁶ He believed vouchers would increase competition among

1. This paper—and my interest in this topic—would not have been possible without the support of countless people. I am grateful to my family for instilling in me an interest in education. I am also deeply thankful to my friend, colleague, and TICLJ editor, Alexandra Leone-Gregory, who helped me cross the finish line when I could not have done it myself. Additionally, I am grateful to my partner for her unwavering support and patience throughout the drafting process. Most importantly, I dedicate this paper to Professor Susan DeJarnatt, my faculty advisor and mentor, who introduced me to the concept of vouchers in her 2023 Equity and Bias in Education class at Temple Law. Her valuable insights, grammatical wisdom, and permission to draw from her work as an education law expert made this paper possible.

2. Brooke Schultz, *Opt In or Not? States Weigh Big Decision on Federal School Vouchers*, EDUC. WEEK (Aug. 4, 2025) <https://www.edweek.org/policy-politics/opt-in-or-not-states-weigh-big-decision-on-federal-school-vouchers/2025/08>.

3. Leonard Ross & Richard Zeckhauser, *Education Vouchers*, 80 YALE L. J. 451 (1970) (quoting Milton Friedman, *The Role of Government in Education in Capitalism and Freedom* 85-107 (1962)).

4. Milton Friedman, “The Role of Government in Education,” in CAPITALISM & FREEDOM 85, 90 (40th anniversary ed. 2002) (contending that education administration through nationalization “conflicts with the preservation of freedom itself”); see also *Id.* at 95 (arguing that teachers’ salaries do not scale with performance, incentivizing poor performance).

5. See Ross & Zeckhauser, *supra* note 3, at 451 (referring to Friedman’s argument that *all* schools will respond to parental demands).

6. Friedman, *supra* note 4, at 89.

schools, forcing schools to improve their offerings to attract more students.⁷

After Friedman created the concept,⁸ school choice and vouchers are now a global economic policy.⁹ Nations such as Chile,¹⁰ Sweden,¹¹ India,¹² New Zealand,¹³ and many U.S. states¹⁴ have implemented voucher schemes as a solution to the purported failings of the public education system.¹⁵ These programs typically follow the same general structure: First, the governmental agency tasked with education allocates funding to parents directly in the form of a voucher or tax credit. Second, parents can use these vouchers to enroll their children into voucher-accepting private schools — such as religious private schools — that meet minimum accreditation standards.¹⁶

Proponents of vouchers put forth multiple arguments to support their position. Most importantly, they argue that, as a decentralized form of education, individuals will have more choices in a private school system.¹⁷ They contend that increasing school choice for parents and students increases access to quality private education for lower-income families, which in turn deconstructs systemic barriers such as class.¹⁸

In evaluating whether voucher proposals can achieve this effect, we must identify the program's purpose and dissect the minutiae of the individual policies.¹⁹ For example, in the United States today, vouchers are presented as a lifeline to save low-income students from failing public schools.²⁰ Contrasting the U.S. approach, voucher programs in Chile were designed for a socioeconomic purpose rather than

7. Ross, *supra* note 3, at 451.

8. JOSH COWEN, *THE PRIVATEERS: HOW BILLIONAIRES CREATED A CULTURE WAR AND SOLD SCHOOL VOUCHERS*, 30 (2024) (recognizing Friedman disseminating his work through Virginia and Missouri).

9. See Dennis Epple, et al., *School Vouchers: A Survey of the Economics Literature*, 55 J. ECON. LIT. 441 for a broad survey of literature on the effects of vouchers from around the world.

10. *Id.* at 452–53 (describing Chile's voucher system).

11. *Id.* at 455–56 (describing Sweden's voucher system).

12. *Id.* at 451–52 (describing one voucher program in South India).

13. *Id.* at 454–55 (describing open enrollment policy in New Zealand).

14. *Id.* at 446–49 (describing U.S. approach to vouchers as “small-scale”).

15. *Lifeline (PASS) Scholarship Program*, COMMONWEALTH FOUND. (Aug. 1, 2023) <https://www.commonwealthfoundation.org/research/lifeline-pass-scholarship-program> (explaining how vouchers in Pennsylvania can prevent “thousands of children” from being “assigned to schools that persistently rank low for student achievement”).

16. Ross, *supra* note 3, at 451.

17. VARUN GAURI, *SCHOOL CHOICE IN CHILE: TWO DECADES OF EDUCATIONAL REFORM* 9 (1998) (stating that, “[Policy makers] believe that decentralization allows for more citizen participation in the state, and in precisely those services that most concern marginalized populations.”).

18. *Id.*

19. *Id.* at 1.

20. See *Lifeline (PASS) Scholarship Program*, *supra* note 15; but see Tim Walker, *The Catastrophic Failure of School Vouchers*, NEA Today (Sept. 20, 2024), <https://www.nea.org/nea-today/all-news-articles/school-vouchers-catastrophic-failure> (critiquing arguments made by voucher proponents).

a political one,²¹ resulting in a large-scale, expansive national voucher program.²² This paper seeks to compare these two axiomatically different approaches to create a policy study on the effects of vouchers on socioeconomic equity.²³ It will then apply these conclusions to a U.S. state looking to implement a voucher program in the near future: Pennsylvania. This paper will predict what effects a voucher program might have in Pennsylvania's most populous city, Philadelphia.

This paper will consider a recent iteration of the Pennsylvania Award for Student Success Scholarship Program ("PASS Scholarship Program") under which eligible K-12 students will receive a PASS Scholarship Account of up to \$10,000, or \$15,000 for students with disabilities.²⁴ Section I of this paper will discuss the history of vouchers in Chile and the United States to evaluate whether a voucher program like the PASS Scholarship Program will increase access to higher-quality education for lower-income families—as its proponents suggest. Section II will detail the effects of voucher policies in both countries and present reasons why vouchers create socioeconomic inequity. Section III will present the PASS Scholarship Program's language. Finally, Section IV will argue that because the PASS Scholarship Program does not address the reasons why vouchers create socioeconomic inequity, it will likely exacerbate inequities in Philadelphia schools.

II. THE HISTORY OF VOUCHERS

A. *Chilean Voucher History*

Chile's universal school choice program is paradigmatic in design.²⁵ Because the program was initially unregulated as a whole,²⁶ it offers a unique set of circumstances and multiple models for comparison, allowing researchers to draw conclusions about what regulation on the education voucher market creates what specific effect. This section will describe the structure of Chile's education system across three eras: (1) The installation of a voucher system between 1981 and 2008;²⁷ (2) Policy changes from 2008 to 2015 during SEP;²⁸ and (3) 2015 and beyond following the enactment of the Inclusion Law.²⁹

21. See GAURI, *supra* note 17, at 10 (stating that neoliberal policies in Chile, like privatization of social sector services, were used to break up public sector unions).

22. See Epple, *supra* note 9, at 452.

23. Alejandro Carrasco, Manuela Mendoza & Carolina Flores, *Self-Segregation strategies through school choice in Chile: A middle-class domain?*, 58 J. SOCIO. 359, 362 (2022) (recognizing Chile as a "paradigmatic example" of voucher programs because it is an unregulated mechanism).

24. *PASS scholarships Debated in Senate Field Hearing*, PA. CHAMBER BUS. & INDUS.: THE SENTINEL https://www.pachamber.org/media/11343/pass_scholarships_debated_in_senate_field_hearing (last visited Jan. 23, 2024).

25. Carrasco, et al., *supra* note 23, at 362.

26. *Id.*

27. Alejandra Mizala & Florencia Torche, *Means-Tested School Vouchers & Educational Achievement: Evidence from Chile's Universal Voucher System*, 674 AM. ACAD. POL. SOC. SCI. 163, 165 (2017) (describing Chilean vouchers as "flat").

28. *Id.* at 166.

29. Peter M.M. Cummings, et al., *Chile's Inclusion Law: The Arduous Drive to Regulate an*

First, before its voucher era, Chile was a socialist country, and free education was a guaranteed right for all.³⁰ However, in 1973, General Augusto Pinochet Ugarte overthrew the democratically elected socialist leader, Salvador Allende.³¹ After instituting military rule with the help of the United States,³² Pinochet tasked a cohort of Chilean economists,³³ collectively known as the “Chicago Boys,”³⁴ to implement national economic policies under his regime.

These economists were given broad discretion, and little is known about how they reached their decision.³⁵ In this opaque fashion,³⁶ Pinochet’s regime issued three decrees over the course of eighteen months—creating the basis for Chile’s voucher system:³⁷ *Decreto Ley* 3.063 (Decree 3.063), *Decreto Ley* 3.476 (Decree 3.476),³⁸ and *Decreto Ley* 3.477 (Decree 3.477).³⁹ First, Decree 3.063 decentralized Chile’s national education system under the Ministry of Education by granting control of essential education functions, such as funding, to local municipalities.⁴⁰ Second, under decree 3.476,⁴¹ an education “subvention” (or voucher) for public and private schools was established,⁴² which was linked with public school funding in each municipality.⁴³ Finally, under Decree 3.477, Pinochet authorized large payments from the national legislature to municipalities to fund their control of the educational establishments in their vicinities.⁴⁴

Unequal Education System, 2006–19, EDUC. REV. at 2 (2023), <https://doi.org/10.1080/00131911.2023.2234661>. For more information on the Inclusion Law, see *infra* text accompanying notes 109–129.

30. See Ivan Castillo, *La Revolución de los Pingüinos: Educational Reforms and the Chilean Winter*, 17 IND. UNIV. S. BEND UNDERGRAD. RSCH. J. 159 (2017).

31. *Id.*

32. James Doubek, *The U.S. set the stage for a coup in Chile. It had unintended consequences at home*, NAT’L PUB. RADIO (Sept. 10, 2023, 6:00AM), <https://www.npr.org/2023/09/10/1193755188/chile-coup-50-years-pinochet-kissinger-human-rights-allende>.

33. Orlando Letelier, *The ‘Chicago Boys’ in Chile: Economic Freedom’s Awful Toll*, THE NATION, (Sept. 16, 2016), <https://www.thenation.com/article/archive/the-chicago-boys-in-chile-economic-freedoms-awful-toll>.

34. *Id.*; see also GAURI, *supra* note 17, at 23 (describing who was involved in the “modernization” of Chilean education).

35. See GAURI, *supra* note 17, at 22–23 (describing privatization of Chile’s education happening in silence).

36. *Id.* at 22.

37. *Id.* at 22–24.

38. *Id.* at 24, n.10.

39. *Id.* at 24.

40. *Id.* at 23. In effect, granting control was a misnomer. See *id.* Pinochet’s decree was an order to municipalities across Chile to assume control because many of the officers in charge of the communes were military officers following the General’s orders.

41. *Id.* at 24, n.10.

42. *Id.* at 24.

43. Chang-Tai Hsieh and Miguel Urquiola, *The Effects of Generalized School Choice on Achievement and Stratification: Evidence from Chile’s Voucher Program* 90 J. Pub. Econ. 1477, 1479–80 (2006).

44. GAURI, *supra* note 17, at 24.

Working in tandem, Decree 3.063, Decree 3.476, and Decree 3.477 required municipalities to distribute per-student payment for every child attending their schools, effectively tying public school funding to the number of children attending.⁴⁵ Simultaneously, under Decree 3.476, eligible private schools that participated in the voucher program received the same per-student funding as public schools, which was an attempt to remove unfair municipal financial support from public schools.⁴⁶ Due to these decrees, families — not residential boundaries — determined student attendance.⁴⁷ Specifically, families could use their voucher at any school providing admission to cover tuition, thereby transferring the education budgets of these schools.⁴⁸ As a result, student attendance determined education budgets for private, subsidized, and public schools⁴⁹—effectively putting the public and private sectors in competition.⁵⁰

The Chicago Boys created limitations on the program to further promote market competition between the public and private sectors.⁵¹ First, the voucher amount per student was fixed and did not scale with economic status or income security.⁵² Every family within the same geographic region received the same amount.⁵³ Second, participating private schools were allowed to select students at will.⁵⁴ Private schools were also not required to participate in the program, meaning some schools could refuse to accept vouchers altogether.⁵⁵ Finally, to allow schools to differentiate themselves from competitors, Pinochet loosened the national curriculum, allowing schools to adopt alternative education services.⁵⁶ In essence, the first iteration of Chilean vouchers resembled Friedman’s base design.⁵⁷

Notably, state intervention continued to ensure market forces did not deny

45. See Chang-Tai & Urquiola, *supra* note 43, at 1480 (“As a result, enrollment losses came to have a direct effect on their education budgets.”).

46. See *id.* (“Most importantly . . . subsidized private schools began to receive exactly the same per-student payment as the municipal schools.”). As later parts of this paper will discuss, municipal support continued despite this intention. See text accompanying notes 58 through 67 for more about state intervention.

47. See *id.*

48. *Id.*

49. *Id.*

50. GAURI, *supra* note 17, at 2.

51. See *id.* at 24.

52. Mizala & Torche, *supra* note 27, at 165.

53. GAURI, *supra* note 17, at 24.

54. See Chang-Tai & Urquiola, *supra* note 43, at 1480 (noting that voucher schools retained “wide latitude regarding student selection”).

55. Martin Carnoy & Joe Bower, *For the Love of Learning: Lessons of Chile’s Voucher Reform Movement*, NAT’L EDUC. POL’Y CTR. (Dec. 11, 2013), <https://nepc.colorado.edu/blog/lessons-chiles-voucher-reform-movement> (noting that elite private schools did not take part in the program, requiring complete tuition to be paid).

56. Taryn Round Parry, *Decentralization & Privatization: Education Policy in Chile*, 17 J. PUB. POL’Y 107, 109 (noting the base curriculum was determined by the national government, but schools were allowed greater flexibility).

57. Compare Ross, *supra* note 3, at 454 (describing how Friedman’s voucher program provided fixed amounts for all students and kept admissions under school control), with Chang-Tai & Urquiola, *supra* note 43, at 1479–1480 (describing the same structure in Chile).

education to some students altogether.⁵⁸ In fact, following multiple scandals with private subsidized schools in 1986, the Ministry of Education added stringent accountability requirements and compliance standards for private subsidized schools, including limitations on what infrastructure a school was required to have, who was allowed to operate a private subsidized school, and even the number of teachers a school was required to hire.⁵⁹

State intervention also extended to protect public schools from the market.⁶⁰ Because municipalities were running public schools in their area, many wanted to ensure these schools would not close if their public education budget was insufficient as a result of the voucher shift.⁶¹ Thus, “alcaldes” (mayors) often lobbied the Ministry of Education and Finance for additional funding to cover deficits and basic costs.⁶² In fact, this practice was so frequent that it led to a “quasi-institutionalized” practice of the Ministry covering such deficits.⁶³ Additionally, despite removing collective bargaining rights for teachers, municipalities retained many teachers and administrators at their public schools because of authoritarian implementation practices.⁶⁴ Specifically, the National Ministry of Education continued to oversee all staffing decisions at public schools, including the firing of teachers, with no input from the overseeing municipalities.⁶⁵

Despite the continued state intervention, proponents of voucher implementation heralded Chile for being at the forefront of education innovation.⁶⁶ After former U.S. President Bill Clinton stated that he only recognized school choice for public schools, an editorial in the Wall Street Journal contended that the United States may “lag behind the rest” as “[a]ll over the world, education is being transformed as people realize the creaking model of centralized, bureaucratic schooling no longer meets the needs of today’s students.”⁶⁷

However, a significant change was anticipated for Chilean education when the authoritarian government ended and reinstituted democracy in March 1990.⁶⁸ In its final act, Pinochet’s government enacted *Ley Orgánica Constitucional de Enseñanza* (LOCE), or the Constitutional Organic Law of Education,⁶⁹ entrenching

58. See generally Friedman, *supra* note 4, at 89 (arguing that the role of government is to ensure that all schools meet certain minimum education standards, like a baseline curriculum).

59. GAURI, *supra* note 17, at 26–27. These scandals included schools who falsified attendance records to obtain additional subvention payments based on student attendance. *Id.* at 26.

60. *Id.* at 41.

61. See *id.*

62. *Id.*

63. *Id.*

64. *Id.* at 34.

65. *Id.* at 35 (stating that decisions like the dismissal of nearly 8,000 teachers happened in secrecy from the alcaldes).

66. See e.g., Editorial, *U.S. Lags on Choice Bill*, WALL ST. J., Oct. 19, 1992, at A14.

67. *Id.*

68. Patricia Tomic & Ricardo Trumper, *Higher Education in Chile Thirty Years After Salvador Allende: Privatization, Mass Education, Profits, & Exclusion*, in DEMOCRACY IN CHILE: THE LEGACY OF SEPTEMBER 11, 1973, 99, 102 (2013) (noting how Pinochet legitimized the education system by passing LOCE on the day before his regime ended).

69. Jorge Inzunza, et. al., *Public Education & Student Movements: The Chilean Rebellion*

education privatization and school choice by creating constitutional protection for the voucher program.⁷⁰

Even though democracy was reinstated, fearing regression to an authoritarian regime, Chile's new democratic government did not implement broad policy changes from 1990 to 1995.⁷¹ Instead, it focused on ensuring its public institutions improved in functionality.⁷² Specifically, following LOCE, the Concertación—a coalition government of Chilean political parties led by the Christian Democrats and the Socialists⁷³—implemented multiple small-scale policies.⁷⁴ In 1990, Chile's government passed the Teachers' Statute to combat inequality in teaching staff between the public and subsidized private sectors.⁷⁵ This law allocated pay increases and reinstated a pay schedule that scaled with seniority and performance.⁷⁶ Concertación also pushed for increased access to secondary education in rural areas of the country in 1992.⁷⁷ Most importantly, in 1993, Concertación also allowed schools to charge tuition add-on fees—a major win for private subsidized schools at the time, as it allowed these schools to charge amounts in excess of the voucher payment allocated to families.⁷⁸

Despite continuing for ten-some-odd years, the voucher program began to face student resistance, culminating in significant education reform in the late 2000s.⁷⁹ As the voucher program continued into the 2000s, enrollment rates in private voucher schools increased from 31% to 48% at the expense of public school enrollments.⁸⁰ The total number of for-profit schools also increased by 96%, while student enrollment in these new for-profit schools increased by 113%.⁸¹ Due to these significant increases, the voucher program created a mentality shift in the student

Under a Neoliberal Experiment, 40 BRIT. J. SOCIO. EDUC. 490, 494 (2023).

70. *Id.*

71. Christian Bellei & Xavier Vanni, *Chile: The Evolution of Education Policy, 1980–2014*, in *EDUCATION IN SOUTH AMERICA* 179, 181–84 (Simon Schwartzmann, ed, 2016).

72. *Id.*

73. See Guy Burton, *Michelle Bachelet: The Last Concertación Government*, 39 LAT. AM. PERSP. 34, 36 (defining the Concertación as a combination of the Christian Democratic Party and the Socialist Party opposing Pinochet's regime).

74. Bellei & Vanni, *supra* note 71, at 182.

75. See *id.* (referred to as the “Statute of Teachers”).

76. Richard J. Murnane et al., *The Consequences of Educational Voucher Reform in Chile* 4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 23550, 2017) (noting that after Chile's 1990 return to democracy, “the salaries of public school teachers were increased and uniform salary schedules, which based pay on seniority and credentials, were restored,” reflected in the “Teacher Statute”).

77. *Id.*

78. Mizala, *supra* note 27, at 165; see generally Burton, *supra* note 73, at 40 (discussing the Concertación's legislation in the 1990s).

79. Sofía Donoso, *Dynamics of Change in Chile: Explaining the Emergence of the 2006 Penguin Movement*, 45 J. LATIN AM. STUD. 1, 1–2 (2013) (noting that widespread protests began in 2006).

80. Gregory Elacqua, *For-profit Schooling & the Politics of Education Reform in Chile: When Ideology Trumps Evidence*, 7 (CPCE, Working Paper No. 5, 2009), <https://ncspe.tc.columbia.edu/working-papers/files/OP178.pdf>.

81. *Id.* at 10.

population.⁸² For many students educated in this era, the school you entered defined the career you had when you left, i.e., the hallmark mentality of socioeconomic stratification.⁸³

Disillusioned by socioeconomic inequities, scattered student protests broke out in Lota—a small ex-mining town in southern Chile—following a public school roof collapsing.⁸⁴ Initial protests gathered around 4,000 students.⁸⁵ With the rise of civil discontent throughout the country, the “Penguin Revolution” was born on March 10, 2006.⁸⁶ What started as a peaceful protest in Santiago, concluded with violent clashes between students and the police, resulting in significant damage to public spaces.⁸⁷ Over 930 people were detained as a result.⁸⁸ Following this protest, school sit-ins multiplied throughout the country,⁸⁹ and at its height, nearly one million supporters participated in nationwide demonstrations, demanding a repeal of LOCE and an increased focus on equity in schools and universities.⁹⁰ Notably, protestors were not demanding a step-by-step solution. Instead, many felt that it was the government’s decision to determine how to meet the protestors’ demands.⁹¹ Following continued pressure from students, the “Penguin Revolution” achieved a monumental goal,⁹² when the Preferential School Subsidy Law (SEP) was passed and LOCE was repealed in 2008 and 2009.⁹³

SEP’s stated purpose was to address stratification and recognize that poorer students were costlier to educate than other students.⁹⁴ Its implementation resulted in two main changes: additional funding the voucher system and new accountability measures for participating schools.⁹⁵

First, SEP increased the school voucher amount for students who fell within the bottom 40% of the national economic distribution.⁹⁶ Furthermore, to incentivize private schools to adopt more inclusive selection practices, schools serving large percentages of “priority students,” or low-income families, received per-student

82. See Donoso, *supra* note 79, at 16–17.

83. See *id.* at 16 (discussing how public-school students like Mari Huerta, “felt tired of confirming that they did worse than students from private schools” on entrance examinations a disparity which translated into “differential access to higher education institutions”).

84. *Id.* at 10.

85. *Id.*

86. See *id.* at 11. “Penguin” is a reference to the black-and-white uniforms Chilean public-school students wore. *Id.* at 2.

87. Donoso, *supra* note 77, at 11.

88. *Id.*

89. *Id.*

90. See *id.* at 12.

91. *Id.*

92. See *id.* at 26 (referring to the law that replaced LOCE, “Ley General de Educación” (LGE) in 2009); see also Mizala, *supra* note 27, at 166 (referring to the “Sunvencion Escolar Preferencial”, or SEP being implemented in 2008).

93. See Mizala & Torche, *supra* note 27, at 166.

94. *Id.* at 166.

95. *Id.* at 168.

96. *Id.*

concentration bonuses that scaled with the size of the school body.⁹⁷ SEP did not contemplate restrictions on how schools used the additional funding bonuses.⁹⁸ Furthermore, participating schools could no longer charge added-on tuition fees to “priority students.”⁹⁹

Second, SEP created a national accountability program that focused on equity and academic performance, and the new law mandated voucher school enrollment in this program.¹⁰⁰ In the accountability program, voucher-accepting schools were either classified as “recovering,” “emerging,” or “autonomous,” depending on how they performed on national assessments.¹⁰¹ Schools failing to improve altogether risked being closed or losing the additional resources the law provided.¹⁰²

Despite the enactment of SEP and its stated purpose, the years leading up to 2015 continued to be rife with political tension over education.¹⁰³ In fact, mass protests and student demonstrations erupted consistently following SEP’s implementation.¹⁰⁴ In 2011, protests lasted seven months with students from 17 universities and 600 high schools participating.¹⁰⁵ Protesting students demanded revitalizing public education and outlawing profits for private schools.¹⁰⁶ As a result of continued student pressure, then-president Michelle Bachelet promised disassembling purported key contributors to socioeconomic stratification in Chile—namely: (1) Discriminatory student selection practices by schools, and (2) copayments or tuition add-on fees.¹⁰⁷ Additionally, Bachelet also promised that education would once again become a social right.¹⁰⁸

Following her re-election, Bachelet made good on some of her campaign promises and passed *Ley de Inclusión Escolar* (Inclusion Law) in 2015.¹⁰⁹ In passing the Inclusion Law, Chile went from being one of the least regulated education markets to one of the most regulated.¹¹⁰ Under the Inclusion Law, private subsidized schools were required to create programs to support “low-achieving students.”¹¹¹

97. *Id.*

98. *Id.* at 169 (noting the bonus to schools was not earmarked and could benefit both priority and nonpriority students).

99. *Id.* at 168.

100. *Id.*

101. *See id.*

102. *Id.*

103. *See Cummings, et. al., supra* note 29, at 2 (describing the Inclusion Law as politically divisive).

104. *Id.* (noting that student protests following SEP’s implementation “erupted with even more force than in 2006”).

105. *Id.*

106. *Id.*

107. *Id.* at 774.

108. *Id.*

109. *Id.* at 765.

110. *Id.* at 768.

111. *Inclusion Law: The Key Changes to Come with the New Legislation*, GOB (June 1, 2015), <https://www.gob.cl/en/news/inclusion-law-the-key-changes-to-come-with-the-new-legislation> [hereinafter “Inclusion Law”].

Furthermore, the voucher amount for “priority students” was increased by 20%.¹¹² Additionally, the Inclusion Law also created a new preferential subsidy for students from the third and fourth-lowest-income quintiles, equivalent to half the amount currently paid to “priority students” under SEP.¹¹³ The Law also mandated private subsidized schools to use funding solely for educational purposes,¹¹⁴ and gradually banned the charging of tuition add-on fees to any student, regardless of economic status.¹¹⁵ The Inclusion Law also went further than SEP by also affirming student rights to education.¹¹⁶ It prohibited arbitrary discrimination and sought to promote the inclusion of lower SES students in private subsidized schools by granting permanent funding to such institutions.¹¹⁷

Notably, the Inclusion Law also intended to place families back at the center of school choice.¹¹⁸ The Law mandated that admissions processes to voucher schools be transparent, and schools were not allowed to request socioeconomic information from applicants, information regarding current school attendance, marital status, or a family’s financial situation.¹¹⁹ Furthermore, under a new admissions system, the Inclusion Law centralized applications by requiring families to rank schools by preference, and subsequently, allocate children according to those rankings in a lottery system.¹²⁰ Additionally, the school superintendent’s office for each school was mandated to register their school’s bank records to ensure public funds were being used for educational purposes.¹²¹ A year after its passing, the Inclusion law was implemented in the Magallanes region and later expanded to four other regions in 2017.¹²² In 2019, the new admissions system began its implementation in Santiago, Chile’s capital.¹²³

Despite its focus on regulating the education market, the implementation of the Inclusion Law did not end civil unrest in the country. Instead, many student activists considered it as the first step to total education reform.¹²⁴ Following the

112. *Id.*

113. *Id.*

114. *Id.*

115. Carrasco, et al., *supra* note 23, at 363.

116. Inclusion Law, *supra* note 111.

117. *Id.*

118. *Id.*

119. *Id.*

120. Andrea Rebolledo & Ingrid Olea, *Chile’s School Admission System: Segregation or Inclusion?*, HARV: HKS, (Dec. 18, 2018), <https://studentreview.hks.harvard.edu/chiles-school-admission-system-segregation-or-inclusion-by-andrea-rebolledo-ingrid-olea>.

121. Inclusion Law, *supra* note 111.

122. Rebolledo & Olea, *supra* note 120.

123. See VINCENT DUPRIEZ ET. AL., EDUCATIONAL MARKETS & SEGREGATION: GLOBAL TRENDS & SINGULAR EXPERIENCES FROM BELGIUM & CHILE 230 n.3 (online, ed, 2023), https://link-springer-com.libproxy.temple.edu/chapter/10.1007/978-3-031-36147-0_10 (noting as of 2019, the admissions system is present all across the country).

124. See Adrián Zancajo, *Drivers and Hurdles to the Regulation of Education Markets: The Political Economy of Chilean Reform 1* (Nat’l Ctr. For the Study of Privatization in Educ., Working Paper 239, 2019), <https://ncspe.tc.columbia.edu/working-papers/files/WP239.pdf> (noting that amid international concerns for voucher impact on socioeconomic status, Chile’s 2014 government

implementation of the Inclusion Law in Santiago, protesters began demanding that Chile's national government draft a new constitution to replace the Pinochet-created constitution from the 1980s—a document that had focused on the privatization of public services.¹²⁵ As a result of ensuing protests, nearly 80% of voters opted for the drafting in a 2020 plebiscite, and a redrafting process began.¹²⁶ However, this effort was defeated in 2022, when a majority of the Chilean population rejected a redraft of the document.¹²⁷ Despite this failing, education and equity have remained a central issue in modern Chile, with ongoing student protests and teachers' strikes concerning working conditions.¹²⁸

In short, while Chile initially implemented Friedman's voucher system, after facing multiple calls from the public to address inequity and accessibility, the country began adding restrictions on private voucher schools to preserve its public education sector. The culmination of these restraints led to the Inclusion Law and subsequent calls for constitutional reform, turning Chile's once minimally regulated education market into one of the most regulated education markets in the world.¹²⁹

B. U.S. Voucher History

The U.S. story of “modern-day” vouchers¹³⁰ begins in the same place as Chile's—with Milton Friedman's traditional voucher system.¹³¹ Following *Brown v. Board of Education* in 1954, the immediate concern for the U.S. South was to retain their segregationist practices in schools.¹³² Southern policymakers recognized Friedman's model for vouchers as one way of opposing integration of White and Black public schools.¹³³

As a result, states all throughout the American South began sanctioning “tuition grant bills” that allowed public funding to be made available to White parents in the

pursued “one of the most emblematic policies” to reform disparities); Ciara Nugent, *Why Chile's SATs Have Become The New Frontline of Inequality Protests*, TIME (Jan. 23, 2020 10:38 AM ET), <https://time.com/5770308/chile-student-protests> (noting that student protests have continued since Inclusion law's passing).

125. John Otis, *Chileans have Rejected a New, Progressive Constitution*, NPR (Sept. 5, 2022; 9:56PM ET), <https://www.npr.org/2022/09/04/1121065756/chile-constitution-referendum>.

126. *Id.*

127. *Id.*

128. See e.g. Nugent, *supra* note 124. For more information on Teacher strikes in Chile, see Carla Tapia, *Teacher Activism: Struggles Over Public Education in Chile*, 44 BRIT. J. SOC'Y EDUC. 963 (2022).

129. Cummings, et. al., *supra* note 29, at 5.

130. COWEN, *supra* note 8, at 31 (noting that Friedman's *The Role of Government in Education* spawned the “school choice movement”). “School Choice” in this paper refers to policies meant to empower parents to select their child's education instead of accepting a school based on residential area. See Susan L. DeJarnatt, *School Choice & the (Ir)rational Parent*, 15 GEO. J. POVERTY L. & POL'Y 1, n.3 (adopting such a definition).

131. Cowen, *supra* note 8, at 15.

132. See Robert Kennedy, *Debating School Choice in North Carolina: The Rise of Private School Vouchers* 38 (Feb. 22, 2019) (Ph.D. dissertation, University of North Carolina).

133. They recognized this in part because of Friedman's own marketing. See COWEN, *supra* note 8, at 19 (discussing how Friedman marketed his teachings around Virginia).

form of a “grant” to be spent on private education.¹³⁴ Six southern states passed these laws following *Brown*: Alabama (1955), North Carolina (1956), Virginia (1956), Louisiana (1958), South Carolina (1963), and Mississippi (1964).¹³⁵

Some states and their counties passed more stringent restrictions in response to *Brown*. Most notably, Virginia’s Prince Edward County School district closed and defunded its public schools for five years in 1959 to oppose integration.¹³⁶ Simultaneously, the district issued vouchers to White students to attend local private schools, while Black students of the same county were not given this opportunity.¹³⁷

While racism and segregation created voucher programs in the United States, Christian religious communities also viewed vouchers as a way of escaping public education for a variety of reasons.¹³⁸ Catholic religious groups throughout the South helped such programs remain standard policy through the 1960s. U.S. Catholic communities began using vouchers to leave public schools as they felt such schools were not emphasizing Catholic values,¹³⁹ in part because of a hostile divide between Protestants and Catholics in the early 1900s.¹⁴⁰

However, in the 1980s, the reasoning for implementing vouchers evolved with the publication of *A Nation at Risk*, which sensationalized the failings of the U.S. public education system.¹⁴¹ Under President Reagan, U.S. Secretary of Education Terrel Bell created the National Commission on Excellence in Education (NCEE) in 1981 to address the “widespread public perception that something was seriously remiss in [the U.S.] educational system.”¹⁴² The NCEE was “directed to examine the quality of education in the United States and to make a report to the Nation . . . “within eighteen months, providing “practical recommendations for educational improvement.”¹⁴³ The NCEE gave special attention to, *inter alia*, “assessing the quality of teaching and learning” in U.S. public and private schools and “assessing the degree to which major social and educational changes in the last quarter century affected student achievement.”¹⁴⁴ As the title suggests, the report concluded that the United States was “at risk” of falling behind other nations, such as Japan, South

134. Kennedy, *supra* note 132, at 38 (describing instances of how tuition grant bills were implemented).

135. Ursula Hackett & Desmond King, *The Reinvention of Vouchers for a Color-Blind Era: A Racial Orders Account*, 33 *STUD. AM. POL. DEV.* 234, 239 (2019).

136. Kennedy, *supra* note 132, at 41–42.

137. See Hackett & King, *supra* note 135, at 242.

138. See Cowen, *supra* note 8, at 45–46 (discussing how Catholics in St. Louis studied Friedman’s teachings).

139. *Id.*

140. James Forman Jr., *The Rise & Fall of School Vouchers: A Story of Religion, Race, and Politics*, 54 *UCLA L. REV.* 547, 551 (2006).

141. Kennedy, *supra* note 132, at 45–46.

142. See James W. Guthrie & Matthew G. Springer, *A Nation at Risk Revisited: Did “Wrong” Reasoning Result in “Right” Results? At What Cost?*, 79 *PEABODY J. EDUC.* 7, 10–14 (describing the buildup, purpose and appointment of Bell by Reagan); see also NAT’L COMM’N ON EXCELLENCE IN EDUC., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATION REFORM* 2, 4 (April 1983) [hereinafter “*A Nation at Risk*”].

143. *A Nation at Risk*, *supra* note 142, at 1.

144. *Id.*

Korea, and Germany.¹⁴⁵ The Commission found that approximately “23 million American adults [were] functionally illiterate by the simplest tests of everyday reading, writing, and comprehension.”¹⁴⁶ It also found that standardized testing scores had dropped 40-50 points across verbal and mathematics test sections when compared to scores from the 1950s.¹⁴⁷ To fix this perceived drop in “excellence,” the NCEE recommended that school districts: (1) elevate the content of state and local high school graduation requirements, (2) adopt more rigorous and measurable standards, and higher expectations for academic performance, and (3) provide more funding and training for teachers and schools.¹⁴⁸ However, instead of adopting these recommendations, U.S. lawmakers responded to *A Nation at Risk* by considering avenues to fund private education alternatives, and imposing strict accountability standards on public schools.¹⁴⁹

First, by highlighting public education’s failings, *A Nation at Risk* forced politicians to consider alternatives, strengthening school choice as a philosophy.¹⁵⁰ State legislatures began considering options that would “entice suburban students to transfer voluntarily” into urban schools.¹⁵¹ In Wisconsin, school choice and vouchers in particular were viewed as a way of integrating low-income students into other schools.¹⁵² Former Wisconsin State Representative Polly Williams viewed vouchers as a way to provide academic achievement for poor and minority children in urban areas, leading to the creation of the Milwaukee Parental Choice Program (MPCP) in 1990.¹⁵³ In its first iteration, the MPCP would provide up to \$2,570 per pupil to a non-sectarian private school if their family income was below 175% of the federal poverty level.¹⁵⁴ As a result of *A Nation at Risk*, the MPCP created an unlikely alliance between conservatives seeking school privatization and Black liberal politicians seeking educational equity.¹⁵⁵

Soon, other cities followed suit, such as Cleveland, Ohio, which implemented its voucher program in 1995 to save its “failing schools.”¹⁵⁶ However, unlike the MPCP, Ohio’s Pilot Project Scholarship Program broadened the supply side of the education market by allowing parents to use tuition vouchers at both non-sectarian

145. *See id.* at 7.

146. *Id.* at 8.

147. *Id.* at 8–9.

148. *See id.* at 20–29.

149. *See Kennedy, supra* note 132, at 45–46 (discussing how *A Nation at Risk* “served as a clarion call for educational reform.”).

150. *See id.* (noting that after the report’s publication, voucher advocates were targeting state legislatures).

151. Shane Goodridge, *Tracing the Historical DNA & Unlikely Alliances of the American Charter School Movement*, 31 J. POL’Y HIST. 273, 291 (2019).

152. *See id.* (noting that Milwaukee Vouchers was only meant to serve low-income Black students).

153. *See id.*

154. *Id.*

155. *Id.* at 292. In response to criticisms to this alliance, Williams stated that the problem was not political expediency but that the public school system was not meeting the cultural needs and values of Black children. *Id.*

156. *See Zelman v. Simmons-Harris*, 536 U.S. 613, 646–47 (2002).

and religious private schools¹⁵⁷—namely, Catholic schools.¹⁵⁸ In 1999, opponents to the voucher program filed suit in federal court alleging that Ohio's program violated the Establishment Clause of the First Amendment. In that suit, the district court granted summary judgment for the opponents and a divided Sixth Circuit panel later affirmed that decision. However, in 2002, the U.S. Supreme Court reversed the Sixth Circuit's decision, 5-4, with former Chief Justice Rehnquist writing for the majority. The Court concluded that because Ohio's voucher program: (1) was neutral with respect to religion; (2) did not explicitly fund one particular religion over another, and (3) did not coerce parents into admitting their children into religious education, it did not violate the Establishment Clause of the First Amendment.¹⁵⁹ Interestingly, the Court also relied on descriptions of the dismal state of public education in the Cleveland City School District,¹⁶⁰ while simultaneously painting vouchers as a lifeline to lower-income families to flee from such institutions.¹⁶¹

Second, *A Nation at Risk* also subjected public education to scrutiny, leading to more accountability testing in schools, with a focus on creating more school choice alternatives for the U.S. Public.¹⁶² The culmination of this idea came in 2002 when former President George W. Bush signed the "No Child Left Behind Act" (NCLB) into law.¹⁶³ Under the NCLB, each state was responsible for a school accountability system using assessments to measure the performance of public schools.¹⁶⁴ Each school was required to make "adequate yearly progress" and disclose their assessment results to the state and the Department of Education.¹⁶⁵ Under the NCLB, penalties were imposed on public schools if they failed to reach this standard.¹⁶⁶ Notably, the penalties under the NCLB became increasingly harsh

157. *Id.* at 646–47 (noting that nearly 96% of schools participating in the voucher program in Cleveland were religious private schools).

158. *Id.*; see also COWEN, *supra* note 8, at 56 (stating that "nearly" all participating schools were Catholic schools).

159. See *Zelman*, 536 U.S. at 653–57.

160. The opening paragraph to the majority opinion by former Chief Justice Rehnquist provides as much. The Court noted that "for more than a generation Cleveland's public schools have been among the worst performing public schools in the Nation," with one Federal district court placing it under state control and declaring it a "crisis of magnitude." See *id.* at 644. Notably, the "crisis of magnitude" quote is misrepresented, with the actual language coming from *Reed v. Rhodes*, 934 F.Supp. 1533, 1560 (N.D. Ohio 1996), a federal district court order regarding the desegregation of public schools in Cleveland. In that order, the "crisis" was a "financial crisis" requiring proper administrative management to oversee desegregation practices, not one of academic performance. See *Reed*, 934 F.Supp. at 1560.

161. See *Zelman*, 536 U.S. at 675 (J. O'Connor, concurring) (citing to studies by voucher-proponent economist Paul Peterson which show academic improvement in students who shifted to voucher accepting schools from the Cleveland City School District); but see Cowen, *supra* note 8, at 41–42 (suggesting that Peterson's research was only focused on two schools substantially funded by corporate donors).

162. See generally *A Nation at Risk*, *supra* note 142, at 22 (calling for standardized testing).

163. No Child Left Behind Act, 20 U.S.C. § 6316 (b) (2002), *repealed by* Every Student Succeeds Act, 20 U.S.C. § 6301 et seq. (2015).

164. DeJarnatt, *supra* note 130, at 11.

165. *Id.* at 18.

166. *Id.* at 17.

if the failure continued over successive years.¹⁶⁷ For example, if a school failed to meet the standard two years in a row, it was required to offer its students an opportunity to transfer to a different school.¹⁶⁸ If a school failed to make adequate yearly progress for four years, the school was required to create a “restructuring” plan under which it would be privatized by owners of charter schools—another form of school choice.¹⁶⁹

As a result, public schools across the country were threatened with school choice, while school choice proponents endorsed the practice. For example, Senator William Frist, the former majority leader of the U.S. Senate, stated that under the NCLB:

Parents will be enabled to make informed choices about schools for their children by being given access to school-by-school report cards on student achievement for all groups of students. Students in persistently low-performing schools will be provided the option of attending alternative public schooling. That means that starting in September, students in more than 6,700 failing schools will have the authority to transfer to better public schools.¹⁷⁰

Under the Obama Administration, the NCLB was eventually replaced with the Every Student Succeeds Act,¹⁷¹ a piece of legislation that removed NCLB’s punitive measures and granted additional funding to lower-performing public schools.¹⁷² Although the Department of Education no longer supported school choice, the argument for vouchers modernized and gained support from conservative billionaires and the religious right.¹⁷³ These groups began to frame voucher programs in many U.S. states as state-funded programs meant to empower families with school choice, and specifically help low-income families leave public education for better private school alternatives.¹⁷⁴

However, despite claims that U.S. voucher programs are targeted, most of them

167. See generally *id.* at 14–15 (discussing harsher and harsher sanctions imposed on failing schools).

168. *Id.* at 18.

169. *Id.* at 19.

170. 147 Cong. Rec. S13365-07 at 13397-13398 (daily ed. Dec. 18, 2001) (statement of Sen. William Frist).

171. See Cory Turner, *President Obama Signs Education Law, Leaving ‘No Child’ Behind*, NPR (Dec. 10, 2015, 12:59PM ET), <https://www.npr.org/sections/thetwo-way/2015/12/10/459219774/president-obama-signs-education-law-leaving-no-child-behind>.

172. See *id.* (stating that “[w]hile ESSA keeps in place the basic testing requirements of [NCLB], it strips away many of the high stakes that had been attached to student scores”).

173. See COWEN, *supra* note 8, at 38–41 (referring to voucher policy as being a central focus of billionaires such as the Koch Brothers, who routinely meet with religious supporters of vouchers).

174. See *id.* at 22 (noting that the Koch Brothers created the Cato Institute, a conservative think tank that supports voucher programs); see also Neal McCluskey, *From Federal Failure to Parental Freedom: The Story of a Movement*, CATO INST, <https://www.cato.org/free-society/summer-2025/federal-failure-parental-freedom-story-movement>, (last visited Sept. 2, 2025) (describing the CATO Institute’s mission as a way to popularize vouchers); see also Eppe, *supra* note 8, at 447 (detailing voucher policies from Milwaukee, Florida, and Arizona and their general purpose).

expand dramatically following passage or start extremely large by design. For example, in 1990, Milwaukee's voucher program targeted low-income students and capped eligibility at 175% of the 1990 federal poverty level,¹⁷⁵ or \$23,194 for a family of four¹⁷⁶ (approximately \$33,000 in 2024).¹⁷⁷ From 2005 to 2024, however, the MPCP expanded eligibility to any family having an income of less than 300% of the federal poverty level¹⁷⁸ (approximately \$68,000 for a family of four in 2011; or \$97,451 in 2024)¹⁷⁹—effectively covering approximately 80% of Milwaukee city's population.¹⁸⁰ Similarly, Indiana began with an expansive fixed voucher program that was not targeted at the lower-middle class families, despite claims otherwise.¹⁸¹ Under the Indiana voucher program, families with an income under 400% the reduced-cost lunch program qualification may apply for vouchers to attend private school.¹⁸² Thus, if a household of four makes less than \$222,000 annually in 2025, they qualify under the program for an education voucher.¹⁸³ This income threshold covers 97% of the state.¹⁸⁴

Finally, some states have begun adopting universal voucher programs. For example, Arizona's voucher program is a universally available voucher scheme that

175. Goodridge, *supra* note 151, at 291; see also Wis. Legis. Fiscal Bureau, *Milwaukee Parental Choice Program*, Informational Paper No. 40, at 1, 3 (Jan. 31, 1991) (describing the MPCP as covering “children from low-income families” and stating that a participating pupil’s “total family income must not exceed 175% of the federal poverty level”).

176. *Poverty Thresholds*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html> (click on “1990 <1.0 MB”) (assuming two children under the age of 18 multiplied by 1.75).

177. *CPI Inflation Calculator*, U.S. BUREAU LAB. STATS., https://www.bls.gov/data/inflation_calculator.htm (enter in “13254”; choose “January” from dropdown; choose “1990” from dropdown; click “Calculate”) (last visited Jan 23, 2025).

178. *A Brief History of Voucher Expansion*, WIS. DEP’T PUB. INSTRUCTION, <https://dpi.wi.gov/search/google/a%20brief%20history%20of%20voucher%20expansion> (last visited Jan. 20, 2025); see also *Milwaukee Parental Choice Program*, SCH. CHOICE WIS., <https://schoolchoicewi.org/programs/milwaukee-parental-choice-program>, (last visited Jan 23, 2025) (noting current income threshold is the same as in 2011).

179. *Poverty Thresholds*, *supra* note 176 (assuming two children under the age of 18 multiplied by 3); *CPI Inflation Calculator*, U.S. BUREAU LAB. STATS., https://www.bls.gov/data/inflation_calculator.htm (enter in “68000”; choose “January” from dropdown; choose “2011” from dropdown; click “Calculate”) (last visited Jan 23, 2025).

180. *Wisconsin: Milwaukee Parental Choice Program*, ED CHOICE, <https://www.edchoice.org/school-choice/programs/wisconsin-milwaukee-parental-choice-program> (last visited Jan. 23, 2025) (noting that four in five Milwaukee students qualify for the MPCP scholarship).

181. See IND. DEP’T EDUC., *CHOICE SCHOLARSHIP PROGRAM ANNUAL REPORT: 2023-2024* 4 (2024), (noting that even for a family of one, the individual would need to make over \$ 110,000 to be outside the financial qualifications for the scholarship), <https://www.in.gov/core/results.html> (search for “2024 CHOICE SCHOLARSHIP PROGRAM ANNUAL REPORT”; click on “2023-2024 Annual Choice Report”) (last visited Jan. 23, 2025).

182. *Id.*

183. *Id.*

184. *Indiana Choice Scholarship Program*, IND. CHOICE, <https://indianachoescholarship.org> (last visited Jan. 23, 2025).

began as a targeted program.¹⁸⁵ Initially created in 2011, Arizona’s Equity Scholarship Account (ESA) program was exclusive to students with disabilities.¹⁸⁶ However, in 2022, Arizona Governor Doug Ducey expanded the program to a flat voucher program of roughly \$7,000 to \$8,000 for every grade-eligible student, regardless of income threshold or whether the student ever attended public school.¹⁸⁷

As the programs have broadened, modern-day voucher proponents contend that deregulating education is the best way to ensure “individual liberty” and reduce government interference in family decisions.¹⁸⁸ As a result, these tenants make vouchers a policy darling of conservatives, who routinely argue for the decentralization of education.¹⁸⁹

One such conservative politician who made school choice a consistent policy of an otherwise turbulent 2016 Trump administration, was former-Secretary of Education, Betsy DeVos.¹⁹⁰ A champion for “educational freedom” and a proponent of decentralizing the Education Department,¹⁹¹ DeVos planned to set aside \$400 Million to expand charter schools and private school vouchers in her 2018 budget proposal for the Department of Education.¹⁹² DeVos also proposed a national voucher program that would have provided up to \$5 billion annually for children to attend the school of their choice, including non-sectarian and religious private schools.¹⁹³ Neither proposal passed in Trump’s first presidency.¹⁹⁴

However, in July 2025, the U.S. Senate passed President Trump’s “One Big Beautiful Bill”—a controversial piece of legislation that included a federal “voucher-like” program in the form of a tax credit scheme.¹⁹⁵ Referred to as a “tax-

185. Jennifer Browne McBeth, *Opportunity Hoarding Through Arizona’s Voucher Expansion of 2022* (2024) (Ph.D. Dissertation, University of Arizona) (ProQuest).

186. Jamie Klinenberg, Jon Valant & Nicholas Zerbino, *Arizona’s ‘Universal’ Education Savings Account Program has Become a Handout to the Wealthy*, BROOKINGS (May 7, 2024), <https://www.brookings.edu/articles/arizonas-universal-education-savings-account-program-has-become-a-handout-to-the-wealthy>.

187. McBeth, *supra* note 185, at 13; *see also* Klinenberg, *supra* note 186 (noting the amounts offered).

188. *See* COWEN, *supra* note 8, at 141–43 (noting that vouchers are not a statistical argument but a moral argument around “religious nationalism”).

189. *See generally id.* (citing conservative actors like ‘Moms for Liberty’).

190. *See generally* Cory Turner, *How Education Secretary Betsy DeVos Will Be Remembered*, NAT’L PUB. RADIO (Nov. 19, 2020, 5:00AM ET), <https://www.npr.org/2020/11/19/936225974/the-legacy-of-education-secretary-betsy-devos> (noting DeVos was consistent throughout her term).

191. *See id.*

192. *Id.*

193. *Id.*

194. *See id.* (illustrating that DeVos’ interest in voucher schemes is only a partial representation of the proponents advocating for vouchers—specifically, the continuing interest of the Christian right in voucher schemes); *See also* COWEN, *supra* note 8, at 23–27 (explaining that in addition to partnering with other organizations and individuals to create the Council for National Policy (CNP), the DeVos family also partnered with Economic conservative right, such as Charles and David Koch who Friedman’s policies may have influenced—so much so that the brothers created the CATO institute—a conservative think tank that honors selected academics with the “Milton Friedman Award for Advancing Liberty” each year).

195. *See* Elena Moore, Claudia Grisales, & Deirdre Walsh, *Trump on Fourth of July signs*

credit” scholarship, qualified individuals under this voucher program can deduct \$1,700 from their tax bill, if they donate to a private organization that awards scholarships to students attending private school.¹⁹⁶ Despite being touted as a step in the right direction by voucher proponents,¹⁹⁷ the policy also presents a quandary from many states who do not have a voucher program because the scheme only applies to states that opt in to the program.¹⁹⁸

One crucial state to consider whether to opt into the federal program is Pennsylvania, which serves as a political bellwether for the rest of the nation.¹⁹⁹ While Pennsylvania Republicans want to revive plans for state voucher adoption,²⁰⁰ Pennsylvania Democrats have resisted such efforts and blocked any such enactment.²⁰¹ Furthermore, Pennsylvania Governor Josh Shapiro, a prominent Democrat voice who was initially in favor of vouchers, has since withdrawn support for voucher programs by line-item vetoing voucher provisions from state budget bills.²⁰² With continued Republican control of the U.S. Congress and a midterm election scheduled for 2026, education vouchers will likely be a central issue for the state and the nation.

In short, despite starting in the same place as the Chilean voucher program, school choice in the United States arose out of “restructuring” the public education system to oppose *Brown*’s integration requirements. However, due to influence from the conservative and Christian right, vouchers have been rebranded multiple times, with its current iteration focusing on “individual liberty” and public-school accountability. While Democrats have routinely prevented the passing of such bills, voucher proponents have more support today than ever before, following the passing

‘One Big Beautiful Bill’ to Implement his Agenda, NAT’L PUB. RADIO (July 4, 2025 6:27PM ET), <https://www.npr.org/2025/07/03/nx-s1-5454841/house-republicans-trump-tax-bill-medicaid>; see also Cory Turner, *9 Things to Know about the Big Private School Voucher Plan in Republicans’ Tax Bill*, NAT’L PUB. RADIO (May 23, 2025 6:00AM ET), <https://www.npr.org/2025/05/23/nx-s1-5397175/trump-federal-voucher-private-school> (describing the federal voucher program).

196. Alexandria Ng, *The New Federal School Choice Program: 3 Takeaways*, EdWEEK: MKT. BRIEF (July 18, 2025), <https://marketbrief.edweek.org/regulation-policy/the-new-federal-school-choice-program-3-takeaways/2025/07>.

197. *Id.*

198. See *id.* (noting that states must opt into the program).

199. See William A. Galston, *In the Presidential Election’s Most Important State, the Race is a Dead Heat*, BROOKINGS INST. (Oct. 1, 2024) (noting that Pennsylvania’s choice of U.S. president is indicative of who will likely win the entire election).

200. See, e.g., Carly Sitrin, *Pennsylvania Republicans Resurrect School Voucher Plans as State Budget Talks Heat Up*, CHALKBEAT: PHILA. (May 20, 2025, 1:04 PM ET), <https://www.chalkbeat.org/philadelphia/2025/05/20/pennsylvania-republicans-want-school-vouchers-again> (noting that Pennsylvania republicans will push to pass a voucher bill).

201. See e.g. Ian Karbal, *Senate Education Committee Revives School Voucher Program at Center of Last Year’s Budget Fight*, CHALKBEAT: PHILA. (May 7, 2024, 4:13 PM ET), <https://www.chalkbeat.org/philadelphia/2024/05/07/pennsylvania-school-voucher-bill-passes-senate-education-committee> (noting that a voucher bill was “killed by House Democrats” during 2023 budget debate).

202. Stephen Caruso, Angela Couloumbis & Katie Meyer, *Inside Pennsylvania Gov. Josh Shapiro’s Support for Private School Vouchers*, SPOTLIGHT: PA (July 26, 2024), <https://www.spotlightpa.org/news/2024/07/josh-shapiro-vice-president-school-choice-voucher>.

of President Trump’s “One Big, Beautiful Bill.” As a result, the effect of such programs on equity and inclusion in the U.S. education system is a timely and pertinent question for the U.S. public.

III. THE EFFECTS OF VOUCHERS IN CHILE AND THE UNITED STATES

This section will highlight the effect of voucher programs and their iterations in Chile and the U.S. voucher programs. This section will then argue that Chile’s fixed voucher era exacerbated socioeconomic inequities because (1) elite private schools can afford to opt out of voucher programs, (2) private schools may adopt discriminatory policies to prevent access, and (3) individual parents are not rational actors. Finally, this section will argue that these three factors are present in the U.S. voucher program, although such programs may seem fundamentally different, thereby creating similar inequities.

A. *The Effects of a Fixed Voucher System in Chile*

It is indisputable that the fixed voucher scheme in Chile hampered class equity. First, on the supply side, 84% of new schools entering the education market were profit-seeking institutions.²⁰³ Furthermore, between 1982 and 1985, more than a thousand private schools were created.²⁰⁴ In Santiago alone, private schools accounted for more than 55% of the entire schooling population.²⁰⁵ Second, the scheme also dramatically increased Chile’s enrollment in private schools.²⁰⁶ Following the implementation, public school enrollment fell below 60% in 1990 from 80% in 1970.²⁰⁷ Simultaneously, private subsidized school enrollment was over 30% by 1986.²⁰⁸ Across all three variations of secondary schools (public, private subsidized, and private non-subsidized), student enrollment rose from 65% in 1980 to 85% in 1996.²⁰⁹ In sheer numbers, the number of students enrolled in private subsidized elementary schools more than doubled from 306,000 in 1980 to 610,000 in 1988.²¹⁰ Additionally, at the secondary level (the equivalent of middle and high school in the United States), the effect on enrollment in private subsidized schools was more dramatic²¹¹—the attending student population jumping from 38,000 in 1980 to over 269,000 in 1988.²¹²

However, who exactly was transferring to the private subsidized schools? Overall, the fixed voucher proposal led to the middle class fleeing from Chile’s public schools, effectively isolating lower-income families in public schools.²¹³ The

203. Chang-Tai & Urquiola, *supra* note 43, at 1482–83.

204. *Id.* at 1481.

205. GAURI, *supra* note 17, at 2.

206. Chang-Tai & Urquiola, *supra* note 43, at 1481.

207. *Id.*

208. *Id.*

209. GAURI, *supra* note 17, at 3.

210. *Id.* at 2.

211. *Id.*

212. *Id.*

213. See Chang-Tai & Urquiola, *supra* note 43, at 1479 (referring to the large shift as an

fixed voucher proposal created this socioeconomic inequity in Chilean education because (1) not all private schools were required to participate,²¹⁴ (2) private schools that did participate did not improve their services,²¹⁵ and (3) voucher practices highlighted “market-irrational” school selection methods by families and communities.²¹⁶

First, not all private schools entered into the market—limiting schooling options for most of Chile’s students to either newly constructed private schools or traditional public schools. While any private school could refuse to participate in the voucher program, in practice, only elite private schools declined to participate, making them private non-subsidized schools.²¹⁷ By refusing to participate in the voucher program, families who wished to attend elite private schools would have to cover the full tuition, which only the wealthiest of Chile’s population could do.²¹⁸ As a result, private non-subsidized schools did not experience a sudden rise in their market share of students as private subsidized schools did during this era.²¹⁹ Instead, from 1980 to 1990, private non-subsidized school admission steadily increased from 5.5% to 9.5%.²²⁰

Second, inequities also formed between students attending private subsidized schools and public schools through student selection practices. While many voucher proponents believe that increased competition between schools would increase the quality of education services,²²¹ this was not the case in Chile. Instead, most private subsidized schools in Chile screened children through parental interviews or admissions tests and prioritized admission for higher income and higher performing students over lower income and lower performing students.²²² As a result, despite contending that they had better services, in reality, private subsidized schools had selected academically stronger students to boost academic performance.²²³

Arguably, both state intervention practices and deregulation of the market may have exacerbated these practices.²²⁴ Because public schools could avoid closing

“exodus”).

214. See *id.* at 1480 (noting that “elite institutions” generally chose not accept vouchers).

215. See, e.g., Juan Pablo Valenzuela, Cristian Bellei & Danae de los Rios, *Socioeconomic School Segregation in a Market-Oriented Educational System. The Case of Chile*, 29 J. EDUC. POL’Y 217, 220 (2014) (referring to socioeconomic practices such as ‘cream-skimming which negatively affected public and private schools).

216. See Martin Carnoy, *National Voucher Plans in Chile and Sweden: Did Privatization Reforms Make for Better Education?*, 42 COMP. EDUC. REV. 309, 311 (1998) (stating that families with lower socioeconomic status have less choices due to transportation and information).

217. Chang-Tai & Urquiola, *supra* note 43, at 1479.

218. See *id.* at 1480 (stating such institutions refused to accept vouchers).

219. *Id.* at 1481.

220. David Bravo, Sankar Mukhopadhyay & Petra E. Todd, *Effects of School Reform on Education and Labor Market Performance: Evidence from Chile’s Universal Voucher System*, 2010 QUANTITATIVE ECON. 47, 50 (2010).

221. See e.g., *Lifeline (PASS) Scholarship Program*, COMMONWEALTH FOUNDATION (Aug. 1, 2023), <https://www.commonwealthfoundation.org/research/lifeline-pass-scholarship-program>.

222. Chang-Tai & Urquiola, *supra* note 43, at 1498–99.

223. *Id.* at 1499 (discussing the practice typically referred to as cream-skimming).

224. GAURI, *supra* note 17, at 44.

down by lobbying the Ministry of Education for deficit coverage, the market was not an even playing field for private subsidized schools.²²⁵ Thus, private subsidized schools were often required to survive on razor-thin budgets generated through vouchers and attracting students.²²⁶ However, such practices did not stop once private subsidized schools were allowed to charge added-on tuition fees to compensate for this difference.²²⁷ Instead, research suggests that these discriminatory student admission policies continued even after Chile's adoption of the progressive voucher under SEP in 2008.²²⁸

Finally, by arguing that more competition between the public and private sector will lead to better education services for all students, voucher proponents assume that families will act as rational consumers, i.e., select and prioritize schools based on academic performance. As Chile's voucher program shows, parents did not exercise school choice in a manner consistent with market rationality. Instead, their decisions were shaped by various factors such as socioeconomic bias or disparities in access to information.

First, the Chilean education system during the fixed-voucher era demonstrates how socioeconomic bias influences school choice for parents. In a 2006 study of how parents exercise school choice in Chile, Humberto Santos and Gregory Elacqua found that while safety, security, and discipline were important for lower SES families, higher SES families focused on social composition, values, and school ethos.²²⁹ Notably, neither socioeconomic group focused on actual academic performance. Claudio Theime & Ernesto Treviño found similar results in 2011.²³⁰ Namely, academic performance was not a criterion for many parents and higher SES families emphasized the importance of the social composition of a school.²³¹ This fixation on social composition by higher SES families can be traced to the framework of Chile's fixed voucher system.²³² Specifically, because private subsidized schools were allowed to discriminate against students through selective admission practices, public schools and their students were often culturally

225. *Id.*

226. *Id.*

227. See Adrian Zancajo, *Education Markets & Schools' Mechanisms of Exclusion: The Case of Chile*, 27 EDUC. POL'Y ANALYSIS 130, 12–13 (2019) (detailing school admissions practices in the SEP era of Chilean Vouchers) (*See supra* test accompanying notes 78–97 for more information about the purpose of SEP).

228. *Id.* at 144–45 (detailing how not only school fees are an economic barrier for poor students to access some schools, but also a means by which schools influence their school population).

229. Humberto Santos & Gregory Elacqua, *Segregación Socioeconómica Escolar en Chile: Elección de la Escuela Por Los Padres y un Análisis Contrafactual Teórico* [Socioeconomic Segregation in Schools in Chile: School Choice by Parents and a Theoretical Counterfactual Analysis], 119 REVISTA CEPAL [CEPAL REVIEW] 133, 133 (2016).

230. Xavier Bonal, Adrián Zancajo, & Antoni Verger, *Making Poor Choices? Demand Rationalities and School Choice in a Chilean Local Education Market*, 11 J. SCHOOL CHOICE 258, 267 (2017) (citing Claudio Thieme & Ernesto Treviño, *School Choice and Market Imperfections: Evidence From Chile*, 45 EDUC. URBAN SOC'Y 635 (2011)).

231. *Id.*

232. See Zancajo, *supra* note 227, at 147.

perceived as economically unfit or unintelligent.²³³ As a result, higher SES families perceived private subsidized schools as being superior to public schools because of who attended those schools, and not based on academic performance.²³⁴

Second, disparities in access to information may have exacerbated this issue, preventing certain socioeconomic classes from acting in a “market-rational” manner. For example, Gregory Elacqua and Rodrigo Fábrega found that fewer than 10% of families, regardless of income, use Sistema de Medición de la Calidad de la Educación (SIMCE) (Chile’s national standardized assessment) to select a school, despite the prevalence of government programs that publicize school test scores.²³⁵ However, Elacqua and Fábrega also found that parents with higher education levels were more likely to use formal information sources such as direct information from schools and would have more precise information about a school’s curriculum and its composition than parents with lower education levels.²³⁶ Conversely, the team found that less educated parents relied more heavily on friends, relatives, and other informal community sources when researching schools.²³⁷

This is problematic for voucher implementation because informal sources may not direct parents toward academically stronger schools, thereby undercutting rational choice.²³⁸ For example, Elacqua and Fábrega measured the quality of the informal social networks parents relied upon by looking at the educational level of their members.²³⁹ They found that highly educated parents were 13 times more likely to consult with educators and 2.8 times more likely to consult other professionals than parents with an incomplete high school education.²⁴⁰ As a result, while educated parents can leverage professional networks to their advantage when exercising school choice and select better quality voucher schools, less educated parents may be confined to informal sources that reinforce educational disadvantage, perpetuating stratification within the school system.

In short, because schools could opt out of the voucher program, private subsidized schools adopted selective practices, and parents may not operate in as economically rational actors when exercising school choice, higher SES families fled from public schools to private subsidized schools, stratifying the Chilean education market.

B. Effects of the Progressive Era Voucher System in Chile

How did the progressive era compare to the fixed voucher era of the 1990s? As

233. *Id.* (discussing how one mother argued that public schools “are attended by people that maybe we don’t want . . .”).

234. *See id.*

235. Gregory Elacqua & Rodrigo Fábrega, *El Consumidor de la Educación: El Actor Olvidado de la Libre Elección de Escuelas en Chile* [The Consumer of Education: The Forgotten Actor in Free Choice of Schools in Chile] in EDUCACIÓN BRECHAS DE EQUIDAD EN AMÉRICA LATINA [EDUCATION EQUITY GAPS IN LATIN AMERICA] 353, 381 (Santiago Cueto, ed., 2006).

236. *Id.*

237. *Id.*

238. *See generally* DeJarnatt, *supra* note 130, at 1–2, 7–8 (making this argument).

239. Elacqua & Fábrega, *supra* note 235, at 371.

240. *Id.*

noted, SEP was meant to increase opportunities for lower-income students.²⁴¹ Specifically, by providing more funding for lower SES families, the law tried to empower lower-income families to exercise school choice by addressing some of Chile's economic barriers.²⁴² By incentivizing schools to take on lower-income students through bonus funding, SEP also intended to address the limited budgets of private voucher schools and prevent discriminatory admissions practices.²⁴³

Despite its intentions, SEP had a minor positive effect on the achievement gap between public and private schools. In a 2013 study, Alejandra Mizala and Florencia Torche, looked at SIMCE data taken at the fourth-grade level.²⁴⁴ They compared “a panel” of schools’ test scores, enrollment, and the number of priority students from 2005 to 2014 to “identify the effect of the [policy].”²⁴⁵ They noticed that schools with the lowest test scores entered SEP first, followed by those schools that tested higher.²⁴⁶ For example, schools that entered into SEP in 2008 had the lowest mean test scores in 2006 and 2007, while schools that entered in 2010 had marginally higher test scores in those years.²⁴⁷ Mizala and Torche noted that, as schools remained in SEP, lower performing schools began to close the achievement gap between them and private voucher schools in their area.²⁴⁸ The team also found that many of the schools that had joined in 2008 were now performing at the national average, and theorized that this increase was a result of additional funding from SEP.²⁴⁹

Yet subsequent research complicated this interpretation. In a 2018 study, Benjamin Feigenberg et al, looked at a decomposition of the gains between the public and private sector, as well as the gains in each sector.²⁵⁰ They also took note of student demographics as well as family backgrounds during the period of SEP's implementation.²⁵¹ They found that changes in family backgrounds of test-takers could account for much of the decline in the achievement gap between public and private subsidized schools.²⁵² Additionally, Feigenberg et al, found little to no evidence supporting the assumption that SEP had induced many children to switch to higher-quality schools or raised the equality of instruction by increasing competition between schools—corroborating other studies skeptical of SEP's

241. See *supra* text see text accompanying *supra* notes 78–95 for information about the the origins and purpose of SEP.

242. Mizala & Torche, *supra* note 27, at 166.

243. See *id.*; see also Zancajo, *supra* note 227, at 142 (noting that schools’ and student selection practices are among the main forms of exclusion).

244. Mizala & Torche, *supra* note 27, at 171.

245. *Id.* at 167.

246. *Id.* at 172–73.

247. *Id.* at 172.

248. *Id.* at 173.

249. See *id.*, tbl. 2.

250. Benjamin Feigenberg, Rui Yan & Steven Rivkin, *Illusory Gains from Chile's Targeted School Voucher Experiment*, 129 ECON. J 2805, 2810 (2019).

251. *Id.* at 2806.

252. *Id.*

broader impact.²⁵³ Thus, while SEP resulted in modest improvements in test performance, its effect on stratification across achievement is contested.

How successful was SEP at integrating socioeconomic classes? Richard Murnane, et al looked for trends in mathematics achievement scores of nearly 1.7 million Chilean fourth-grade students to answer this question.²⁵⁴ Based on their data, Murnane, et al found that socioeconomic segregation in schools that did not charge fees under SEP—public and religious private schools—had decreased.²⁵⁵ However, Murnane, et al found that socioeconomic segregation increased for private subsidized schools that charged added on tuition fees, suggesting that private, partially subsidized voucher schools served a much lower percentage of low-income fourth-grade students than either public or fully subsidized private schools.²⁵⁶ Based on their data, Murnane, et al concluded that SEP had not affected school segregation by income overall.²⁵⁷

Notably, SEP had failed to affect inequity in the Chilean education market for the same three reasons the fixed voucher program created the initial inequity: (1) Schools did not have to participate, (2) discriminatory practices continued, and (3) parents were never “rational” buyers of education.

First, private non-subsidized schools were not required to participate under SEP.²⁵⁸ Because the policy remained an opt-in policy for schools, schools serving more advantaged populations could choose not to participate in SEP, thereby excluding access to disadvantaged parents who may have otherwise had access due to the increased voucher amount.²⁵⁹ Mizala and Torche’s study corroborated this evidence. They found that when SEP started, schools that entered were already serving more disadvantaged students than schools that did not join the program.²⁶⁰ Additionally, they found that schools that had not entered the program by 2016 typically served more advantaged populations than those that entered SEP.²⁶¹ This suggests that after securing the market of higher-income students, private voucher schools entered SEP to attract lower-income families who possessed new high-value vouchers.

Second, Mizala and Torche’s research also suggests that additional school funding provided by SEP was not enough to outweigh the advantages of

253. *Id.* at 2807.

254. Richard Murnane, et al., *The Consequences of Educational Voucher Reform in Chile*, 1 (Nat’l Bureau of Econ. Rsch., Working Paper No. 23550, 2017) (stating in the “Abstract” that Murnane et al., used national data on math achievement of 1,631,841 Chilean Fourth Grade Students).

255. *Id.* at 29.

256. *Id.*

257. *See id.* at 31.

258. *See* Zancajo, *supra* note 227, at 17 (noting how some schools advertised that they did not participate in SEP to prevent parents from applying).

259. *See* Mizala & Torche, *supra* note 27, at 172.

260. *Id.*

261. *See id.* (noting that in the subsequent years schools that gradually served more socioeconomically advantaged populations joined later).

discriminatory admissions practices.²⁶² Instead of attracting lower-income students overall, SEP forced only public and private subsidized schools to compete and attract low-SES students with good academic records.²⁶³ As a result, private schools, not only refused to stop using discriminatory practices to weed out underperforming students, but many expanded these practices. Principals of private and public schools used “hard” and “soft” discriminatory practices.²⁶⁴ Typical “hard” practices included mandatory school fees that would price schools outside the range of lower-income families or entrance examinations to qualify for admission.²⁶⁵ Other schools focused on adding fees to the admissions process to weed out lower-income families.²⁶⁶

“Soft” discriminatory practices included adopting “values and codes” that would appeal to higher SES families “family codes, values, preferences.”²⁶⁷ Additionally, private voucher schools would also require active participation from families during the application process— usually by requiring parents to attend school meetings, family workshops, and other social activities to show a “real commitment” to the school.²⁶⁸ In some cases, parents were required to attend such meetings for several months before the admission cycle had even begun.²⁶⁹ Principals would inform parents during these sessions that “[their] school[s] [did] not have the will or capacity to enroll children from low socioeconomic backgrounds or with special needs.”²⁷⁰

Furthermore, with the threat of losing funding, schools participating in SEP began reducing test-score gaps in students through artificial means.²⁷¹ Mizala and Torche’s research indicates as much. The mathematics scores for Chilean fourth-grade students increased across their data set; with schools that had entered the program first experiencing the most gain.²⁷² However, because low-performing students may have been allowed to miss the national assessments as part of a

262. See Mizala & Torche, *supra* note 27, at 181 (explaining that SEP failed to reduce socioeconomic segregation because schools serving advantaged populations opted out of the program to maintain higher add-on family fees, thus “reducing the choice set of more disadvantaged parents”).

263. See *id.* at 8, 15 (noting that research suggests schools may choose to attract the most academically able students, since they cost less to educate).

264. See generally Zancajo, *supra* note 227, at 12 (describing “hard” and “soft” mechanisms for exclusion).

265. *Id.*

266. See *id.* at 16 (describing how some practices like charging application fees “auto-selects” some parents out of the school’s selection pool).

267. *Id.* at 12.

268. *Id.* at 16.

269. *Id.*

270. *Id.*

271. Research by Alvaro Hofflinger and Paul von Hippel confirmed that schools allowed lower-performing students to miss testing days to boost the schools’ overall test scores. See Alvaro Hofflinger & Paul T. von Hippel, *Missing children: how Chilean Schools evaded accountability by having low-performing miss high-stakes tests*, 32 EDUC. ASSES. EVAL. & ACC. 127 (2020). However, Hofflinger and von Hippel found that adding back the test scores of students who were absent did not remove SEP’s estimated impact. *Id.* at 145–46.

272. See Mizala & Torche, *supra* note 27, at 173.

school's strategy to pass the testing requirements, they believed these reductions may be suspect.²⁷³

Finally, despite overt discriminatory practices being enacted, Chilean parents tolerated such practices because they saw it as ensuring “some level of school closure,” indicating that families preferred such practices over being inclusive.²⁷⁴ For example, in interviews with parents during their exercise of school choice, researchers heard from one mother who stated that public schools “are attended by people that maybe we do not want; it's not like discriminating against them, but we did not want that for our daughter.”²⁷⁵ Thus, even with additional funding provided to lower-income families, middle class parents continued to consider the attending population when choosing schools and sought schools that engaged in discriminatory practices to measure school quality²⁷⁶—showing that parents were not operating in a market rational manner as voucher proponents would hope.²⁷⁷

In short, the mounting volume of research confirmed one thing for Chile: The pre-2015 system allowed schools to segregate and exclude students through various bureaucratic means.²⁷⁸ While SEP sought to address student concerns, it did not address the main causes of socioeconomic inequity—resulting in modest increases in achievement scores and a minor reduction in socioeconomic stratification. Ultimately, SEP left intact the very structures of exclusion it was designed to dismantle.

C. *What will the Era of Inclusion Bring?*

The current Inclusion Law addresses school discriminatory practices — a significant cause of inequity in Chilean education.²⁷⁹ In theory, addressing these practices should create a more equitable education market. However, recent research suggest that this addresses the supply side only.²⁸⁰ In a 2023 study examining the effects of requiring K-12 schools to accept any applicant, Ngaire Honey & Alejandro Carrasco find that the Inclusion Law produced only minimal to moderate improvements in for low-income families' access to better performing schools.²⁸¹

273. See Hofflinger & von Hippel, *supra* note 271, at 127 (studying how increased accountability measurements under SEP led to more low-performing students miss high stakes tests).

274. Zancajo, *supra* note 227, at 17.

275. *Id.*

276. See *id.* (stating that parents required “certain level of social homogeneity” in selecting a school).

277. See generally DeJarnatt, *supra* note 130 (arguing that “school choice” is not operated in a rational manner by parents).

278. See Cummings, et. al., *supra* note 29, at 1 (stating that pre-2015 voucher system in Chile was very good at sorting children by social class).

279. See *supra* notes 109–28 and accompanying text for more discussion on the policy implementation.

280. See, e.g., Macarena Kutscher, et. al., *Centralized Admission Systems & School Segregation: Evidence from a National Reform*, INST. LAB. ECON., May 2020, at 23 (noting that despite implementation of “centralized student assignment system,” or lottery system, there has not been any overall improvement in evenness of “student background distribution”).

281. Ngaire Honey & Alejandro Carrasco, *A New Admission System in Chile and Its Foreseen*

They theorize that structural inequities—such as residential segregation and limitations in transportation—may limit parents, hampering the Inclusion law’s effects.²⁸² Specifically, even with access to larger voucher amounts and a more accepting supply-side education market, parents may still be acting in a “market-irrational” manner.

Chile will also have to contend with socioeconomic disparities in access to information about schooling. Recent research demonstrates that when Chilean parents looking to exercise school choice were provided with digestible and personalized information about vouchers schools in their area, these parents were more likely to select academically higher performing schools even if these schools were costlier or further away than local schools.²⁸³ This finding suggests that, with accessible information, parents have some margin to improve their choices.²⁸⁴

In short, the Inclusion Law was a large normative undertaking to redistribute education benefits across socioeconomic classes. However, without additional reforms to address information gaps, residential segregation, and transportation costs, and other factors on the demand-side of the education market, it may not achieve the level of equity its drafters hoped.

D. The Effect of U.S. Vouchers

Like Chile, U.S. voucher programs are inequitable because they: (1) segregate low-income students; or (2) are used primarily by higher-income households to attend private schools.

First, some voucher programs may have segregated low-income students into only voucher-accepting schools.²⁸⁵ David Fleming et al. analyzed data following the 2005 enlargement of the Milwaukee Program to observe how student distribution was affected.²⁸⁶ They found that students participating in the voucher program were often lower income and lower test score-achieving families.²⁸⁷ Fleming, et al also found that voucher students were more likely to be Black or Hispanic, while public school-attending students were more likely to be White.²⁸⁸ Fleming et al. also surveyed families’ background and home life in their analysis. They found that while parents of public-school attending students were more likely to have a high school degree or less, they were also more likely to have higher household incomes than

Moderate Impact on Access for Low-Income Students, 45 EDUC. EVAL. & POL’Y ANALYSIS 108, 129 (2023) (finding limited evidence of “small changes of representation of low-income students” following implementation of Chile’s admissions process under “Inclusion Law”).

282. *Id.* at 109 (noting structural inequities prevent parents from selecting higher academically performing schools).

283. Claudia Allende et al., *Approximating the Equilibrium Effects of Informed School Choice*, 20 (Princeton Univ., Working Paper No. 628, 2019).

284. *Id.* at 19.

285. See David J. Fleming, et. al., *Similar Students, Different Choices: Who Uses a School Voucher in an Otherwise Similar Population of Students?*, 47 EDUC. & URB. SOC. 785, 792-93 (2015) (discussing survey data from Milwaukee’s program).

286. *Id.* at 792.

287. *Id.* at 798–99.

288. *Id.* at 798.

their voucher-attending counterparts.²⁸⁹ Because Milwaukee's voucher program was targeted at historically disadvantaged families, they found the program drew disadvantaged families, increasing segregation in public schools.²⁹⁰

Second, voucher programs, such as Indiana's Choice Scholarship Program, did not serve only lower-income students.²⁹¹ Instead, Indiana's program targeted the middle class, with more than 33,000 students coming from households that make anywhere from \$50,000 to \$150,000 per year.²⁹² It also allowed for higher-income families to participate.²⁹³ For example, during the 2022-2023 school year, only 354 households who made over \$200,000 participated in the program.²⁹⁴ In 2023-2024, over 3,600 households who made over \$200,000 participated in Indiana's voucher program.²⁹⁵ Additionally, most participating households were White, with approximately 45,000 students, and less than 6,500 voucher students were Black.²⁹⁶ Nearly two-thirds of voucher students using the Indiana Choice Scholarship program never attended public school.²⁹⁷ Similarly, the universal program in Arizona subsidized education costs from private school-attending families that were typically higher SES families.²⁹⁸

The Brookings Institution studied the Arizona program and found that higher SES families were more likely to use Empowerment Scholarship Accounts.²⁹⁹ It found that 75 per 1000 people from areas with the lowest poverty rate participated in the voucher program, while less than 14 per 1000 people from regions with the highest poverty rate participated.³⁰⁰ The Institution also found that participation rates increased as income increased; with those making more than \$114,000 most likely to use the voucher scheme.³⁰¹ Finally, the study also reported that participants with more education were likely to use the ESAs, and college graduates were the most

289. *Id.* at 797.

290. *See id.*

291. *See* IND. DEP'T EDUC., CHOICE SCHOLARSHIP PROGRAM ANNUAL REPORT: 2023-2024 4 (2024) (noting that even for a family of one, the individual would need to make over \$ 110,000 to not qualify for the scholarship), <https://www.in.gov/core/results.html> (search for "2024 CHOICE SCHOLARSHIP PROGRAM ANNUAL REPORT"; click on "2023-2024 Annual Choice Report") (last visited Jan. 23, 2025).

292. *See id.* at 18, tbl. 19 (noting that more than 18,000 students participated who had a household income between \$50,000 and \$100,000; and more than 15,000 students came from households with an income of \$100,000 to \$150,000).

293. *See id.*

294. *Id.* at 17-18.

295. *Id.*

296. *Id.* at 9, tbl. 9.

297. *See id.* at 11 (noting that, for 2023-2024 school year, only 33% of voucher students had a record of attending public school before).

298. *See* Mark Lieberman, *Most Students Getting New School Choice Funds Aren't Ditching Public Schools*, EDUC. WEEK (Oct. 04, 2023), <https://www.edweek.org/policy-politics/most-students-getting-new-school-choice-funds-arent-ditching-public-schools/2023/10> (noting that 75% of ESA applicants did not come from public schools).

299. Jamie Klinenberg et. al., *supra* note 186.

300. *Id.*

301. *Id.* at fig. 2.

likely to participate out of any category.³⁰² Like the program in Indiana, most students who joined the ESA program were never in public school.³⁰³

In short, despite claiming to be “targeted” programs for low-income families, voucher programs in the United States benefit only higher-income families with access to private education. These programs may also restrict lower-income families to voucher schools. Thus, despite being diametrically different from Chile’s program, vouchers in the United States may stratify socioeconomic classes by segregating communities.

E. Same Reasons, Different Country

Like Chile, U.S. voucher programs may have worsened inequities between public and private schools because: (1) traditionally elite private schools remain inaccessible as they refuse to participate in voucher programs; (2) private schools may have enacted discriminatory practices against certain families; and (3) U.S. parents and families do not exercise school choice in a “market-rational” manner.

First, no U.S. voucher program requires traditionally elite private schools to accept vouchers.³⁰⁴ Data from Chile shows that once voucher programs are implemented, schools crop up to cover the market.³⁰⁵ However, the number of elite private schools participating remains at roughly same level.³⁰⁶ Showing that this correlation exists in the United States as well, Sude, et al found that for every \$1,000 increase in school tuition, private schools were less likely to participate in a voucher program.³⁰⁷

Because traditionally elite private schools did not participate in U.S. voucher programs, lower-income families that utilized vouchers often could not attend these schools. They attended voucher schools that were often financially distressed and low-ranking academically.³⁰⁸ Researchers Michael Ford and Fredrik Andersson found that between 1991 and 2015, 121 new private schools opened in Milwaukee.³⁰⁹ However, more than two-thirds of these start-up schools would go on

302. *Id.* at fig. 3.

303. Jacques Billeaud, *Arizona lawmakers face big deficit due mostly to massive tax cut and school voucher expansion*, AP NEWS (Jan. 5, 2024), <https://apnews.com/article/arizona-legislature-hobbs-school-vouchers-tax-cut-0bbf267957942c887335ab63d9104a89> (“About 75% of the students who got vouchers immediately after the program was expanded had no prior record of attending an Arizona public school, according to Department of Education data reported in 2022.”).

304. See Neal Morton, *10 things to know about Trump’s new school voucher program*, HECHINGER REP. (Aug. 1, 2025), <https://hechingerreport.org/whats-a-tax-credit-scholarship-the-details-behind-the-first-national-school-voucher-program> (noting that “many states that offer school choice don’t require private schools to participate” in state voucher programs).

305. See Chang-Tai & Urquiola, *supra* note 43, at 1478.

306. *Id.* at 1481.

307. See Yujie Sude, et. al., *Supplying Choice: An Analysis of School Participation Decisions in Voucher Programs in Washington D.C., Indiana, And Louisiana* 12 J. SCH. CHOICE 8, 22, 30 (2018)

308. See Joshua Cowen, *How School Voucher Programs Hurt Students*, TIME (Apr. 19, 2023, 7:05 AM EDT), <https://time.com/6272666/school-voucher-programs-hurt-students>.

309. Michael R. Ford & Fredrik O. Andersson, *Determinants of Organizational Failure in the Milwaukee School Voucher Program*, 47 POL’Y STUD. J. 1048 (2019).

to fail.³¹⁰ Critically, they found that about 41 percent of the Milwaukee private schools that obtained revenue went on to close down.³¹¹ The state of Wisconsin sent about 1.6 billion dollars to private Milwaukee program schools between 1991 and 2013³¹²— with 12.36% of those funds going to schools that closed for good.³¹³

Despite financing private education at such a cost, once parents realize voucher schools are not the “elite” private academies they believe, lower income families often return to the public schools in their area.³¹⁴ In analyzing this relationship, Joshua Cowen, et al., found that lower performing voucher students often left voucher programs and returned to public schools.³¹⁵ Notably, they found that many of these students academically improved once they returned to public schools.³¹⁶ In response to surveys conducted after their return, Cowen et al found that a large portion of these families reported that they returned due to the voucher school not meeting their expectations.³¹⁷

Additionally, schools also change their habits once voucher programs are implemented.³¹⁸ In some states, private schools have adopted hardline discriminatory policies such as hiking tuition thereby nullifying the subsidizing effect vouchers provide in the first place.³¹⁹ For example, following the implementation of Iowa’s voucher program, private schools increased prices by 21-25% for kindergarten and 10-16% for grades with partial eligibility.³²⁰ Because lower SES families may be unable to cover tuition add-ons, they may be barred from choosing a school that may be a good fit for them.³²¹

Furthermore, like the first iteration of the voucher system in Chile, voucher schools in the U.S. have no requirement to accept every child who pays tuition.³²² Instead, voucher schools can implement various admissions guidelines to exclude student demographics.³²³ Ian Farrell and Chelsea Marx studied discrimination

310. *Id.*

311. *Id.* at 1063.

312. Michael R. Ford, *Funding Impermanence: Quantifying the Public Funds Sent to Closed Schools in the Nation’s First Urban School Voucher Program*, 40 PUB. ADMIN. Q. 882, 886 (2016).

313. *Id.* at 899.

314. See Joshua Cowen et al., *Going Public: Who Leaves a Large, Longstanding, and Widely Available Urban Voucher Program?* 49 AM. EDUC. RSCH. J. 231, 234 (2012).

315. *Id.* at 231.

316. *Id.*

317. See *id.* at 250.

318. See generally Zancajo, *supra* note 227 (discussing practices schools implemented after starting to participate in voucher program).

319. *Id.*

320. Ty Rushing, *Princeton Study Confirms Iowa Voucher Program Led to Tuition Increases*, IOWA STARTING LINE, (May 16, 2024), <https://iowastartingline.com/2024/05/16/princeton-study-confirms-iowa-voucher-program-led-to-tuition-increases> (discussing how tuition rates naturally went up once vouchers were implemented).

321. See *id.*

322. See Chang-Tai & Urquiola, *supra* note 43, at 1498–99.

323. See Ian Farrell & Chelsea Marx, *The Fallacy of Choice: The Destructive Effect of School Vouchers on Children with Disabilities*, 67 AM. UNIV. L. REV. 1797 (2018) (arguing that because voucher schools can be religious schools they can exclude students with disabilities).

against students with special needs and found some voucher programs do not prohibit such conduct by schools.³²⁴ One such program was Indiana’s Choice program, which required participating schools to meet “minimum requirements.”³²⁵ However, Indiana’s Choice program specifically prohibits any state agency from regulating the education program of private schools receiving state funding through vouchers.³²⁶ Additionally, Farrell and Marx found no express non-discrimination requirement for participating schools against students with special needs.³²⁷

Notably, there is also no federal protection for students with special needs, if they are denied admission to a voucher school.³²⁸ Specifically, Farrell and Marx concluded that the Individual with Disabilities Education Act (IDEA) does not provide any protection because (1) IDEA does not govern private schools; and (2) while IDEA requires public school districts to protect private school students only if “a parent believes public schools are contravening their child’s right to free appropriate public education.”³²⁹ Additionally, because religious private schools are exempt from Title III of the Americans with Disabilities Act, no protection is offered under the ADA as well.³³⁰ This is especially problematic for students with special needs in a state, such as Indiana, where Farrell and Marx found that nearly 97% of participating schools entering Indiana’s program in 2018-2019 claimed to be religious private schools.³³¹

Religious private schools may also use “soft” policies to discriminate against students based on gender identity or sexual orientation.³³² Because there is no federal legislation prohibiting private schools from discriminating against LGBTQ+ students, students are forced to rely on Title IX of the Civil Rights Act for protection.³³³ However, Title IX requirements are exempt “to the extent that application of [the title] would be inconsistent with the organization’s religious tenets.”³³⁴ This effectively leaves anti-discrimination policy to the states, such as the Indiana General Assembly,³³⁵ which continues to enact anti-LGBTQIA+ legislation.³³⁶

324. *Id.*

325. *Id.* at 1855.

326. *Id.*

327. *Id.* at 1858.

328. *See id.* at 1833, 1855–56 (noting that many schools don’t have non-discrimination policies).

329. *Id.* at 1832–33.

330. *Id.*

331. *Id.* at 1855–56.

332. *See* text accompanying note 267 for a discussion the “soft” policies.

333. Julia Donheiser, *Chalkbeat Explains: When Can Private Schools Discriminate Against Students?*, CHALKBEAT (Aug. 10, 2017; 6:05 PM EDT), <https://www.chalkbeat.org/2017/8/10/21107283/chalkbeat-explains-when-can-private-schools-discriminate-against-students>.

334. *Id.*

335. *See* Arleigh Rodgers, *Indiana Governor Signs Bills Targeting LGBTQ Students*, AP NEWS (May 4, 2023; 5:12 PM EST), <https://apnews.com/article/indiana-governor-transgender-students-book-bans-b3662d950080cf43965bce58692bfc70>.

336. *Id.*

Additionally, schools may adopt policies that promote values that appeal to specific types of families. For example, Raleigh Christian Academy in North Carolina, even after taking more than \$200,000 in public funding, enacted policies prohibiting male students from doing “anything which might detract from their masculinity.”³³⁷ Notably the school also reminded female students that “Satan desires to take away from a lady’s feminine qualities.”³³⁸

Finally, like school choice in Chile, school choice in the U.S. is not always exercised in a market “rational” manner by families. Lower SES parents may not have access to information to make a rational choice based on the quality of the voucher-receiving schools.³³⁹ Fleming, et al asked parents where they received their information concerning schools around them.³⁴⁰ They found that public school parents were more likely to hear about their children’s school from formal sources, such as school websites, flyers, brochures, and school administrators.³⁴¹ In contrast, voucher parents relied more on social networks and other informal sources such as family, churches, community centers, and “word of mouth.”³⁴²

However, the connection of wealth and information goes deeper. In her longitudinal comparative case study of forty-eight parents and their thought process for the Grade six and grade nine admission processes,³⁴³ Courtney Bell found that a third of families chose schools based on the attendance of their older children.³⁴⁴ She also found that, of the remaining two-thirds of families,³⁴⁵ middle-class parents were more likely to admit their children into nonfailing, selective, and tuition-based schools than working-class parents were.³⁴⁶ Critically, despite reasoning in the same manner as middle-class parents, working-class parents were more likely to consider failing, non-tuition-charging schools.³⁴⁷ Bell theorized that most families use their social networks — which are often influenced by wealth and socioeconomic status — to reach their decisions; thus, affecting their exercise of choice in an irrational manner.³⁴⁸

Furthermore, like parents in Chile, U.S. parents may grant factors other than school quality more weight. Such factors include the racial demographics of the

337. Kimberly Quick, *Second-Class Students: When Vouchers Exclude*, CENTURY FOUND (JAN. 11, 2017), <https://tcf.org/content/commentary/second-class-students-vouchers-exclude>.

338. *Id.*

339. Carnoy, *supra* note 216, at 312 (noting that lower-income families have less access to information to make informed decisions).

340. *See* Fleming et. al., *supra* note 285, at 801–03 (recounting a series of questions asked to parents about their children and how they learned about schools).

341. *Id.* at 802.

342. *Id.*

343. Courtney A. Bell, *All Choices Created Equal? The Role of Choice Sets in the Selection of Schools*, 84 PEABODY J. EDUC. 191 (2009) (discussing how “choice sets,” or the set of schooling options parents are considering, are impacted by wealth).

344. *Id.* at 198 (noting fifteen of the forty-eight families did not engage in a search).

345. *Id.*

346. *Id.* at 201.

347. *See id.* at 191, 201 (stating that despite reasoning in a similar manner, middle-class and working class parents ended with different “choice sets”).

348. *See id.* at 194, 202.

school, religion practices, or proximity.³⁴⁹

One such factor is race. In 1999, sociologists Salvatore Saporito and Annette Lareau examined school choice by eighth graders applying to high school programs in a district with over 150,000 students.³⁵⁰ In their study, graduating eighth graders were offered either to join a magnet program or a student transfer program that allowed students to apply for spots in any neighborhood high school.³⁵¹ Selected schools would conduct a lottery to divvy up spots to applicant students.³⁵² Saporito and Lareau examined the school choices listed on the transfer application. They looked at the student body's racial composition and the crime rates of those schools' locations, among other factors.³⁵³ Their quantitative analysis showed that "White students were more likely to leave schools at an increasing rate as the percentage of [Black] students in the school increased. Measures of academic quality and school safety did not account for the relationship between application patterns and . . . racial composition of schools . . ."³⁵⁴ Saporito and Lareau identified a two-stage process of how white parents effectuated their choice: First, White parents would often eliminate schools with a heavy Black presence from consideration.³⁵⁵ Second, White parents would then consider other school criteria such as academic performance.³⁵⁶

Studies done since 1999 have bolstered Saporito and Lareau's conclusions. For example, in 2019, Chase Billingham and Matthew Hunt looked at survey data from approximately 1,200 respondents to distinguish whether parents were only considering race or using race as a proxy for other considerations when choosing a school for their child.³⁵⁷ In their survey, the respondents were presented with hypothetical demographic scenarios and had to decide which factors they would consider when exercising school choice in these scenarios.³⁵⁸ Billingham and Hunt found that as the percentage of Black students rose in the hypothetical scenario—irrespective of the school's academic record—the likelihood of enrollment reduced for the respondents.³⁵⁹ However, even when Billingham and Hunt controlled for

349. See Salvatore Saporito & Annette Lareau, *School Selection as a Process: The Multiple Dimensions of Race in Framing Educational Choice*, 46 SOC. PROBS. 418, 420 (1999) (discussing the effect of race on school selection); Fleming et. al., *supra* note 287, at 800 (discussing parents' choosing voucher schools based on religion); Carnoy, *supra* note 216, at 311 (discussing how parents consider factors like transportation when selecting schools).

350. Saporito & Lareau, *supra* note 349, at 420.

351. *Id.* Because the focus of this section is on how parents exercise choice in selecting a school, and parents may choose a variety of schools including voucher accepting institutions, this article will draw on analogous studies done in other school choice environments such as transfer programs.

352. Saporito & Lareau, *supra* note 349, at 420.

353. See *id.* at 422–24.

354. *Id.* at 421.

355. *Id.* at 435–36.

356. *Id.* at 436.

357. Chase M. Billingham & Matthew O. Hunt, *School Racial Composition and Parental Choice: New Evidence on the Preferences of White Parents in the United States* 89, SOC. EDUC. 99, 104 (2016).

358. See *id.* at 102 (discussing research methodology).

359. *Id.* at 108.

racial proxy factors, such as school safety, they found that “parents reacted more negatively toward schools with more Black students than to schools with lower proportions of Black students.”³⁶⁰

Furthermore, religious practices may prevent parents from selecting academically stronger schools. Religion continues to be a consistent criterion in United States voucher programs.³⁶¹ In evaluating the Milwaukee Program, Fleming et al., found that Catholic families were much more likely than non-Catholic families to use vouchers.³⁶² They also found that parents who attended religious services at least once a week were far more likely to be voucher users.³⁶³ Yujie Sude et al., found similar results on the supply side of school choice, finding that Catholic Schools were also more likely to participate in voucher programs overall.³⁶⁴ Because more Catholic schools participate, parents who attend religious services may have a better chance of connecting with families already enrolled in religious schools than non-religious families, and therefore, they may have increased access to choice when compared to their non-Catholic counterparts.³⁶⁵

Finally, proximity and, by extension, transportation continue to be a primary concern for parents in the United States.³⁶⁶ In Indiana, most of the students participating in the voucher program remained within the boundaries of their local public school system despite having access to schools in other districts.³⁶⁷ Parental testimony regarding their school selection process backs up this theory. In an analogous situation dealing with school choice, Jeremy Singer found that parents at different class levels relied on different forms of transportation.³⁶⁸ He found that

360. *Id.* at 110.

361. See text accompanying notes 138–40 for more information on how religious communities adopted vouchers.

362. Fleming et. al., *supra* note 287, at 800.

363. *Id.*

364. See Yujie Sude, et. al., *Supplying Choice: An Analysis of School Participation Decisions in Voucher Programs in Washington D.C., Indiana, And Louisiana* 12 J. SCH. CHOICE 8, 22 (2018) (noting that Catholic Schools in Indiana and Louisiana were more likely to participate in voucher programs than their non-Catholic counterparts).

365. *Cf.* Fleming et. al., *supra* note 287, at 805 (opining that the MPCP would be significantly less appealing to the city’s catholic families, if only non-religious schools were allowed to participate.).

366. Carnoy, *supra* note 216, at 311.

367. Casey Smith, *New Report Highlights Indiana’s Choice Scholarships as Vouchers Increase Nationwide*, IND. CAP. CHRON. (Oct. 29, 2024, 6:30 AM), <https://indianacapitalchronicle.com/2024/10/29/new-report-highlights-indianas-choice-scholarships-as-vouchers-increase-nationwide>.

368. See Jeremy Singer, *School Choice, Socioeconomic Status, and Stratified Enrollment in Urban Districts: Evidence from Detroit*, 2 (Mar. 22, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4390504 (talking about how parents exercise choice in the context of selecting a charter school). Singer interviewed multiple families and sorted them based on their family’s income-to-poverty ratio. *Id.* at 15–16. The categories were “deep poverty” (0–49% of the federal poverty line); “below the poverty line” (50–99% of the federal poverty line); “above the poverty line” (100–184% of the federal poverty line); and “not classified as economically disadvantaged” (185% of the poverty line and above). *Id.* at 15. By sorting parents’ responses based on income, Singer discerned patterns and stitched together multiple vignettes of

parents within “deep poverty,” often relied on the school closest to their home to ensure their children could get to school even if something happened with transportation.³⁶⁹ Higher SES families felt less economic constraint and thus less geographic constraint; thus, they felt more comfortable relying on personal transportation.³⁷⁰

In short, despite having diametrically different programs, U.S. vouchers—like Chile’s voucher system—lack traditional elite private school participation, fail to address discrimination by voucher schools, and finally, do not address “irrational” considerations in parental choices—leading to socioeconomic stratification.

IV. PENNSYLVANIA & PASS SCHOLARSHIP PROGRAM

This section will first discuss the most recent iteration of the PASS Scholarship Program. Next, it will ask whether the Program addresses the discussed problems noted in the Chilean and U.S. voucher programs and, thus, whether equity will be preserved should it be implemented.

A. *The Provisions of the PASS Scholarship Program*

The PASS Scholarship Program is Pennsylvania’s attempt at a limited voucher program.³⁷¹ According to the most recent version of the bill, eligible K-12 students will receive a fixed amount of money deposited into a PASS Scholarship. Students may receive: (1) \$2,500 for Kindergarten students who attend a half-day; (2) \$5,000 for K-8 students; (3) \$10,000 for 9th -12th-grade students; or (4) \$15,000 regardless of grade level for special needs students.³⁷² Parents can only use the scholarship to cover qualified education expenses incurred by or associated with the recipient.³⁷³

The PASS Scholarship Program integrates both an income eligibility criterion and a location-based criterion. Like Milwaukee’s voucher program, the PASS Scholarship program targets school vouchers for only low-income families. An eligible applicant student: (1) must be a resident of the Commonwealth; (2) have not yet received their high school diploma; (3) live in a household with a household income below 250% of the federal poverty guidelines; and (4) satisfy one of the following: (i) attended a public school in this commonwealth in the preceding school year or (ii) received a scholarship from the program in the preceding school year or (iii) will attend kindergarten for the first time in the next school year.³⁷⁴ A household income below 250% of the federal poverty guidelines is approximately \$80,000 for

the mindset of the parent based their specific category. *See id.* at 17.

369. *Id.* at 21.

370. *See id.* at 22.

371. Ian Karbal, *Senate Education Committee Revives School Voucher Program at Center of Last Year’s Budget Fight*, CHALKBEAT (May 7, 2024, 4:13 PM EDT), <https://www.chalkbeat.org/philadelphia/2024/05/07/pennsylvania-school-voucher-bill-passes-senate-education-committee>.

372. S.B. 795, 2023 G.A. 208th Gen. Assemb., Reg. Sess. (Pa. 2023).

373. *Id.*

374. *Id.*

a family size of four people in 2024.³⁷⁵ Within the city of Philadelphia, such a threshold would cover approximately 100,000 people or roughly 55% of the city's population.³⁷⁶

Additionally, the bill contemplates geographic restrictions on applicants by requiring students to be within the attendance boundary of a “low-achieving school.”³⁷⁷ A “low-achieving school” is any public or private school ranked in the bottom 15% of the school's designation based on combined mathematics and reading scores from the annual assessment administered.³⁷⁸ The Pennsylvania Board of Education compiled a list of all “low achieving schools” in 2024-2025.³⁷⁹ According to its data, after state assessments, approximately 387 schools across the state were in the bottom 15% of their designation.³⁸⁰ In the Philadelphia school district, 141 schools were labeled as “low-achieving”³⁸¹ of the 218 public district schools. This means that students of nearly 65% of the schools in the city may be eligible for voucher programs.

Furthermore, the PASS Scholarship Program also contains accountability measures like the NCLB and shows a thematic favoritism for privatization.³⁸² Under Section 1713-F of the proposed bill, school districts with at least *one* low-achieving school *must* notify parents of students attending that school or residing within the attendance boundary of the school's designation through a formal letter sent out to all parents.³⁸³ Besides schools notifying parents that their attending school is low-achieving, the Bill does not create any other source of information for families and instead solely relies on the school districts in the state.

Finally, the Bill creates broad acceptance policies for voucher-accepting schools or “participating nonpublic schools.”³⁸⁴ Under Section 1711-F of the proposed bill, a nonpublic school must notify the state treasury of its desire to participate and certify that it: (1) is a non-profit entity exempt from Federal Taxation; (2) complies with non-discrimination policies under 42 U.S.C. 1983; (3) complies with the criminal history of employees state statute requirement; and (4) promises not to charge students with a PASS Scholarship Account more than it would for a

375. See *Poverty Guidelines*, ASPE, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last visited Jan. 23, 2025) (stating that federal poverty guidelines for a family of four are “\$32,150”). \$32,150 times 2.5 is \$80,375.

376. Maddie Hanna, *Who Would Pa. Vouchers Save From Failing Schools? Philly Students Could Be Eligible Regardless of the School They Attend*, PHILA. INQUIRER (June 25, 2024, 5:00AM ET), <https://www.inquirer.com/education/pennsylvania-school-voucher-program-philadelphia-students-20240625.html>.

377. S.B. 795, 2023 G.A. 208th Gen. Assemb., Reg. Sess. (Pa. 2023).

378. *Id.*

379. See *2024-25 SY OSTC List of Low-Achieving Schools*, COMMONWEALTH PA., <https://www.pa.gov/search.html?q=%20list%20of%20low-achieving%20schools.xlsx> (last visited Jan 24, 2025) (click on “2024-25 SY OSTC list of low-achieving schools”).

380. *Id.*

381. *Id.*

382. Compare S.B. 795, 2023 G.A. 208th Gen. Assemb., Reg. Sess. (Pa. 2023), with 20 U.S.C § 6316 (b).

383. S.B. 795, 2023 G.A. 208th Gen. Assemb., Reg. Sess. (Pa. 2023).

384. See *id.*

student without such an account.³⁸⁵ There is no requirement for participating schools to improve their state assessment scores in mathematics or English.³⁸⁶ Additionally, voucher-accepting schools will also be able to supplement tuition costs with additional charges besides the voucher,³⁸⁷ as there is no language preventing such behavior. Finally, the PASS Scholarship Program contains no language requiring established private schools within the school district to participate.³⁸⁸

B. Predicted Effects on Socioeconomic Equity in Philadelphia

Proponents of the program believe that the PASS scholarship Program is what parents want and students need.³⁸⁹ According to the Commonwealth Foundation, a PASS Scholarship Program proponent, the program seeks to provide immediate relief to the poorest children.³⁹⁰ Many advocates also believe that the program will allow parents to pursue a more diverse range of schooling options, like private and charter schools.³⁹¹ Advocates argue that these options will also allow parents to choose schools that align more with their values.³⁹² However, how it is designed currently, the PASS Scholarship Program will not achieve these goals. Instead, it will only stratify socioeconomic classes because it does not (1) mandate participation of all private schools; (2) protect student rights and ensure voucher schools do not engage in discriminatory practices; and (3) help parents act as “market-rational” consumers and seek out strong academic schools.

First, there is no requirement for participation in private schools. Traditional elite private schools in Philadelphia, such as Germantown Friends School, charge \$24,000 to \$46,750 for K-12 per school year.³⁹³ Given their high costs, schools like Germantown Friends are not incentivized to accept vouchers³⁹⁴ and therefore, like the elite private schools in Chile, such schools in Philadelphia may not participate in the voucher program.³⁹⁵ As a result, lower SES families are immediately limited to the middle-tier and lower-tier private schools, as well as public schools when

385. *Id.*

386. *See id.* (containing no requirement that participating schools improve their state assessment scores).

387. *See id.* (containing no prohibiting against additional charges).

388. *See id.* (omitting any such language).

389. *Lifeline (PASS) Scholarship Program*, COMMONWEALTH FOUND., (Aug. 1, 2023), <https://www.commonwealthfoundation.org/research/lifeline-pass-scholarship-program> (explaining that vouchers in Pennsylvania can prevent thousands of children from being assigned to schools that rank low for student achievement).

390. *Id.*

391. Epple, *supra* note 9, at 444.

392. Jason Bedrick, *Pennsylvania’s Governor’s Reversal on School Choice Betrays Voters, Children*, HERITAGE FOUND., (July 11, 2023), <https://www.heritage.org/education/commentary/pennsylvania-governors-reversal-school-choice-betrays-voters-children>.

393. *Tuition & Financial Aid*, GERMANTOWN FRIENDS SCH., <https://www.germantownfriends.org/admissions/tuition-financial-aid> (last visited Jan. 24, 2025).

394. *See e.g.* Sude, *supra* note 364, at 30.

395. *Id.*

exercising school choice.³⁹⁶ Furthermore, because the PASS Scholarship Program does not ban tuition hikes, it would presumably allow them.³⁹⁷ Under the current language of the proposal, participating schools can set the amount they require from parents, even if it means the voucher amount would not cover tuition completely.³⁹⁸ Thus, elite private schools can continue to economically discriminate against lower income families in the city by increasing their prices, even if such families used a voucher program.³⁹⁹

The MPCP provides an interesting solution to this problem. Under its current form, the MPCP requires participating private schools to accept the voucher as full payment for tuition. Pennsylvania legislators may go one step further and adopt language that (1) requires all private schools to accept vouchers as full cost for tuition, and (2) forces traditional private schools to participate in voucher programs. While on the one hand, schools would not be allowed to economically discriminate against lower income families using vouchers, such a proposal may be unlikely because private schools would have to reduce their income from tuition substantially. However, if socioeconomic equity is a priority for Pennsylvania legislators, adding such language to the PASS Scholarship Program would increase access for lower income families and help address a substantial concern.

Second, under the current language of the bill, private schools in Philadelphia can freely discriminate against students they do not want.⁴⁰⁰ While the PASS Scholarship Program requires private schools to comply with the 42 U.S.C. § 1981,⁴⁰¹ it does not offer protection against other forms of discrimination, such as gender-based discrimination, disability discrimination, or sexual orientation discrimination.⁴⁰² As a result, students attending voucher schools could be removed based on how they identify or whether they are disabled.⁴⁰³

Furthermore, the PASS Scholarship program only requires private schools to treat non-voucher-attending students like voucher-attending students, which is insufficient protection for students.⁴⁰⁴ For example, under a plain reading of the text,

396. See Chang-Tai & Urquiola, *supra* note 43, at 1479; see also Klinenberg et. al., *supra* note 186 (hypothesizing that “[s]ome families may confront financial barriers, since tuition at many private schools exceeds the value of [Arizona’s ESAs] leaving ESA-recipient families to cover the difference.”).

397. S.B. 795, 2023 G.A. 208th Gen. Assemb., Reg. Sess. (Pa. 2023); see Rushing, *supra* note 320.

398. See *School Choice FAQs*, SCH. CHOICE WIS., <https://schoolchoicewi.org/school-choice-faqs> (last visited Jan. 24, 2025) for a different approach. Milwaukee schools must accept the voucher as the full payment for tuition. *Id.*

399. See Chang-Tai, *supra* note 43, at 1482.

400. See generally S.B. 795, 2023 Gen. Assemb., Reg. Sess. (Pa. 2024) (establishing the program and limiting anti-discrimination obligations to 42 U.S.C. § 1981).

401. See *id.* § 1711-E(a)(2) (citing stricken language that non-public schools aiming to participate should comply with existing racial discrimination law under 42 U.S.C. § 1981).

402. See *id.* (requiring compliance with 42 U.S.C. § 1981 while not adding program-specific protections for gender, disability, or sexual orientation).

403. See generally Farrell & Marx, *supra* note 323 (arguing that because voucher schools can be religious schools they can exclude students with disabilities).

404. See *id.*; see also Farrell & Marx, *supra* note 323 (arguing that because voucher schools

if a private voucher school discriminated against a non-voucher student who identifies as gay, such schools will be allowed to continue this practice, even if the student had used a voucher. Additionally, despite providing a higher voucher to families with children with special needs, nothing in the Bill prevents accepting schools from discriminating against such students. As a result, parents of children with special needs may be forced out of schools unilaterally by private schools with no recourse. Therefore, to protect student rights and ensure schools do not engage in discriminatory practices, policymakers should consider introducing anti-discrimination measures like formal due process and appellate rights for students who have been discriminated against, in addition to an explicit ban on discriminatory policies based on disability, race, or gender identity, and sexual orientation.

Finally, although it grants access to 55% of Philadelphia's population, the PASS Scholarship Program does not provide more ways of reaching lower income families. It only mandates school districts to inform parents that their current school is "low-achieving."⁴⁰⁵ The PASS Scholarship Program does not supplement the program by requiring schools to notify parents of adequate private schools in the area.⁴⁰⁶ Under such a fixed voucher amount regime, higher SES families will have more access to information to make better market "rational" decisions than lower SES families. Without this information, lower SES families are more likely to rely on their social networks to find schools, which may not be the best way forward in obtaining an academically stronger school.⁴⁰⁷ A more equitable voucher program would create a program to provide families with information about the high-performing voucher schools in their vicinity.

Furthermore, as Chile's fixed voucher program and programs in the United States illustrate, parents often select schools for irrational reasons rather than rational choices for their children.⁴⁰⁸ Just as in Chile, where many middle class families adopted self-segregation practices,⁴⁰⁹ families in Philadelphia may not select their schools based on the performance of a school but through factors like race or religion.⁴¹⁰ Critically, proximity may not be a significant issue for vouchers in Philadelphia because the district covers transportation for nearly all public, charter, and private school students.⁴¹¹ Not worrying about transportation costs can reduce "market irrational" considerations for parents. However, nothing in the PASS

can be religious schools they can exclude students with disabilities).

405. S.B. 795, 2023 Gen. Assemb., Reg. Sess. § 1703-E(b) (Pa. 2024)

406. *Id.*

407. For a discussion on how social networks may limit parents, see Bell, *supra* note 343 (discussing how wealth shapes parents' "choice sets"—the range of schooling options they consider).

408. See Saporito & Lareau *supra* note 349, at 419, 435–36 (finding that parents' school selections are driven by "socially charged" factors like racial composition rather than by objective measures of academic quality).

409. See, e.g., Zancajo, *supra* note 227, at 16–19.

410. See, e.g., Billingham & Hunt, *supra* note 357, at 104 (discussing how race affects choice); James Forman Jr., *The Rise & Fall of School Vouchers: A Story of Religion, Race, and Politics*, 54 UCLA L. REV. 547, 551 (2007).

411. *Transportation Services*, PHILA. SCH. DIST., <https://www.philasd.org/transportation> (last visited Jan. 24, 2025) (saved as PDF with author).

Scholarship program bill indicates how the state must adjust for factors such as race or religion.⁴¹² Adopting a program as detailed in Allende's research in Chile when adopting a voucher scheme in Philadelphia, may help more parents exercise school choice in a more market-rational manner, as they would be more likely to rely on formal sources of information like national assessments.

In short, the PASS Scholarship Program will likely worsen socioeconomic inequity in Philadelphia because it does not provide enough safeguards and resources for the City's students. To prevent such inequity from forming, should a voucher program be adopted, the Pennsylvania legislature should consider substantially enhancing school participation, student protections, and parental information about schools before implementing any such program.

V. CONCLUSION

Based on the accrued evidence of voucher programs from Chile and the United States, it is likely that voucher programs in Pennsylvania will only continue inequity in public education in Philadelphia because it does not (1) contain adequate sources of information, (2) contemplate adequate protections against student discrimination, and (3) require all private schools to participate. Without addressing these concerns, it is unlikely that Pennsylvania will see more usage by low-income communities. Pennsylvania must take adequate steps before implementing vouchers to protect student equity and economic mobility.

412. See generally Farrell & Marx, *supra* note 323 (arguing that because voucher schools can be religious schools they can exclude students with disabilities).