

IN THE  
SUPREME COURT OF FLORIDA

---

Case Nos. SC04-2323/SC04-2324/SC04-2325

---

JOHN ELLIS “JEB” BUSH, *et al.*,  
CHARLES J. CRIST, JR., and  
BRENDA McSHANE, *et al.*,

Appellants,

v.

RUTH D. HOLMES, *et al.*,

Appellees.

---

On Direct Appeal from the First District Court of Appeal

---

BRIEF *AMICUS CURIAE* OF THE NATIONAL PTA, THE NATIONAL  
SCHOOL BOARDS ASSOCIATION, THE AMERICAN ASSOCIATION OF  
SCHOOL ADMINISTRATORS, THE NATIONAL ASSOCIATION OF  
BILINGUAL EDUCATORS, THE UNITED CHURCH OF CHRIST JUSTICE  
AND WITNESS MINISTRIES, AND THE INTERNATIONAL READING  
ASSOCIATION IN SUPPORT OF APPELLEES

---

BILL MCBRIDE  
Florida Bar No. 0211508  
601 Bayshore Boulevard  
Suite 700  
Tampa, Florida 33606  
(813) 253-2020

Counsel for *Amici Curiae*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE IDENTITIES AND INTERESTS OF AMICL.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT .....	1
ARGUMENT .....	2
A.    RESEARCH DOES NOT SHOW THAT VOUCHER PROGRAMS IMPROVE THE ACADEMIC PERFORMANCE OF THE STUDENTS WHO PARTICIPATE IN THE PROGRAMS .....	2
1.    Publicly-funded Voucher Programs.....	4
2.    Privately-funded Voucher Programs.....	8
B.    RESEARCH DOES NOT SUPPORT THE CONTENTION THAT VOUCHER PROGRAMS IMPROVE THE ACADEMIC PERFORMANCE OF STUDENTS WHO REMAIN IN THE PUBLIC SCHOOLS .....	14
CONCLUSION.....	20
CERTIFICATE OF SERVICE.....	22
CERTIFICATE OF COMPLIANCE .....	24

## TABLE OF AUTHORITIES

### CONSTITUTIONS & STATUTES

Fla. Const. art. I, § 3 .....	1, 20
Fla. Const. art IX, § 1.....	1, 20
Consolidated Appropriations Act, 2004, Pub. L. No. 108-199 (2004).....	9

### PUBLICATIONS

Clive R. Belfield and Henry M. Levin, <i>The effects of Competition on Educational Outcomes: A Review of US Evidence</i> (2002) .....	18
Gregory Camilli and Katrina Bulkley, <i>Critique of “An Evaluation of the Florida A-Plus Accountability and School Choice Program”</i> (Educ. Pol’y Analysis Archives, Vol. 9, No. 7, 2001).....	16, 17
Michael Carnoy, Economic Policy Institute, <i>School Vouchers: Examining the Evidence</i> (2001) .....	16
S. V. Date, <i>Voucher Oversight Remains Minimal</i> , Palm Beach Post, July 1, 2004 .....	8
S. V. Date, <i>Education Agency Proposes Weaker Voucher Oversight</i> , Palm Beach Post, Feb. 10, 2005 .....	8
Gregory Elacqua, <i>School Choice in Chile: An Analysis of Parental Preferences and Search Behavior</i> (2004) .....	18
Brian P. Gill <i>et al.</i> , RAND, <i>Rhetoric Versus Reality</i> (2001) .....	3, 7, 10, 13, 19
William T. Gormley Jr. <i>et al.</i> , <i>The Effects of Universal Pre-K on Cognitive Development</i> (2004).....	19
Jay P. Greene and Paul E. Peterson, <i>Methodological Issues in Evaluating Research</i> (1996).....	12
Jay P. Greene <i>et al.</i> , <i>Competition Passes the Test</i> , Educ. Next, Summer 2004, at 66.....	14, 15

William G. Howell and Paul E. Peterson, <i>The Education Gap: Vouchers and Urban Schools</i> (2002) .....	10
Christopher Jenson, <i>The Effects of Private School Competition on Student Achievement</i> (1999) .....	18
Alan B. Krueger and Pei Zhu, <i>Another Look at the New York City School Voucher Experiment</i> , 47 <i>Am. Behav. Scientist</i> 658 (2004).....	11, 12, 13
Haggai Kupermintz, <i>The Effects of Vouchers on School Improvement: Another Look at the Florida Data</i> (Educ. Pol’y Analysis Archives, Vol. 9, No. 8, 2001).....	17
Patricia A. Lauer <i>et al.</i> , <i>The Effectiveness of Out-of-School-Time Strategies in Assisting Low-Achieving Students in Reading and Mathematics: A Research Synthesis</i> (2003).....	20
Kim K. Metcalf <i>et al.</i> , <i>Evaluation of the Cleveland Scholarship and Tutoring Program: Summary Report 1998-2002 22-23</i> (2003).....	5
Alex Molnar, Keystone Research Center, <i>Smaller Classes Not Vouchers Increase Student Achievement</i> (1998) .....	19
Dan Murphy <i>et al.</i> , Am. Fed’n of Tchrs., <i>The Cleveland Voucher Program: Who Chooses? Who Gets Chosen? Who Pays?</i> (1997).....	20
David E. Myers and Daniel P. Mayer, Mathematica Policy Research, Inc., <i>Comments on “Another Look at the New York City Voucher Experiment”</i> (2003) .....	13
People for the American Way Foundation, <i>Punishing Success: The Governor’s Proposed Education Budget and the SAGE and Voucher Program</i> (2001) .....	19
Paul E. Peterson, <i>Monopoly and Competition in American Education</i> , in <i>Choice and Control in American Education</i> 47 (William H. Clune and John F. Witte, eds., 1990).....	4

Paul E. Peterson <i>et al.</i> , <i>An Evaluation of the Cleveland Voucher Program After Two Years</i> (1999) .....	5
Leslie Postal, <i>State Takes Step to Fix F Schools</i> , Orlando Sentinel, Feb. 16, 2005, at A1.....	18
Richard Rothstein, <i>Flaws in Voucher Findings</i> , N.Y. Times, May 9, 2001 .....	17
Cecilia E. Rouse, <i>Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program</i> , 113 Q. J. of Econ. 553 (1998) .....	7
U.S. Gen. Accounting Office, GAO-01-914, <i>School Vouchers: Publicly Funded Programs in Cleveland and Milwaukee</i> (2001) .....	3, 5, 6, 20
U.S. Gen. Accounting Office, GAO-02-752, <i>School Vouchers: Characteristics of Privately Funded Programs</i> (2002).....	<i>passim</i>
John F. Witte <i>et al.</i> , <i>Fifth Year Report: Milwaukee Parental Choice Program</i> (1995) .....	6
John F. Witte, <i>The Effectiveness of School Choice in Milwaukee: A Secondary Analysis of Data from the Program's Evaluation</i> (1996) .....	6

### MISCELLANEOUS

Letter from Gallagher, CFO, State of Florida to Handy, Chairman, Florida Board of Education of 12/11/03.....	7
Letter to the Editor, Helen F. Ladd, <i>Debating Florida's 'Voucher Effect,'</i> Educ. Week, Mar. 14, 2001 .....	17
Letter to the Editor, Richard Allington, <i>A 'Flunking Effect'?</i> , Educ. Week, Mar. 14, 2001 .....	17
Press Release, Mathematica Policy Research, Inc., <i>Voucher Claims of Success are Premature in New York City</i> (Sept. 15, 2000) .....	13
2001-03 Wisconsin State Budget: Summary of Governor's Budget Recommendations, Legislative Fiscal Bureau, 537 (March, 2001).....	19

## **STATEMENT OF THE IDENTITIES AND INTERESTS OF AMICI**

*Amici* the National PTA, the National School Boards Association, the American Association of School Administrators, the National Association of Bilingual Educators, the United Church of Christ Justice and Witness Ministries, and the International Reading Association represent millions of parents, educators, and advocates for excellence in public schools. *Amici* are dedicated to supporting and strengthening public education in the United States, and they oppose policies such as private-school voucher programs that drain urgently needed resources from the public schools.<sup>1</sup>

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

*Amici* recognize that the issue before this Court is not whether the Florida Opportunity Scholarship Program (“OSP”) has merit from an educational point of view, but whether the Program – whatever its educational merit – passes muster under Article I, § 3 and Article IX, § 1 of the Florida Constitution. That said, however, *amici* are aware that certain of defendants’ supporting *amici* seek to color the Court’s consideration of these constitutional issues by presenting a biased and inaccurate assessment of the research that has been done with regard to voucher programs. This research, defendants’ *amici* contend, shows that voucher programs

---

<sup>1</sup> More information about each of the *amici* is found at paragraphs 2 – 7 of the Unopposed Motion of National PTA, *et al.*, For Leave to File a Brief *Amicus Curiae* in Support of Appellees, filed with the Court on March 7, 2005.

(1) improve the academic performance of the students that participate in the programs, and (2) improve the academic performance of the students who remain in the public schools. *See* Brief of the Black Alliance for Educational Options, *et al.* (“BAEO Brief”); Brief *Amicus Curiae* of Independent Voices for Better Education, *et al.* (“Independent Voices Brief”).

In fact, the research does not support either of these contentions, and *amici* submit this brief in order to set the record straight. In Part A, we rebut the contention of defendants’ *amici* that voucher programs improve the academic performance of the students who participate in the programs. In Part B, we turn to the contention that voucher programs improve the academic performance of students who remain in the public schools. We demonstrate that there is likewise no merit to this contention, and explain briefly how the diversion of scarce resources from public to private schools can have precisely the opposite result.

## **ARGUMENT**

### **A. Research Does Not Show that Voucher Programs Improve the Academic Performance of Students Who Participate in the Programs**

Defendants’ *amici* contend that a “body of high-quality research . . . unwaveringly supports the existence of benefits from vouchers” for students who receive them. BAEO Brief at 7. This contention is fatally flawed in two respects.

To begin with, the “body of high-quality research” that is cited to support this contention is highly selective and excludes certain key studies that are to the

contrary. For example, defendants' *amici* ignore two comprehensive reports on vouchers from the United States General Accounting Office and a meta-study conducted by RAND, each of which found little or no difference in the academic performance of voucher students and public school students. See U.S. Gen. Accounting Office, GAO-01-914, *School Vouchers: Publicly Funded Programs in Cleveland and Milwaukee* (2001) ("GAO 2001"); U.S. Gen. Accounting Office, GAO-02-752, *School Vouchers: Characteristics of Privately Funded Programs* (2002) ("GAO 2002"); Brian P. Gill *et al.*, RAND, *Rhetoric Versus Reality* 90-91 (2001). They also ignore the official evaluations of the two major publicly-funded voucher programs outside of Florida – those in Milwaukee, Wisconsin, and Cleveland, Ohio – both of which found no differences between the academic performance of voucher students and their public school counterparts.

The selective studies on which defendants' *amici* do rely for their contention as to the academic performance of voucher students hardly can be described as "high-quality research." These studies have for the most part been conducted by Paul Peterson, Jay Greene, and William Howell, who are acknowledged advocates of voucher programs. Indeed, Peterson once described himself and his pro-voucher research colleagues as "a small band of Jedi attackers, using their intellectual powers to fight the unified Death Star forces led by Darth Vader, whose intellectual capacity has been corrupted by the urge for complete

hegemony.” Paul E. Peterson, *Monopoly and Competition in American Education*, in *Choice and Control in American Education* 47, 73 (William H. Clune and John F. Witte, eds., 1990). Perhaps because of this pro-voucher bias, Peterson *et al.* at best often overstate – and at worst often misstate – their research findings.

As we demonstrate below, the available research – when objectively and dispassionately assessed – does not support the contention that voucher programs improve the academic performance of students who participate in them. This is the case with regard to both publicly-funded voucher programs (which we discuss in Section A(1)) and privately-funded programs (which we discuss in Section A(2)).

#### 1. Publicly-Funded Voucher Programs

The voucher programs in Cleveland and Milwaukee – the nation’s two most prominent publicly-funded voucher programs – provide the most apt comparisons for Florida’s OSP. Although both Ohio and Wisconsin commissioned independent researchers to conduct official evaluations of their programs by tracking the academic performance of voucher students over several years, defendants’ *amici* do not even reference those evaluations, despite their claim that available research “decisively” and “consistently” supports the educational benefits of vouchers. BAO Brief at 5. The reason for excluding these official evaluations, of course, is that they belie the claim of defendants’ *amici*. As the GAO concluded, “[t]he contracted evaluations of voucher students’ academic achievement . . . found little

or no difference in voucher and public school students' performance[.]” GAO 2001, *supra*, at 4 (summarizing results in Ohio and Wisconsin).

a. In order to officially evaluate the Cleveland voucher program, Ohio retained a team of Indiana University researchers led by Kim Metcalf. This team tracked the voucher program from its inception in the spring of 1996, and, in 2003, issued its final report on a four-year longitudinal study of voucher participants. That report found no conclusive evidence of improved academic performance by voucher recipients relative to their public school counterparts. Kim K. Metcalf *et al.*, *Evaluation of the Cleveland Scholarship and Tutoring Program: Summary Report 1998-2002 22-23* (2003). Despite some indication of a slight advantage for voucher students in language two years into the program, the final results did not show a significant impact on achievement in any area. *Id.* at 9.

Defendants' *amici* cite just one study from Cleveland: the 1999 study by Paul Peterson which found improved academic performance by voucher students after the program had been in operation for two years. Independent Voices Brief at 18; Paul Peterson *et al.*, *An Evaluation of the Cleveland Voucher Program After Two Years* (1999). This study, however, lacks credibility. In fact, the GAO excluded Peterson's Cleveland studies from its assessment of publicly-funded voucher programs because the studies did not meet the GAO criteria for reliability. GAO 2001, *supra*, at 28. The GAO discounted the positive voucher effects found

by Peterson, finding that he “did not control for any possible reasons for voucher students’ achievement other than the voucher program.” *Id.* at 43.

b. The results of the official five-year evaluation of the Milwaukee voucher program are similar to those for the official evaluation in Cleveland. The Milwaukee evaluation, which was conducted by a team of University of Wisconsin researchers led by John Witte, found no consistent evidence that the voucher program had affected student achievement in any way. John F. Witte *et al.*, *Fifth Year Report: Milwaukee Parental Choice Program* 9 (1995).<sup>2</sup>

Not surprisingly, a subsequent study by Peterson and Greene did find improvement in voucher students’ test scores in reading and math. *See* BAEO Brief at 6. However, their choice of a study design that “assumed a change in voucher students’ achievement would be more favorable than would a change in the comparison group’s,” and their use for some results of “confidence levels that were less stringent than conventional standards,” caused the GAO to disregard these findings. GAO 2001, *supra*, at 30; *see also* John F. Witte, *The Effectiveness of School Choice in Milwaukee: A Secondary Analysis of Data from the Program’s Evaluation* (1996) (criticizing work of Greene, Peterson, and Du). In another Milwaukee study, economist Cecilia Rouse found no positive voucher effect on

---

<sup>2</sup> Perhaps because of this finding, Wisconsin ceased funding official evaluations of the Milwaukee voucher program in 1995 – the year that the program was expanded to include sectarian private schools. GAO 2001, *supra*, at 6, 32.

reading scores, and a positive, but modest, effect on math scores. Cecilia E. Rouse, *Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program*, 113 Q. J. of Econ. 553 (1998). Rouse cautioned, however, that her results should not be viewed in isolation, but as just one piece of evidence in a larger analysis of the actual impact of vouchers on student achievement. *See id.* at 594; Gill *et al.*, *supra*, at 83 (Rouse results of minimal relevance to the general debate).

In sum, the evidence from the Cleveland and Milwaukee voucher programs – including the official evaluations commissioned by the states themselves – do not support the contention of the defendants’ *amici* that voucher students have better academic outcomes than their public school counterparts.

Florida has declined to officially evaluate the results of the OSP, despite the fact that the State’s Chief Financial Officer has urged the State Board of Education to put into effect processes that ensure the accountability of Florida’s other school voucher programs.<sup>3</sup> Ignoring the abuses that have plagued other Florida school voucher programs, Governor Bush and his pro-voucher allies have declared that

---

<sup>3</sup> In a recent letter to Florida Board of Education Chairman Philip Handy, Florida Chief Financial Officer Tom Gallagher cited the lack of leadership and management of school voucher programs that “has created a lack of accountability and has put the success of these vital school choice programs at risk.” *See* Letter from Gallagher to Handy of 12/11/03, at 1 (attaching two reports concerning school voucher programs).

parental interest in the success of their children’s education supplies the necessary accountability – and that voucher students are learning at “unprecedented levels,” despite the fact that the OSP does not even require participating private schools to publish the standardized test results of voucher students. *See* S.V. Date, *Voucher Oversight Remains Minimal*, Palm Beach Post, July 1, 2004; S.V. Date, *Education Agency Proposes Weaker Voucher Oversight*, Palm Beach Post, Feb. 10, 2005. Accordingly, defendants’ *amici* can cite no data from Florida to support their claim that voucher students outperform public school students.

## 2. Privately-Funded Voucher Programs

In a further effort to support their contention that voucher programs improve the academic performance of students who participate in the programs, defendants’ *amici* also cite studies conducted in connection with several privately-funded voucher programs – specifically, programs in Dayton, Ohio; Washington, D.C.; Charlotte, North Carolina; and New York City. BAEO Brief at 6-7. But the reliance of defendants’ *amici* on these studies is wholly misplaced.

a. With regard to Dayton, the GAO report on privately-funded voucher programs concluded that neither voucher students as a whole nor any demographic subgroup showed “significant improvements in reading or math test scores.” GAO 2002, *supra*, at 3. Notwithstanding that conclusion, the BAEO brief claims “statistically significant” achievement gains in Dayton for the subgroup of African-

American students in combined math and reading test scores. BAEO Brief at 6, n.6. What the BAEO Brief fails to mention, however, is that the authors of Dayton study it cites – Professors Howell and Peterson – were able to report statistically significant results only by using a measure of “significance” below the standard 95% confidence level. GAO 2002, *supra*, at 17.<sup>4</sup> At no level of significance, moreover – watered-down or otherwise – does the Dayton study claim test score improvements for voucher students outside of the African-American subgroup.

Defendants’ *amici* also cite in support of their position a study by Peterson and Howell of a privately-funded Washington, D.C. voucher program.<sup>5</sup> Defendants’ *amici* do more than simply tweak statistical standards of significance to find positive voucher results in Washington; they mislead the Court by reporting only on the first two years of the study and ignoring the complete reversal of the study’s results in its third year. *See* GAO 2002, *supra*, at 3 (“The Washington, D.C. [ ] study demonstrated positive effects for African American students in the second year of the study, *but these disappeared in the third and final year of the study.*”) (emphasis added). BAEO Brief at 6, n.7.

---

<sup>4</sup> A 95 percent confidence level indicates a 95 percent certainty that the results would not occur by chance alone. *See* GAO 2002, *supra*, at 2.

<sup>5</sup> Washington now has a publicly-funded voucher program. *See* Consolidated Appropriations Act, 2004, Pub. L. No. 108-199 (2004) (federal funding for the D.C. School Choice Incentive Act of 2003).

Even if the Dayton and Washington, D.C., studies were persuasive on their own terms, the significance of those results – along with results from a study of the small privately-funded Charlotte voucher program cited by defendants’ *amici*, BAEO Brief at 6 – are inherently limited by the fact that the researchers did not make their data available for re-analysis by disinterested researchers. As the GAO report put it: “Confidence in the conclusions drawn from these studies will be enhanced when other researchers reanalyze these data and examine the assumptions underlying the original research.” GAO 2002, *supra*, at 18; *see also* Gill *et al.*, *supra*, at 75 (re-analysis essential to establish reliable findings). Even Peterson and Howell – the pro-voucher researchers who conducted the Dayton and Washington studies – acknowledge their limitations. Because neither of the studies found significant gains for all voucher recipients, Peterson and Howell caution against generalizing to a “large-scale voucher program involving all children in a large urban school system.” William G. Howell and Paul E. Peterson, *The Education Gap: Vouchers and Urban Schools* 166 (2002).

b. Perhaps the reluctance of Peterson, Howell, and other pro-voucher researchers to regularly allow re-analysis of their data stems from the experience with the other privately-funded voucher program cited by defendants’ *amici* – *i.e.*, the program in New York City. BAEO Brief at 7. The study, conducted by Peterson and Howell in partnership with Mathematica Policy Research, Inc.

(“MPR”), was admired as an ambitious, well-designed random assignment experiment. It showed no significant gains in test scores for voucher students as compared to students in the control group. *See* GAO 2002, *supra*, at 17 (“when the New York study sample is considered as a whole—pooling together African Americans, Hispanics, and white students—there is no significant difference in achievement gains between voucher users and nonusers”). Peterson and his team did not contend otherwise, but they did draw significant media attention with their claim of gains for the subgroup of African-American voucher students. This time, however, independent researchers had access to the data, and their re-analysis convinced even MPR – Peterson’s partner in the study – that there were problems with the positive results reported for African-American students.

The independent re-analysis undertaken by Princeton economists Alan Krueger and Pei Zhu found two problems with the New York study, which, taken together, undermine the conclusion reached by Peterson and Howell regarding the improved academic performance of African-American voucher students. *See* Alan B. Krueger and Pei Zhu, *Another Look at the New York City School Voucher Experiment*, 47 *Am. Behav. Scientist* 658 (2004). The first involved the decision to exclude from the data the incoming kindergarten cohort and other children for whom the researchers did not have baseline testing scores. *Id.* As Krueger and Zhu explained, in a random assignment study such as that in New York, the

potency of the treatment effect – here, receipt of a voucher – did not need to be conditioned on baseline information. *Id.* at 660.<sup>6</sup> When the students without baseline testing information were included in the re-analysis, the positive results for the African-American students dramatically weakened. *Id.*

The second problem concerned inaccurate and misleading coding of the voucher students' race and ethnicity. Krueger and Zhu found that Peterson and Howell had ignored OMB Guidelines by not asking their subjects separate questions for race and ethnicity. *Id.* at 685. Accordingly, their findings were based on an extremely problematic definition of "African-American."<sup>7</sup> Redefining the African-American subgroup to include students who likely would have been designated as African American under the OMB Guidelines substantially lessened

---

<sup>6</sup> Peterson and Greene relied on the same principle when reviewing the Milwaukee data. Jay P. Greene and Paul E. Peterson, *Methodological Issues in Evaluating Research* 5 (1996) ("Analysis of randomized experimental data does not require controls for background characteristics or test scores.").

<sup>7</sup> Particularly given New York's demographics – the study included nearly half as many students identified as "Dominican" as students identified as "Black /African American (non-Hispanic)" – the fact that students were not allowed to identify as both African-American and Dominican had a major impact on the results. Krueger and Zhu, *supra*, at 685-686. When given a separate opportunity to indicate their race, 28 percent of Dominican respondents to the 1990 Census self-identified as Black/African-American. *Id.* at 686. In addition, Peterson's team defined African-American students as those with African-American mothers, regardless of the father's race, but did not apply the same practice to children of African-American fathers – despite the fact that, in the 1990 Census, race was reported as African-American for 85% of children with a Hispanic mother and African-American father. *Id.*

the positive results for African American voucher students reported by Peterson and Howell. *Id.* at 686. And when the effects of wrongfully excluding students without baseline scores and inaccurately defining race were combined, the alleged gains by African-American voucher students disappeared: “the provision of vouchers in New York City probably had no more than a trivial effect on the average test performance of participating Black students.” *Id.* at 688.

Although defendants’ *amici* attempt to portray the work of Krueger and Zhu as the lone outlier in a set of studies that allegedly link vouchers to improved academic performance for African American students in New York City, BAEO Brief at 6-7, that is not the case. The research partner of Peterson and Howell, MPR, has distanced itself from their conclusions on this point. *See* Press Release, Mathematica Policy Research, Inc., *Voucher Claims of Success are Premature in New York City* (Sept. 15, 2000); *see also* David E. Myers and Daniel P. Mayer, Mathematica Policy Research, Inc., *Comments on “Another Look at the New York City Voucher Experiment”* (2003) (parting ways with Peterson and Howell, and acknowledging that the Krueger / Zhu study “suggests that one must remain cautious when interpreting the findings for African Americans”). And the GAO made the following observation based on the Krueger and Zhu re-analysis: “Their findings raise doubts about the size and significance of earlier findings of a positive effect of vouchers on test scores for African-American students.” GAO

2002, *supra*, at 16, n.11. *See also* Gill *et al.*, *supra*, at 78 (results for African American students in the New York City study ambiguous when disaggregated by grade level).

**B. Research Does Not Support the Contention that Voucher Programs Improve the Academic Performance of Students who Remain in the Public Schools**

1. The contention of defendants' *amici* that voucher programs improve the academic performance of students who remain in the public schools, BAEO Brief at 8-15; Independent Voices Brief at 17-19, is bottomed almost entirely on the claim of voucher proponent Jay Greene that the "competition effect" of vouchers on public schools accounts for what Greene characterizes as the dramatic increases in test scores among perennially F-rated Florida schools. Greene's claim does not survive scrutiny.

The Florida A+ Program, Greene posits, presents a unique opportunity to test the theory that public schools respond to competition from private schools by improving the quality of instruction. Jay P. Greene *et al.*, *Competition Passes the Test*, *Educ. Next*, Summer 2004, at 66. Under the A+ Program, public schools face the threat of losing students to private schools only if they are deemed chronically failing by receiving two grades of "F" in any four-year period. *Id.* Public schools can take themselves off the failing list by earning higher grades in future years – in

short, by improving performance on the Florida Comprehensive Assessment Test (“FCAT”).

Greene constructed his study by sorting Florida public schools into five categories: schools eligible for vouchers, schools threatened by vouchers, “always-D” schools, “sometimes-D” schools, and formerly-threatened schools. *Id.* at 67-68. He found that schools eligible for vouchers, or imminently faced with the threat of vouchers, showed impressive gains on the FCAT – far greater than the sometimes-D schools stuck in the limbo of not-quite-failing and the schools that had come off the failing list. *Id.* at 68-71. In stating – conclusively – that “the gains witnessed among low-performing schools are the result of the competitive pressures introduced by school vouchers . . . [and] reflect genuine improvements in learning,” Greene dismissed such potentially significant causes of the observed effect as regression to the mean, the stigma effect, the effect of non-voucher interventions undertaken at failing schools, and the possibility that the public schools in his sample had not in fact improved the quality of instruction despite observed increases in FCAT scores. *Id.* at 71.

Greene’s theory has come under attack from the research community. Rutgers researchers Gregory Camilli and Katrina Bulkley wrote a particularly scathing analysis of Greene’s initial results, cataloguing serious flaws in his study design and conclusions. As Camilli and Bulkley explained, Greene vastly

overstates the competition effect because he computes aggregate school gains rather than individual gains, fails to account for an average trend in score growth that has nothing to do with the competition effect, and declines to account for the regression to the mean that one statistically expects when observing the extreme low end of the distribution. See Gregory Camilli and Katrina Bulkley, *Critique of “An Evaluation of the Florida A-Plus Accountability and School Choice Program”* (Educ. Pol’y Analysis Archives, Vol. 9, No. 7, 2001); see also Martin Carnoy, Economic Policy Institute, *School Vouchers: Examining the Evidence* (2001) (citing, *inter alia*, evidence showing that test scores of the lowest-achieving Florida schools tended to improve more from year to year than those of merely low-achieving schools even before the advent of A+ Program). Offering an alternative reading of the evidence that takes those factors into account, Camilli and Bulkley concluded that Greene’s results “were implausible and should have been submitted to additional methodological scrutiny.” Camilli and Bulkley, *supra*, at 13.

Other researchers have pointed out that the mere fact of being designated as a failing school – even if that designation does not result in voucher program qualification – can result in improved test scores because of the stigma imposed and/or because it qualifies the school for constructive intervention and additional

state assistance.<sup>8</sup> See, e.g., Letter to the Editor, Helen F. Ladd, *Debating Florida's 'Voucher Effect,'* Educ. Week, Mar. 14, 2001 (citing stigma effect in North Carolina); Richard Rothstein, *Flaws in Voucher Findings*, N.Y. Times, May 9, 2001 (citing stigma effects in North Carolina and Texas).

Still other researchers question whether the observed increases in FCAT scores actually reflect the achievement gains that Greene ascribed to voucher competition. Professor Richard Allington of the University of Florida points out that by flunking low-achieving students to remove them from the cohort tested in the follow-up year, failing public schools can generate artificial proof of achievement gains. Letter to the Editor, Richard Allington, *A 'Flunking Effect'?*, Educ. Week, Mar. 14, 2001. See also Haggai Kupermintz, *The Effects of Vouchers on School Improvement: Another Look at the Florida Data* (Educ. Pol'y Analysis Archives Vol. 9, No. 8, 2001) (discussing the extent and causes of improvement in Florida's failing schools). Indeed, recent evidence suggests that, notwithstanding the competitive effect of the OSP, academic performance may not be improving in Florida's chronically-failing public schools. In February of 2005, the State Board of Education began inviting outside entities to operate such schools, observing that

---

<sup>8</sup> The Florida A+ Program not only subjects chronically failing schools to participation in the voucher program, but also may provide them with additional resources or slate them for reorganization, a new principal, or new staff. Camilli and Bulkley, *supra*, at 2.

academic performance appeared to be declining during the 2004-2005 school year at the “big, troubled schools” that have been big and troubled for decades. Leslie Postal, *State Takes Step to Fix F Schools*, Orlando Sentinel, Feb.16, 2005, at A1.

In addition to Greene’s largely discredited findings, defendants’ *amici* wrongly cite a meta-study by Columbia University researchers Clive R. Belfield and Henry M. Levin for the proposition that competition among schools tends to improve academic performance in all schools in the same “market.” BAEO Brief at 14. In fact, Belfield and Levin point out that the majority of studies analyzed found no significant competition effect, and what few positive results they reviewed were slight. Clive R. Belfield and Henry M. Levin, *The Effects of Competition on Educational Outcomes: A Review of US Evidence* (2002). See also Christopher Jepsen, *The Effects of Private School Competition on Student Achievement* (1999) (comprehensive review of available research on school competition found no consistent effect on academic performance); Gregory Elacqua, *School Choice in Chile: An Analysis of Parental Preferences and Search Behavior* (2004) (data from Chile do not support the claim that school competition results in improved academic performance).

2. Unable to demonstrate that voucher programs improve the academic performance of students who remain in public schools, defendants’ *amici* advance a more modest back-up claim: they assert that there is little “evidence that school

choice could harm public-school performance.” BAEO Brief at 14. Quite apart from the fact that “do no harm” is hardly an appropriate standard for making educational policy decisions, defendants’ *amici* are in any event quite wrong.

Diverting scarce resources from public schools to voucher programs can indeed “do harm” to the students who remain in public schools because it limits the ability of those schools to take the types of actions that have proven to be effective in improving academic performance – as the experience in Milwaukee and Cleveland makes clear. There is little doubt, for example, that small classes have a positive impact on student achievement. *See, e.g., Gill et al., supra*, at 75; Alex Molnar, Keystone Research Center, *Smaller Classes Not Vouchers Increase Student Achievement* (1998). But Wisconsin’s highly successful SAGE program, which among other goals seeks to keep student/teacher ratios below 15:1, has lost funding as a result of the Milwaukee voucher program.<sup>9</sup> The positive effect that pre-kindergarten and after-school instruction have on academic performance likewise is beyond dispute. *See, e.g., William T. Gormley Jr. et al., The Effects of Universal Pre-K on Cognitive Development* (2004); Patricia A. Lauer *et al., The Effectiveness of Out-of-School-Time Strategies in Assisting Low-Achieving*

---

<sup>9</sup> *See* 2001-03 Wisconsin State Budget Summary of Governor's Budget Recommendations, Legislative Fiscal Bureau, 537, 544 (March, 2001); People For the American Way Foundation, *Punishing Success: The Governor’s Proposed Education Budget and the SAGE and Voucher Program* (2001).

*Students in Reading and Mathematics: A Research Synthesis* (2003). But in Cleveland, funding for the voucher program is siphoned off from the Disadvantaged Pupil Impact Aid budget the school district receives from the state – which also funds the school district’s pre-K and after-school programs with whatever is left.<sup>10</sup> Vouchers do in fact consume funds that could be spent on more effective interventions.

In short, defendants’ *amici* are wrong when they say that voucher programs “do no harm” to students who remain in public schools. Voucher programs do incalculable harm by diverting from public to private schools the resources that are necessary to implement programs that have proven to be effective in improving the academic performance of public school students.

## CONCLUSION

The issues before the Court are whether the OSP violates Article I, § 3 and Article IX, § 1 of the Florida Constitution. The Court’s consideration of these constitutional issues should not be colored by the unsupported and inaccurate claims about the educational merit of voucher programs that have been made by defendants’ *amici*.

---

<sup>10</sup> See Dan Murphy *et al.*, Am. Fed’n of Tchrs., *The Cleveland Voucher Program: Who Chooses? Who Gets Chosen? Who Pays?* 16 (1997); see also GAO 2001, *supra*, at 4 (Cleveland vouchers funded from Disadvantaged Pupil Impact Aid).

Respectfully submitted,

---

BILL MCBRIDE, ESQUIRE  
Florida Bar No. 0211508  
601 Bayshore Boulevard  
Suite 700  
Tampa, Florida 33606  
(813) 253-2020

Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Brief *Amicus Curiae* of the National PTA, *et al.*, were furnished, this 7th day of March, 2005, by hand delivery to the following:

Barry Richard  
M. Hope Keating  
Greenberg Traurig, P.A.  
101 East College Avenue  
P.O. Drawer 1838  
Tallahassee, FL 33302

Christopher M. Kise  
Louis F. Hubener  
Erik M. Figlio  
Office of the Solicitor General  
PL-01 The Capitol  
Tallahassee, FL 32399

Kenneth W. Sukhia  
Fowler, White, Boggs, Banker, P.A.  
101 North Monroe Street, Suite 1090  
Tallahassee, FL 32301

Ronald G Meyer  
Florida Bar No. 0148248  
Meyer and Brooks, P.A.  
2544 Blairstone Pines Drive  
Tallahassee, FL 32302

and by first-class mail, postage prepaid, to the following:

Raquel A. Rodriguez  
Office of the Governor  
The Capitol, Room No. 209  
Tallahassee, FL 32399

Daniel Woodring  
Florida Department of Education  
325 W. Gaines Street  
Tallahassee, FL 32399

Clark M. Neily  
Clint Bolick  
Institute for Justice  
1717 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, DC 20006

Major B. Harding  
Jason Gonzalez  
Ausley & McMullen  
227 South Calhoun Street  
Tallahassee, FL 32301

Robert H. Chanin  
John M. West  
Bredhoff & Kaiser, P.L.L.C.  
805 Fifteenth Street, N.W.  
Suite 1000  
Washington, D.C. 20005

---

Bill McBride

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief *Amicus Curiae* of the National PTA, *et al.*, was prepared in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

---

Bill McBride