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## NEPC POLICY MEMO

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### MUCH ADO ABOUT POLITICS (AND MUCH IGNORED IN RESEARCH EVIDENCE)

#### ANALYZING THE VOUCHER/DESEGREGATION DISPUTE BETWEEN GOV. JINDAL AND THE US DEPARTMENT OF JUSTICE

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*In this Policy Memo, Kevin Welner explains that Louisiana Gov. Jindal and other opponents either misunderstand or misrepresent the actions of the US Department of Justice, which is attempting to bring Louisiana's voucher program within the scope of existing law and to avoid predictable harm to children that would occur if their racial isolation were increased. Research evidence does not support claims that vouchers advance educational or civil rights. The evidence does, however, establish that racial isolation is harmful to children and to society. Such racial isolation was not acceptable when Freedom of Choice plans were first proposed in the 1960's, and it is no more acceptable today. Whereas the goal 45 years ago was to maintain segregation, the goal today is to forcefully push aside concerns about segregation. Neither goal is consistent with core American values.*

The past several months have seen a well-orchestrated political outcry, led by Louisiana Governor Bobby Jindal, attacking the US Department of Justice for its so-called “motion for further relief” in a long-standing desegregation case. The motion asks Louisiana to collect and report relevant data about how the state’s new voucher policy is impacting racial segregation. Specifically, the Justice Department has asked the federal district court to answer two questions: (1) do desegregation orders apply to Louisiana’s voucher law and thus require the state to seek court approval prior to implementation?, and (2) assuming the answer is yes (which it almost surely is), what needs to be done to ensure compliance?

As explained in this Policy Memo, the Justice Department’s motion is routine, is important, and is in fact consistent with wording in the Louisiana voucher law itself. The Justice Department (DOJ) has a legal obligation to review the state’s voucher program. Louisiana school districts have a history of intentionally harming children of color by, among other things, unlawfully using school-choice programs to avoid desegregation. This history of discriminatory practice led to desegregation orders, and it is the job of the DOJ to monitor Louisiana school practices to insure that those practices do not harm children by increasing their racial isolation. Jindal and other opponents either misunderstand or misrepresent the DOJ’s actions. Racial isolation remains harmful to all children, lowering academic performance and worsening intergroup relations.

The DOJ’s motion is not designed to stop the implementation of the state’s unproven voucher program. It is attempting to bring the voucher program within the scope of existing law and to avoid predictable harm to children that would occur if their racial isolation were increased.

The outcry against the Department of Justice action is not grounded in law, nor is it grounded in research evidence. Instead, notwithstanding the often disingenuous and partisan language used, the core message can be explained in the following straightforward terms: *The Justice Department should set aside any desegregation concerns because there is a more important set of concerns at stake. The voucher law saves students from having to attend ‘failing schools.’ Keeping students in those schools for the sake of racial integration places a tactic (desegregation) above a goal (high-quality educational opportunities).* Implicit in this argument, which is generally wrapped in civil-rights rhetoric, is the doubtful empirical claim that implementation of the voucher policy will meaningfully improve those opportunities.

The first section of this Policy Memo describes the voucher law and is followed by a brief explanation of the applicable federal constitutional law. The next section offers an examination of the rhetoric surrounding the Louisiana dispute, placed in the context of the rhetoric surrounding Freedom of Choice plans of the late-1960s. The final section examines the evidence regarding vouchers and the Louisiana voucher plan in particular.

## The Legal Issues

The state's voucher policy began in New Orleans in 2008 and expanded to the entire state last year, through a law known as [Act 2 \(HB 976\)](#). The law provides that the state's per-pupil funding move to the private school for each eligible student who uses the voucher. Eligibility begins with family income. To qualify, families must have a household income not exceeding 250 percent of the federal poverty guideline. This works out to \$57,625 for a family of four. In Louisiana, the [median household income is \\$44,086](#), so the scope of the policy is pretty encompassing in terms of income eligibility.

Any income-eligible child may be enrolled at the start of school (kindergarten), and this kindergarten eligibility is not tied to any academic outcomes at neighborhood public schools. However, for those who begin in public school and then wish to move to a participating private school and use a voucher, eligibility depends on attendance at a school with a state "report card" grade of C or lower.<sup>1</sup> In Louisiana, the scores that establish a school's grade (cut scores) are set so that more than [56% percent of all schools currently receive a grade of C or lower](#). These 56% are the "failing schools" that Gov. Jindal has been speaking of (setting aside for the moment the "A" and "B" public schools that would otherwise be attended by those students who begin receiving the vouchers in kindergarten).

As noted above, in August of this year the DOJ filed a "[motion for further relief](#);" this motion was filed in a case called [Brumfield v. Dodd](#). In the 1970s the state of Louisiana was ordered by a federal court, in the *Brumfield* case, to stop providing state resources to private schools in ways that create or perpetuate racial segregation. This desegregation order has remained in effect. The August motion asks the court to confirm that the existing order does apply to the voucher law and also asks (assuming applicability) what modification of existing orders should be put in place to address specific compliance issues.

The US is a party to 24 active school desegregation lawsuits in Louisiana. Desegregation lawsuits remain active until the court is shown that the prior segregation has been addressed. This means that the government cannot take actions that undermine the goals of the desegregation order. Louisiana Act 2 itself expressly states that the awarding of vouchers is "subject to any court-ordered desegregation plan in effect for the school system in which the public school is located." (See page 35, lines 14-15, of [the Act](#).) Yet the state inexplicably did not seek approval of the federal courts overseeing the desegregation plans in the districts under court order (apparently 22 such districts/cases). The DOJ's motion notes that the data available

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<sup>1</sup> Such school report cards now exist in multiple states, and the grade cut-scores differ from state to state (they are set using subjective and arguably arbitrary standards). The assignment of A-F grades to schools is part of a package of reforms being aggressively marketed by the "Foundation for Excellence in Education," the advocacy think tank created for former Florida governor Jeb Bush (see Mathis, 2011).

suggest a negative impact on many schools and asks the judge in the *Brumfield* case to stop the issuance of new vouchers until the state is in compliance.

As a practical matter, what the Justice Department is doing is simply asking Louisiana to collect and report relevant data about how the voucher policy is impacting racial segregation. In a [September letter](#), the Justice Department assured US House Speaker John Boehner, “To be clear, we are neither opposing Louisiana’s school voucher program nor seeking to revoke vouchers from any students. When properly run, state and local voucher programs need not conflict with legal requirements to desegregate schools.”

The basic law at issue in this dispute—holding that local and state law must not run afoul of the US Constitution or of enforceable federal law—is as old as *Marbury v. Madison* (1803, pp. 177-178). As illustrated by Act 2’s inclusion of language set forth above, it is also clearly established that federal desegregation orders in particular cannot be subverted by local or state law. The beef here is apparently with the Supremacy Clause of the US Constitution as much as it is with the DOJ.

## The Rhetoric

Louisiana Governor Jindal has pounced on the Justice Department’s motion. As of September 24th, he had already spent a half-million dollars in campaign money to run a spot on television (Emma, 2013b). In [the ad](#) he says, “The federal government in Washington’s out of control; now they want to run our schools. The know-it-alls in Washington think they know better than Louisiana parents.”

Jeb Bush, who like Jindal is seen as a likely candidate for president in 2016, offered this: “This latest move by the Obama administration proves, yet again, that they are more interested in playing politics than worrying about quality education for all Louisiana children. ... Unless the administration drops this lawsuit in its entirety, Louisiana students will be denied equal opportunity” (Emma, 2013a).

House Speaker John Boehner wrote [a letter](#) to the Justice Department, contending:

[The] department’s allegation that the Louisiana Program could impede the desegregation process is extremely troubling and paradoxical in nature. If DOJ is successful in shutting down this invaluable school choice initiative, not only will students across Louisiana be forced to remain in failing schools, but it could have a reverberating effect and cause other states to feel pressured to shut down similar initiatives that provide countless children the opportunity to receive a better education. ... We strongly urge you to consider the effects of this poorly conceived motion on the very children you profess to be protecting.

Subsequently, 30 Republican Senators sent a letter to the DOJ, criticizing the motion: “It seems to us that a program that rescues needy children from failing schools, gives families a chance to break the cycle of poverty and violence, and saves taxpayers millions of dollars each year is one that should be lauded by the federal government. Instead, the Justice Department is working to sabotage it” (Alpert, 2013).

Louisiana Senator David Vitter added (Alpert, 2013),

The Justice Department's lawsuit is an outrageous attack on Louisiana parents and students. Instead of allowing parents to make one of their most important choices—where to send their kids to school—the federal government is stepping in, and trapping students in failing schools to meet quotas. Education needs to be about giving all of our students the best possible opportunity, not about reaching federal quotas determined by some bureaucrat in Washington.

## The History of Freedom of Choice Policies and Segregation

This is not the first time that Southern politicians have railed against a desegregation-minded Justice Department's interference with school choice plans. (Quite a few Northern politicians have used that tactic over the years as well.) In the 1960s, numerous Southern states put in place so-called Freedom of Choice plans to replace the dual (*de jure* segregated) systems of the type declared unconstitutional in the Supreme Court's *Brown* decision. While ostensibly even-handed, such choice plans effectively continued to create racially segregated schools. Freedom of Choice policies were rejected in the 1968 Supreme Court case *Green v. County School Board of New Kent County*.

Yet consider the following reactions to the Supreme Court and the DOJ:

- Mississippi Governor John Bell Williams: “[T]he children of Mississippi, white and black, have been denied the right to attend the school of their choice by an arbitrary edict of the United States Supreme Court. ... [O]ur fight has been for freedom of choice, and that fight will continue on and on until we have gained the ultimate victory.” (Bolton, 2005, p. 170.)
- U.S. Rep. Charles Griffin (Mississippi): “freedom of choice is the only way to save quality public education. Freedom of choice—what can be more American? Or more democratic?” (Bolton, 2005, p. 170.)
- Alabama Governor [George Wallace](#) (running for president at the time): “Isn’t it silly and ludicrous and asinine for a group of pin-head socialists theorists telling you that they are going to make you send your child out of a neighborhood school to satisfy the whim of some social engineer and say to parents, ‘You don’t have anything to do with it.’ ... It is freedom-of-choice only if you choose like they think you ought to choose.”

As the Supreme Court in the *Green* case pointed out—and as the DOJ has stressed these past several months—there is nothing inherently segregatory in school choice as a policy tool that could be used in broad set of policies. But a serious attempt to pursue desegregation—or simply to avoid segregation—would begin with a look at the evidence of how a given policy is actually playing out. The above-quoted politicians wanted to divert attention from that evidence 45 years ago, and the politicians currently attacking the DOJ are doing so now. To be clear: the two are not equal: Whereas the goal 45 years ago was to maintain segregation, the goal today is to aggressively push aside concerns about segregation. But the echoes of past school choice rhetoric are nonetheless troubling.

## **Voucher Research and Louisiana Vouchers: Is a Meaningful Benefit Really Being Denied?**

### *Voucher Research*

Even though they have vociferously contended that the DOJ is attempting to deny voucher recipients equal educational opportunity, Governor Jindal and his allies have apparently never said that his voucher program has produced any positive academic results. The state-level plan is too new, and there appear to be no studies examining the academic impact of the New Orleans plan that dates back about five years. There does exist, however, an extensive body of research concerning vouchers in other states and districts, and nobody could read that research and reasonably conclude that vouchers will deliver high achievement in Louisiana.<sup>2</sup>

The approach generally taken with voucher research is to compare the test scores of students receiving vouchers to the scores of comparable students who remained at their assigned public schools. As is the case in Louisiana, these other voucher programs were usually directed toward

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<sup>2</sup> The research has shown mixed results. The most positive results come from a prolific group of voucher advocates and researchers headed up initially by Paul Peterson and later by Patrick Wolf (see Chingos and Peterson, 2012; Greene and Winters, 2006; Jacob and Wolf, 2012; Mayer, et al., 2002; Witte, et al., 2009; Witte, et al., 2012; Wolf, 2011; Wolf, et al., 2009). Their research has generally used solid designs that, setting aside data limitations, have allowed them to make causal claims about the particular programs they have studied. While these research teams often turn up no positive effects of vouchers, they have also teased out occasional evidence of benefits, particularly for African American students. But their research has also been plagued by two problems: (1) data limitations, and (2) re-analyses and reviews of their work that almost invariably suggest more negative results than those set forth by the Peterson/Wolf teams (see Belfield, 2011; Carnoy, 2009; Cobb, 2009; Goldrick-Rab, 2012; Krueger and Zhu, 2004; Metcalf, 1998; Rouse, 1998). Moreover, outside of the Peterson/Wolf research teams, most studies have shown no significant academic effects of vouchers. One likely reason for these discouraging results is that the private schools that participate in voucher programs studied in the past tend to have resource levels very similar to the public schools that the students would otherwise attend. Highly resourced independent schools like Sidwell Friends, for example, do not have a business reason to participate, since the voucher amounts fall well short of their tuition and since they are generally not under-enrolled. Instead, the main participants are Catholic schools (with resource levels similar to public schools) and protestant schools (which often have resource levels below public schools). (See Baker, 2009.)

low-income communities and toward students attending public schools with poor outcomes. Thus, the research attempted to discover whether the private (voucher) schools performed better than the low-performing public schools that the students would otherwise attend. In theory, it should not be difficult for these private schools to perform meaningfully better than the public schools specifically identified as “failing.” However, even the most dedicated pro-voucher researchers have been unable to find clear evidence of superior performance by students attending private schools as part of a voucher program.

Other research looks at the effects of school choice on segregation. In this case, the patterns that emerge are clear: unconstrained choice tends to result in parental decisions that increase segregation, adding a new layer of segregation on top of the segregation due to housing patterns (see Mickelson et al., 2012). This is seen in public school choice and with charter schools.

It should be noted, however, that voucher policies have generally operated in areas of hyper-segregation, meaning that the choices among voucher recipients cannot generally add much racial segregation. This ceiling effect means that while skimming can take place based on factors such as parental efficacy and parental education, it is unlikely to drive substantial increases in school-level racial segregation. Yet the communities in Louisiana subject to desegregation orders may well be different, so there is good reason to be concerned about possible increased segregation. And, Governor Jindal’s and Governor Bush’s arguments notwithstanding, racial segregation has been strongly linked to decreases in academic achievement and in other key schooling outcomes (see Linn & Welner, 2007).

In sum, the research evidence offers little reason to expect any meaningful academic advantage from vouchers. The evidence does, however, offer reason to expect that the vouchers, as applied to the broad population encompassed by Louisiana’s Act 2, will result in greater segregation (see Orfield and Frankenberg, 2013). No reasonable reading of the research findings suggests any benefit that would justify the civil rights rhetoric of Governor Jindal and his allies.

#### *Louisiana’s Voucher Approach*

Moreover, Louisiana’s voucher program seems to be unusually deregulated and plagued by problematic private schools. One prominent example was provided by the “New Living Word” school, which the state had approved for participation in the program. A local newspaper pointed out that the school’s instructional approach mainly involved having students watch dvds. After first attempting a bit of a cover-up, the state eventually decided to exclude the New Living Word school from the program. The state justified its action based on financial improprieties rather than the school’s dvd approach to education (Editorial Board, 2013; see also Michel, 2012).

The state’s general approach to approving voucher schools has been hands-off as regards issues of academic quality. It, for example, signed off on allowing voucher-receiving schools to teach an anti-evolution, creationist science curriculum, reasoning that accountability will be felt

through the students possibly doing poorly on state science exams (see Associated Press, 2012). Such curricular issues have continued to embarrass the program, however. Pan (2012) points to troubling items included in popular textbooks used in some voucher-receiving schools:

- “God used the Trail of Tears to bring many Indians to Christ.”
- “[The Ku Klux] Klan in some areas of the country tried to be a means of reform, fighting the decline in morality and using the symbol of the cross. Klan targets were bootleggers, wife-beaters, and immoral movies. In some communities it achieved a certain respectability as it worked with politicians.”
- “A few slave holders were undeniably cruel. Examples of slaves beaten to death were not common, neither were they unknown. The majority of slave holders treated their slaves well.”

The laissez-faire attitude from authorities in Louisiana regarding curriculum is notable and potentially significant because earlier voucher programs studied generally relied on private schools that, while religious, adhered to an academic curriculum much more in keeping to generally accepted ideas of knowledge and critical thought. Given Louisiana’s hands-off approach to curricular quality it is likely that those earlier research findings cannot be meaningfully applied to Louisiana’s voucher schools.

## Conclusion

The Justice Department’s motion for further relief in the *Brumfield* desegregation case is best understood as the DOJ applying routine safeguards to prevent harmful segregation. The heated attacks and political rhetoric from politicians ignores the appalling past harms of Jim Crow and Freedom of Choice policies. This is not inconsequential or irrelevant history. America’s schools are more segregated now than they were in the late 1960s. Vouchers do not advance a civil rights agenda; they leave in place a system with a devastating opportunity gap (see Carter and Welner, 2013). A serious policy designed to address what Governor Jindal calls “failing” public schools would attend to the overwhelming resource needs in those schools. No level of attacks on the Department of Justice will benefit a public school system in great need of the state’s assistance. Further, no policy maker should seek to eradicate the rights of children to full and equal educational opportunity and inclusion. We have all heard the argument before that racial isolation is acceptable and normal. They were wrong then, and they are still wrong today.

In sum the DOJ has an obligation to ensure that the voucher program will not violate existing court orders. In doing so, the DOJ will hopefully prevent Louisiana from carrying out policies that intensify racial isolation across the state and that bring well-known academic and social harms to children.



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