

# The Reinvention of Vouchers for a Color-Blind Era: A Racial Orders Account

**Ursula Hackett**, *Royal Holloway, University of London*

**Desmond King**, *University of Oxford*

*Historically, vouchers, which provide a sum of money to parents for private education, were tools of racist oppression; but in recent decades some advocates claim them as “the civil rights issue of our time.” This article brings an analytic-historical perspective rooted in racial orders to understand how education vouchers have been reincarnated and reinvented since the Jim Crow era. Combining original primary research with statistical analysis, we identify multiple concurrent and consecutive transformations in voucher politics in three arenas of racial policy alliance contestation: expansion of color-blind policy designs, growing legal and political support from a conservative alliance, and a smorgasbord of voucher rationales rooted in color-blind framing. This approach demonstrates that education vouchers have never been racially neutral but served key roles with respect to prevailing racial hierarchies and contests.*

## INTRODUCTION

The renaissance of education vouchers in the United States is indisputable and striking (Figure 1).<sup>1</sup> While modern proponents of education vouchers cite numerous motives, the majority are at pains to promote them as “color-blind” or “race-neutral” measures, to use King and Smith’s<sup>2</sup> language. Color-blind advocates of vouchers claim the race of the children participating is irrelevant to the policy, even though it is an activist program nominally targeting the educationally disadvantaged.<sup>3</sup> In contrast, proponents of an active federal role to ameliorate enduring racial inequalities rarely advocate education vouchers,

concluding that they are commonly designed by white Republican Party lawmakers and used by white parents to perpetuate de facto segregated education among American children.<sup>4</sup>

The contemporary debate about education vouchers has unmissable historical echoes reflecting, first, the origin of voucher schemes in the 1950s when they were used as instruments to maintain racial segregation and, second, their redesign after the 1960s, principally by opponents of racial progress, to accommodate the civil rights era. This article brings an analytic-historical perspective rooted in racial orders to understand how education vouchers have been reincarnated and reinvented since Milton Friedman first formalized the idea in 1955.<sup>5</sup>

We argue that the politics of such schemes—variously called tuition grants, tax credit scholarships, educational savings accounts, or vouchers—is related to the dominant racial order at each historical juncture in American politics. Vouchers buttressed white supremacy during public school desegregation by

E-mail: [Ursula.Hackett@rhul.ac.uk](mailto:Ursula.Hackett@rhul.ac.uk)

E-mail: [Desmond.king@politics.ox.ac.uk](mailto:Desmond.king@politics.ox.ac.uk)

1. We use the term “voucher” to refer to all types of programs that offer a sum of public money to parents to spend on their children’s education at a private school of their choice, whether they are “tax credit scholarship” vouchers, “tuition grants,” or “educational savings accounts.”

2. Desmond King and Rogers M. Smith, *Still a House Divided*. Princeton Studies in American Politics: Historical, Institutional, and Comparative Perspectives (Princeton, NJ: Princeton University Press, 2011); Desmond King and Rogers M. Smith, “Without Regard to Race”: Critical Ideational Development in Modern American Politics,” *The Journal of Politics* 76, no. 4 (2014): 958–71, <https://doi.org/10.1017/S0022381614000541>.

3. Eric Levitz, “Devos Champions HBCUs as Pioneers of ‘School Choice,’” *New York Magazine*, February 28, 2017.

4. Chris Ford, Stephenie Johnson, and Lisette Partelow, “The Racist Origins of Private School Vouchers,” Center for American Progress, 2017, <https://www.americanprogress.org/issues/education/reports/2017/07/12/435629/racist-origins-private-school-vouchers/>.

5. Milton Friedman, “The Role of Government in Education,” in *Economics and the Public Interest*, ed. R.A. Solo (New Brunswick, NJ: Rutgers University Press, 1955), 123–44.

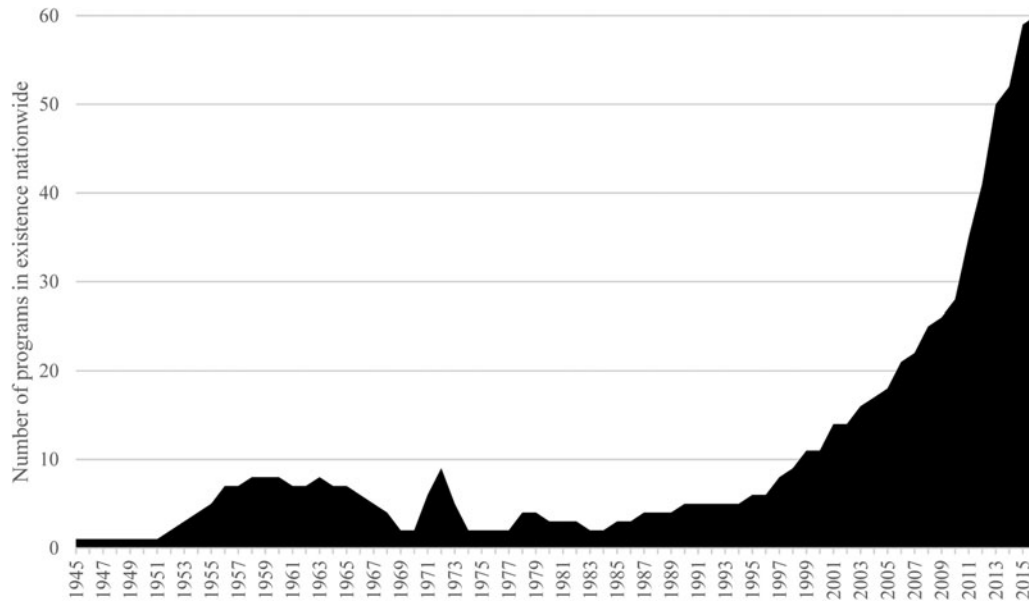


Fig. 1. The Renaissance of Vouchers—Cumulative Total of Voucher Programs in the United States, 1945–2016.

funding segregated private schools. They were opposed by civil rights organizations but attracted some advocates for racial equality during the 1990s as a remedy for educational inequalities. But during President Obama's first term, vouchers became firmly associated with the modern color-blind alliance, consisting of Republicans and conservatives who disclaim the use of racial categories in policymaking. Our approach enables us to demonstrate that education vouchers have never been racially neutral but served key roles with respect to these prevailing racial hierarchies.<sup>6</sup>

In the era of segregated education in the decades up to 1964, vouchers emerged as an instrument developed by white supremacists to maintain the racial order that was under threat from court orders and federal actions. Responding to the *Brown v. Board of Education of Topeka* (1954) decision ordering school desegregation, school districts offered tuition grants to white parents to remove their white children from public schools that had been ordered to integrate.<sup>7</sup> Tuition grant vouchers funded segregated institutions indirectly—channeling money via parents rather than directly to the school—in an effort to avoid legal challenge, but activists and judges exposed their racist purposes. In the 1960s and 1970s, as civil and voting rights legislation transformed the segregationist order into a new civil rights regime, proponents of racial equality worked

to end the use of tuition grants in the South. More generally, they opposed the use of voucher-type schemes because these included the potential to discriminate racially between children.

Some liberal academics and progressive policymakers supported vouchers or tax credit voucher programs for the educationally disadvantaged, but growing racial and ideological polarization from the 1980s pushed vouchers firmly into conservatives' issue preferences.<sup>8</sup> In the post-civil rights era, American voters' partisan and ideological polarization<sup>9</sup> has increasingly overlapped with a racial division between conservative color-blind and liberal race-conscious policy alliances: loose configurations of individuals and groups seeking to disclaim or deploy racial categories in policymaking, respectively.<sup>10</sup> This polarized context provides an opportunity for politicians associated with the conservative color-blind alliance to promote voucher type schemes that in practice contribute to keeping schools segregated.<sup>11</sup>

8. James Forman, "The Secret History of School Choice: How Progressives Got There First," *Georgetown Law Journal* 93 (2004): 1287–320.

9. Nolan McCarty, Keith T. Poole, and Howard Rosenthal, *Polarized America: The Dance of Ideology and Unequal Riches* (Cambridge MA: MIT Press, 2016).

10. King and Smith, *Still a House Divided*; King and Smith, "Without Regard to Race."

11. Bruce J. Katz and Margery Austin Turner, "Who Should Run the Housing Voucher Program? A Reform Proposal," *Housing Policy Debate* 12, no. 2 (2001): 239–62, <https://doi.org/10.1080/10511482.2001.9521403>; Jonas Persson, "Vouchers on the Move: Return to School Segregation?" *The Center for Media and Democracy's PR Watch*, April 28, 2015, <http://www.prwatch.org/news/2015/02/12730/segregation-school-vouchers>; Sean F. Reardon and John T. Yun, "Private School Racial Enrollments

6. Other commentators are beginning to acknowledge the racist origins of school vouchers (Ford et al., "The Racist Origins of Private School Vouchers").

7. Some black children also received tuition grant vouchers, which could be used only in segregated black schools.

Table 1. Three Arenas of Racial Policy Alliance Contestation: Framing, Design, Support

	Color-Blind	Race-Conscious	In King and Smith, <i>Still a House Divided</i> <sup>a</sup> (italics added)
<i>Framing and rhetoric</i>	No mention of race in policy wording, in discussion points, or among elites during bill passage. <i>Example:</i> Disavowal of racial categories in GOP party platform.	Legislation mentions race, or policy is framed in racial terms during bill passage. <i>Example:</i> Direct acknowledgment of racial groups in Democratic Party platform.	“This <i>framing of racial issues</i> has produced a polarized politics of disputatious mutual disrespect” (p. 12). “The party has <i>professed commitments</i> to color-blind policy approaches” (p. 10).
<i>Policy design and targets</i>	Policy does not target particular racial groups; individual based market-oriented mechanisms. <i>Example:</i> Tax expenditures.	Direct state action to ameliorate racial inequalities; policy targets particular racial categories. <i>Example:</i> Affirmative action programs.	“Proponents of both <i>color-blind and race-conscious policies</i> have drawn the wrong lesson from this history” (p. 11). “ <i>Measures...designed and implemented</i> with specific goals of racial equality in view” (p. 9). “ <i>Race-conscious proponents</i> ” and “ <i>color-blind advocates.</i> ” The “clash of rival ‘color-blind’ and ‘race-conscious’ <i>racial policy alliances</i> ” (p. 9).
<i>Patterns of support</i>	Support drawn from conservatives and Republicans: color-blind alliance.	Support drawn from liberals and Democrats: race-conscious alliance.	

Note: <sup>a</sup>Desmond King and Rogers M. Smith, *Still a House Divided*. Princeton Studies in American Politics: Historical, Institutional, and Comparative Perspectives (Princeton, NJ: Princeton University Press, 2011).

Modern vouchers have some race-conscious supporters—liberals and Democrats committed to the use of racial categories in policymaking—but their support base is overwhelmingly color-blind. Since the 1990s, some of these color-blind advocates of vouchers have maintained that such schemes will be beneficial to African American children and parents, but most are anxious to deny that vouchers result in any race-targeted effects. Proponents lobbied states to hold referenda to enact them. The overwhelming rejection of the schemes after such referenda prompted a strategic shift among voucher advocates to enact schemes in GOP-controlled state legislatures. To make sense of this complexity in the evolution of voucher politics over time, we draw on King and Smith’s racial policy alliances framework to distinguish three arenas in which alliances contest: rhetoric, patterns of support, and policy design (Table 1). Table 1 defines the terms “color-blind” and “race-conscious” for policy framing, design, and support (columns 1 and 2) and situates the components of the King-Smith analytical framework in context (column 3).

King and Smith’s two racial policy alliances represent broad alignments rather than precise specifications of tight coalition partners. In this article we show how the framework can be calibrated and applied in an analytic-historical way to the development of school vouchers as these schemes move through their shifting incarnations. We argue that these arenas of racial policy alliance contestation—rhetoric, patterns of support, and policy design—are analytically separable, which means that race-conscious policy alliance members do not always espouse race-conscious arguments, and race-conscious policy designs may be publicly justified in a color-blind fashion. In King and Smith’s book, *Still a House Divided*, race-consciousness and color-blindness identify frames, policies, and people, as illustrated in Table 1, column 3.

For King and Smith, color-blindness and race-consciousness manifest in the framing of racial issues and in parties’ professed commitments, whereby elites rhetorically emphasize or diminish racial categories (Table 1, row 1). Color-blindness and race-consciousness also occur in the design and implementation of policy (Table 1, row 2). And race-conscious proponents and color-blind advocates form two sides of opposed racial policy alliances (Table 1, row 3). Distinguishing these three arenas of racial policy alliance conflict enables us to identify multiple concurrent and consecutive transformations in voucher politics over time.

and Segregation,” in *Public School Choice vs. Private School Vouchers*, ed. R. D. Kahlenberg (New York: Century Foundation Press, 2003). <https://cepa.stanford.edu/content/private-school-racial-enrollments-and-segregation>.

Table 2. Three Eras of Voucher Politics

<i>Era</i>	Jim Crow and the Aftermath of <i>Brown</i> (1950–64)	Era of Transition (1964–96)	The Civil Rights Era and Rise of Color-Blind Vouchers (1996–)
Patterns of support	White supremacists	Scattered liberal support; race-conscious opposition and strange-bedfellow alliances	Color-blind alliance
Framing and rhetoric	Veneer of color-blindness: “freedom of association”	Liberal vs. segregationist versions; some race-conscious arguments	Smorgasbord of arguments, but dominated by color-blind frames
Design and targets	Quasi-direct transfers of public funds; decentralized administration; targeted at whites	Mixture of tuition aid and in-kind aid programs; some indirect transfer of voucher funds via parents; some race targeting	Increasingly indirect transfers; tax credit funding; target dependent upon program design

The tenacity of racial hierarchies in U.S. politics and the struggles to defend or reform approaches to racial equality is exceptionally well illustrated in the trajectory of education vouchers since their introduction by states in the 1950s to their contemporary embrace by Republican state governors and legislators. Our account of vouchers gives a micro example of the broad contours sketched out in the racial policy alliances framework showing the powerful ways in which institutionally embedded hierarchies operate locally to maintain and retain racist legacies.<sup>12</sup>

### Vouchers and Racial Epochs

In this article we use a racial orders framework to analyze how the politics of education vouchers has developed since *Brown* and what has driven that change. Empirically, we drew upon modern and historical newspaper sources (1953–2017), judicial rulings, civil rights reports and census data to construct an analytic narrative showing how voucher programs served the interests of those either opposing or on rare occasions promoting egalitarian racial reform rooted in America’s shifting post–Civil War racial orders. We also constructed two original databases, legislator votes on voucher bills (2005–2017) and judicial votes in voucher cases (1955–2017), to express these patterns statistically.

Our approach used state legislature websites to extract information about the 6,693 legislative votes on forty-seven voucher bills passed between 2005 and 2017. To address possible selection bias we incorporated twelve voucher bills that were brought to a vote before July 2017 but failed to become law

because they were vetoed or voted down, yielding a total of 7,851 state legislator votes. Additionally, drawing upon the universe of judicial votes in forty-six voucher cases (1955–2017) and 236 individual votes, we examined the legal vulnerability of voucher programs by recording each judge’s decision about the constitutionality of the program at issue.

In this article we make four key empirical and theoretical contributions. First, we unearth patterns of tuition voucher distribution across the Jim Crow South. To our knowledge, no existing account has calculated the number and distribution of tuition grant vouchers over time for multiple states. Second, we advance empirically the accounts of voucher politics articulated in the first decade of the twenty-first century by analyzing the rapid increase in voucher programs after 2010 and drawing upon original data sets. Third, we apply the racial orders framework developed by Desmond King and Rogers Smith to the elite politics of vouchers. Fourth, our micro-empirical approach disaggregates the racial orders framework for the first time into its underlying dimensions—design, framing, and patterns of support—to understand how racial orders coalesce and fragment in different eras of contestation.

The first section of this article explains how vouchers originated in the 1950s as part of white supremacists’ struggle to resist desegregation. Such efforts were cited as empirical examples by the University of Chicago economist Milton Friedman as he articulated the theoretical rationale for vouchers.<sup>13</sup>

As discussed in the second section, during the momentous transition from the segregationist to the civil rights era, achieved partly in laws passed by Congress in the 1960s, vouchers rarely featured in policy debates as a desirable method to address racial

12. Robert C. Lieberman, *Shifting the Color Line* (Cambridge MA: Harvard University Press, 1997); Carol Anderson, *White Rage* (New York: Bloomsbury, 2016).

13. Friedman, “The Role of Government.”

inequality in American schools. Instead, the focus for getting change and reform was the combination of federal funds, adroitly granted or withheld to the states by the U.S. Department of Education, and of court orders.

In the third section we show that as the civil rights reforms of the 1960s settled into the new alliances and struggles of the 1970s and 1980s, so opponents of federal-backed racial equality revived and redesigned school vouchers for the modern era to block reform. Table 2 illustrates the forms of racial policy alliance contestation in patterns of support, rhetoric, and policy design during the three eras of voucher politics: Jim Crow and the aftermath of *Brown* (1950–64), the era of transition (1964–96), and the civil rights era and rise of color-blind vouchers (1996–). The analysis in the article is organized around these three eras and shifts between them.

Expanding upon King and Smith's racial orders framework, we show how the reinvention of vouchers took place in three key arenas of racial policy alliance contestation summarized in Table 2: patterns of support, framing and rhetoric, and design and targets. Tracing the temporality of voucher politics reveals a trend toward color-blindness punctuated by sporadic race-conscious rationales and coalition building.<sup>14</sup> The revival of racial divides in contemporary voucher use is an empirical surprise but consistent with the deep legacies of racism in America identified by King and Smith and others,<sup>15</sup> and mobilized in recent electoral politics.<sup>16</sup>

14. Of course, the division between these periods of racial orders is a heuristic device, and there is no absolute movement across the dates.

15. Pamela Brandwein, *Rethinking the Judicial Settlement of Reconstruction* (New York: Cambridge University Press, 2011); Anthony S. Chen, *The Fifth Freedom: Jobs, Politics, and Civil Rights in the United States, 1941–1972* (Princeton, NJ: Princeton University Press, 2009); Fredrick Harris, *The Price of the Ticket* (New York: Oxford University Press, 2012); Jennifer L. Hochschild, *Facing Up to the American Dream* (Princeton, NJ: Princeton University Press, 1996); Megan Ming Francis, *Civil Rights and the Making of the Modern American State* (New York: Cambridge University Press, 2014); Soumyajit Mazumder, "The Persistent Effect of U.S. Civil Rights Protests on Political Attitudes," *American Journal of Political Science* 62, no. 4 (2018): 922–35; Robert Mickey, *Paths Out of Dixie* (Princeton, NJ: Princeton University Press, 2015); Naomi Murakawa, *The First Civil Right* (New York: Oxford University Press, 2014); Chloe N. Thurston, "Policy Feedback in the Public–Private Welfare State: Advocacy Groups and Access to Government Homeownership Programs, 1934–1954," *Studies in American Political Development* 29, no. 02 (2015): 250–67; Joseph Lowndes, Jule Novkov, and Dorian Warren, eds., *Race and American Political Development* (New York: Routledge, 2008); Daniel Q. Gillion, *Governing with Words: The Political Dialogue on Race, Public Policy and Inequality in America* (New York: Cambridge University Press, 2016).

16. Lawrence Bobo, "Racism in Trump's America: Reflections on Culture, Sociology, and the 2016 U.S. Presidential Election," *The British Journal of Sociology* 68, no. S1 (2017): S85–104; Ta-Nehisi Coates, "The First White President," *The Atlantic*, October 2017, <https://www.theatlantic.com/magazine/archive/2017/10/the-first-white-president-ta-nehisi-coates/537909/>; Michael Tesler, *Post-*

The racial orders framework guides the empirical analysis by providing explanations for the varying political purpose of vouchers at different historical stages. The use of vouchers took place in three distinct waves corresponding to the King and Smith racial orders and eras of racial policy alliance contestation: As part of the pro-segregationist anti-*Brown* resistance, during the brief race-conscious response to urban school crises, and in the explosion of color-blind vouchers paralleling the Obama presidency.<sup>17</sup>

Within each era we show how color-blind and race-conscious forces sought to make and unmake racial hierarchies by building coalitions, reframing public debate, and crafting policy. This periodization is close to King and Smith's framework.<sup>18</sup> But our micro-empirical focus enables us to expand their account of the post-1970s' decades by delineating the distinct bases of support found among some race-conscious advocates versus the overwhelming color-blind mobilization base for vouchers. These nuances have been missed in many existing broad-stroke accounts of changes in racial politics since the 1960s.

There are competing accounts about vouchers. The most compelling is religious activism, from which we distinguish our analysis. Although most vouchers are used at religious schools and many religious elites support vouchers, we find explanations rooted in racial policy alliances more analytically compelling for three reasons.

First, religious leaders have historically played a weak or ambivalent role in the formation of voucher coalitions, ranging from reluctant Midwest Catholic dioceses to outright hostility from Texan Baptist groups.<sup>19</sup> As we show in Part 2 of this article, voucher activism in the 1990s was propelled by coalitions organized around racial justice, with Catholic organizations in a supporting role. Racial policy alliances—rather than culture war categories—can more usefully describe the *patterns of support* of individuals and groups advocating for and against vouchers.

*Racial or Most-Racial? Race and Politics in the Obama Era* (Chicago: University of Chicago Press, 2016).

17. Desmond King and Rogers M. Smith, "Racial Orders in American Political Development," *American Political Science Review* 99, no. 1 (2005): 75–92; Kimberley S. Johnson, "Racial Orders, Congress, and the Agricultural Welfare State, 1865–1940," *Studies in American Political Development* 25, no. 02 (2011): 143–61, <https://doi.org/10.1017/S0898588X11000095>; Kimberley S. Johnson, "The Color Line and the State: Race and American Political Development," in *The Oxford Handbook of American Political Development*, ed. Richard Valelly, Suzanne Mettler, and Robert Lieberman. Oxford Handbooks (Oxford: Oxford University Press, 2016), 593–624.

18. King and Smith, *Still a House Divided*.

19. Ursula Hackett, "The Exit-Voice Choice: Religious Cleavages, Public Aid, and America's Private Schools," *Politics and Religion* 9, no. 2 (2016), <https://doi.org/10.1017/S1755048316000201>.

Second, the movement from values arguments to racial-justice claims to color-blind framing of vouchers marks significant shifts in vouchers' evolution.<sup>20</sup> Race-conscious and color-blind *frames* are meaningful in judicial decision making. The Establishment Clause of the First Amendment restricts arguments for vouchers couched in terms of benefits for religious individuals or institutions, but not those framed in terms of racial justice, individual choice, or school quality.

Third, voucher policies have been *designed* explicitly to accomplish racial goals, having their genesis in and responses to the *Brown* decision. As we show in section 1 of this article, tuition grant legislation in the Jim Crow era explicitly excluded sectarian schools from participation. We do not deny the importance of religion in propelling voucher activism on occasion but find evidentially that the formation of racial policy alliances is a more compelling explanation for vouchers' patterns of support, rhetoric, and policy design and how they change over time.

## 1. VOUCHERS AND SEGREGATIONIST AMERICA

### 1.1. Origins and Number of Vouchers

The first school voucher programs were adopted in the South in response to *Brown v. Board of Education* (1954).<sup>21,22,23</sup> Their purpose was defined by ardent defenders of the segregationist racial order. These programs were designed to enable white families to escape any desegregation of the public schooling system by utilizing publicly funded vouchers distributed by all-white school districts to send their children to private de facto segregated academies.<sup>24</sup> This tactic was embraced to maintain the South's system of white supremacy.<sup>25</sup>

20. James Forman, "The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics," *UCLA Law Review*, Yale Law School Faculty Scholarship Series, 54 (2007): 547.

21. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

22. Gloria Ladson-Billings, "Landing on the Wrong Note: The Price We Paid for Brown," *Educational Researcher* 33, no. 7 (2004): 3–13; Jerome C. Harter and Peter M. Hoffman, "Segregation Academies and State Action," *The Yale Law Journal* 82, no. 7 (1973): 1436–61.

23. Segregation tuition grants were not the first forms of school choice, but they were the first programs of any scale that offered grants to parents to exercise their "freedom of choice" of private school. Scattered programs enacted after the First and Second World Wars had paid for tuition for the children of returning servicemen. Town tuitioning programs in rural areas of Maine and Vermont, established in the late nineteenth century and still in operation, pay for public or nonreligious private school for students from towns without a public school, but fewer than 5 percent of students in each state are eligible for these programs, and tuition is paid directly to the receiving school rather than to parents.

24. Ford et al., "The Racist Origins of Private School Vouchers."

25. Eric Schickler and Ruth Bloch Rubin, "Congress and American Political Development," in *The Oxford Handbook of American Political Development*, ed. Richard Valelly, Suzanne Mettler, and

The laws authorized public funding for grant payments to parents to spend on private education for their children. Seven southern states passed tuition grant laws: Alabama (1955), Georgia (1953<sup>26</sup>), Louisiana (1958<sup>27</sup>), Mississippi (1964), North Carolina (1956), South Carolina (1963), and Virginia (1956<sup>28</sup>). For these states, buttressing separate schools was a pivotal component of segregation. In an eighth state, Arkansas, a publicly funded tuition grant bill was introduced but never reached the governor's desk. Instead, policymakers successfully solicited private funding for tuition grants.<sup>29</sup>

The tuition grant programs were to be used for "segregation academies," single-race private schools established in direct response to *Brown*. Catholic or "sectarian" schools were excluded from these tuition grant programs, due partly to anti-Catholicism in the South and partly to the fear that Catholic schools would soon start to desegregate (as, indeed, they did in many parts of the South during the early 1960s).<sup>30</sup>

Compiling data on the number of grants issued during this period is challenging because official records are incomplete and inadequate. We triangulate among contemporary newspaper sources, judicial rulings, and reports of the United States Commission on Civil Rights to piece together—for the first time—the trajectory of grant issuance across states.

Of the tuition grant states, Louisiana and Virginia distributed the largest number of grants. In its first year of operation Louisiana issued 535 tuition grants, but the number quickly rose to 7,093 in its second year (1962–63) and to 11,000 the following year.<sup>31</sup> In 1966, the number of grants peaked at 15,177, followed by 14,059 in 1967–68, after which the program was struck down by a federal district court.<sup>32</sup>

Robert Lieberman (Oxford, UK: Oxford University Press, 2016), 259–90.

26. Grants were not distributed until 1961.

27. Grants were not distributed until 1962.

28. After being struck down as unconstitutional, the program was repackaged by state legislators in 1959.

29. "State Tuition Aid Urged by Fausbus," *New York Times*, February 10, 1959; "Fausbus Proposes Integration Bar," *New York Times*, January 22, 1961.

30. Jim Carl, *Freedom of Choice: Vouchers in American Education: Vouchers in American Education* (Santa Barbara, CA: ABC-CLIO, 2011); "Mississippi Faces New School Step," *New York Times*, August 10, 1964.

31. John A. Hannah, Eugene Patterson, Frankie Muse Freeman, Erwin N. Griswold, Theodore M. Hesburgh, and Robert S. Rankin, *1964 Staff Report: Public Education*, submitted to the United States Commission on Civil Rights (Washington, DC: U.S. Government Printing Office, 1964); *Poindexter v. Louisiana Financial Assistance Commission*, 275 F. Supp. 833 (E.D. La. 1968); Susanna McBee, "Report Shows South's Fight to Keep Schools Segregated Has Been Costly," *Washington Post, Times Herald*, July 14, 1963.

32. *Poindexter v. Louisiana Financial Assistance Commission*.

The value of the grants was initially set at \$1.67 per day and later raised to \$2 per day, or \$360 for an assumed school year of 180 days, which was typically sufficient to cover all or most of private school fees.<sup>33</sup> We used the data appendices attached to the *Poindexter v. Louisiana Financial Assistance Commission* case (1968) to calculate the average tuition charge in private schools set up in Louisiana after the *Brown* decision: \$414 per annum.<sup>34</sup> Hence, the grants covered, on average, 87 percent of fees. Judges in many states noted that tuition grants were calibrated to the level of school fees, and vice versa (*Hall v. St. Helena Parish School Board*).<sup>35</sup> Many segregated schools set up after *Brown*, such as Carrollton Private School, Mirabeau Elementary School, United Elementary School, and Jefferson Academy, charged precisely the cost of the tuition grant.

These vouchers were used almost exclusively by whites, although a small number of black students did use tuition grants to attend segregated academies.<sup>36</sup> In *Coffey v. State Education Finance Commission* (1969) the vigilant judges provided a detailed data appendix on patterns of voucher usage to justify their conclusion that Mississippian tuition grants were unconstitutional.<sup>37</sup> The court found that all but one of the private schools receiving the \$240 tuition grant payments in the school year 1967–68 had all-white attendance (the other school was entirely African American).<sup>38</sup>

In Virginia the state dispensed 4,750 grants in the school year beginning in 1959 at a cost of just over \$1 million,<sup>39</sup> with each grant amounting to \$125 per child for elementary students and \$150 for high schoolers, supplemented by local sources (see *Griffin v. County School Board of Prince Edward County* and *Pettaway v. County School Board of Surry County*)<sup>40</sup> In subsequent years the number of tuition grants rose to 6,100, then 7,261, 8,518,<sup>41</sup>

and 9,489 in 1963–64.<sup>42</sup> By 1964, Virginia had spent more than \$7 million on tuition grant payments. Even after the passage of the 1964 Civil Rights Act and a 1965 Supreme Court decision striking down the Prince Edward County's policy of shuttering the public school system to avoid desegregation, Virginia continued to fund private tuition grants.<sup>43</sup>

Numbers rose to 12,253 in 1964, dipping slightly to 11,983 in 1965, then climbing again to 12,786 in 1966 and almost 14,000 in 1967. Despite declining enthusiasm for the program on the part of some whiter Virginian counties toward the end of the decade, particularly Roanoke, Arlington, and Alexandria, the number of tuition grants issued in 1968 (after which they were struck down by a three-judge federal court) was in excess of 13,000.<sup>44</sup> Over the course of a decade, Virginia spent nearly \$20 million in tuition grants.

By contrast, the Georgia tuition grant program's early promise—the state spent \$1.4 million in 1961–62 alone—was quickly snuffed out after the legislature adopted additional regulations. “The legislature provided [in 1963] that local school systems must participate in the costs and certify the students for private school grants, an action that virtually killed the plan.”<sup>45</sup> State outlay for the grants dropped to a mere \$112,000 in 1963 and came to a halt the following year without the need for court action.<sup>46</sup> Figure 2 displays the rise and fall of tuition grant payments in Virginia, Louisiana, and Georgia, normalized for the size of the 5- to 14-year-old population in each state. As Figure 2 shows, at their peak about 2 percent of the school-age population in Louisiana and Virginia used tuition grants. But the impact of these grants was felt across the South.

33. *Ibid.*

34. *Ibid.*

35. *Hall v. St. Helena Parish School Board*, 197 F. Supp. 649 (1961); *Poindexter v. Louisiana Financial Assistance Commission*; *Lee v. Macon County Board of Education*, 231 F. Supp. 743 (M.D. Ala. 1964).

36. *Coffey v. State Educational Finance Commission*, 296 F. Supp. 1389 (S.D. Miss. 1969).

37. *Ibid.*

38. *Ibid.*

39. Elsie Carper, “Tuition Grants Seen Hurting Va. Schools,” *Washington Post, Times Herald*, November 20, 1960.

40. *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (Va. 1964); *Pettaway v. County School Board of Surry County*, 230 F. Supp. 480 (E.D. Va. 1964).

41. There are slight differences between different sources in reports of the exact number of vouchers issued for the years 1959, 1961, and 1964, but in each case the number is small. We have taken the source that cites an issuance figure alongside a more exact financial outlay (e.g., “\$1,034,392” as opposed to “over \$1m”) as the more reliable. There are no precise figures for 1968 and 1969. Contemporaneous news sources tell us only that

“nearly 14,000” vouchers were issued in Virginia in 1967 and “more than 13,000” in 1968.

42. Associated Press, “Tuition Grant Law Rapped by School Head for Roanoke,” *Washington Post, Times Herald*, November 13, 1963; “Tuition Grant Cost Rises in Virginia to \$1.7 Million,” *Washington Post, Times Herald*, August 3, 1961; “Virginia Tuition Grants Increase,” *Washington Post, Times Herald*, May 17, 1961; “Tuition Grant Law Praised by Almond,” *Washington Post, Times Herald*, December 3, 1960; Robert E. Baker, “1600 in Northern Virginia Area Apply for State Tuition Grants,” *Washington Post, Times Herald*, December 2, 1962; Erwin Knoll, “Virginia Board Revises Tuition Distribution,” *Washington Post, Times Herald*, August 3, 1960; Elsie Carper, “Virginia Tuition Grants Go Astray,” *Washington Post, Times Herald*, January 2, 1960; Benjamin Muse, *Ten Years of Prelude: The Story of Integration since the Supreme Court's 1954 Decision* (Beaconsfield, UK: Darwen Finlayson, 1964), 186.

43. *Griffin v. County School Board*.

44. Associated Press, “NAACP Won't Appeal Tuition-Grant Ruling,” *Washington Post, Times Herald*, February 22, 1969.

45. “Maddox Is Rebutted on Private Pupils,” *New York Times*, August 28, 1967.

46. Eric Wearne, “From ‘Fear-Based’ Choice to ‘Freedom-Based’ Choice: Georgia's Tuition Grants Act, 1960–1997,” *Journal of School Choice* 7 (2013): 196–224.

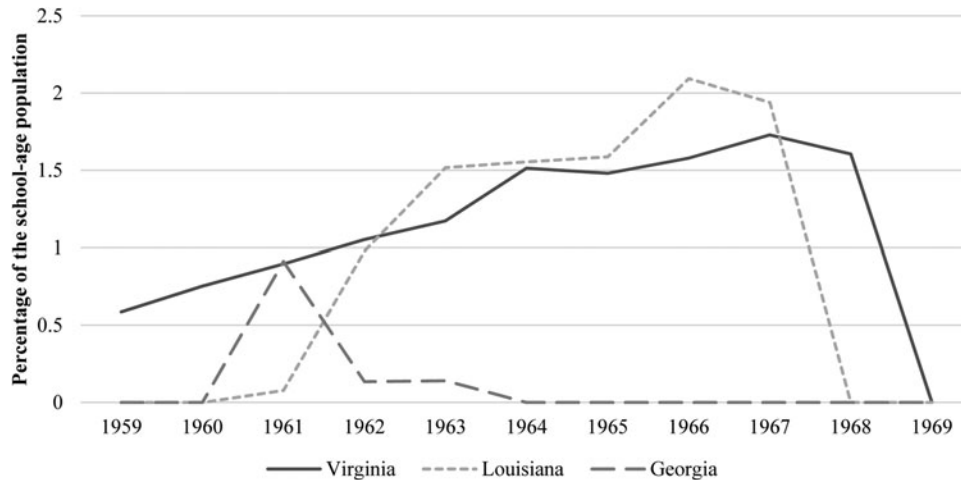


Fig. 2. Selected Southern States' Issuance of Vouchers in the Era of Segregation.

Note. The figures for tuition grant issuance were calculated as a proportion of the contemporaneous school-age population in each state using U.S. Census Bureau data from *1960 Census of Population, General Population Characteristics: United States Summary* (Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, 1960), <https://www.census.gov/prod/www/decennial.html>.

### 1.2. Patterns of Support for Vouchers in Defense of Jim Crow

White supremacist Democratic governors, including George and Lurleen Wallace of Alabama, Eugene Talmadge and Ernest Vandiver Jr. of Georgia, Earl Long and James Davis of Louisiana, Paul Johnson of Mississippi, and Thomas B Stanley of Virginia, were vociferous supporters of tuition grant vouchers.<sup>47</sup> They and their legislative allies established commissions to devise strategies to avoid desegregation. The Sibley Commission in Georgia (“the Committee on Schools of the Georgia General Assembly”), the Pearsall Committee in North Carolina, and the Gray Commission in Virginia recommended tuition grants as part of packages of measures designed to thwart desegregation.<sup>48</sup>

Committee memberships were almost exclusively white and male—three African Americans sat on the sixteen-member Pearsall Committee in North Carolina, but the Gray Commission in Virginia was drawn from the state legislature, which had no African Americans and only one woman serving in it.<sup>49</sup> Members of the Gray Commission were drawn disproportionately from southern Virginian legislative

districts with smaller populations but larger concentrations of black residents, a pattern of support that would be repeated when it came to voting on tuition grant packages across the South.

White segregationists shepherded tuition grant legislation through state legislatures. The bills did not garner uniform support. Some votes were close. But closeness reflected not principled objection to the racist ends of the measures but doubt about their efficacy in achieving widely shared segregationist goals. Virginia’s 1956 tuition grant law passed the upper house by just four votes. There were legislators willing to speak out against tuition grants—but for pro-segregationist reasons, such as expressing their fear that the “massive resistance” approach would make federal court challenge more likely. For example, Senator Bob Wilson of Walker County, Alabama, argued that federal courts would force private schools to accept black students as long as white pupils received state aid.<sup>50</sup> Revealingly, support for tuition grants was concentrated among members with the largest proportion of black residents in their districts. These were the districts that would feel the impact of desegregation most keenly.<sup>51</sup>

### 1.3. Tuition Grant Rhetoric: Veneer of Color-Blindness

The earliest segregation tuition grant efforts employed notionally color-blind arguments about “freedom of choice” and “freedom of association.” Mindful of the risk of judicial challenges, politicians

47. Derek Charles Catsam, *Freedom’s Main Line: The Journey of Reconciliation and the Freedom Rides* (Lexington: The University Press of Kentucky, 2009); Kevin M. Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton, NJ: Princeton University Press, 2005).

48. Gabriel J. Chin, Roger Hartley, Kevin Bates, and Rona Nichols, “Still on the Books: Jim Crow and Segregation Laws Fifty Years after Brown v. Board of Education,” *Michigan State Law Review* (2006): 457–76.

49. Christopher Bonastia, *Southern Stalemate: Five Years without Public Education in Prince Edward County, Virginia* (Chicago: University of Chicago Press, 2012), 56.

50. Associated Press, “Tuition Grants Voted by Alabama Senate,” *Washington Post, Times Herald*, August 8, 1965.

51. Bonastia, *Southern Stalemate*, 73; Benjamin Muse, *Virginia’s Massive Resistance* (Bloomington: Indiana University Press, 1961); Catsam, *Freedom’s Main Line*, 136.



publicly justified their tuition grant policies without recourse to race. In Alabama, for instance, the tuition grant law made no mention of race or color, providing that children could qualify for grants if, in the judgment of their parents, it would be detrimental to their “physical or emotional health” or subject them to “hazards to personal safety” if they attended public school.<sup>52</sup> These supposedly race-neutral frames formed part of a broader “freedom of choice” response to desegregation, purportedly allowing black children to transfer to white schools, but in practice subjecting would-be transfer students to harassment or intimidation and rejecting their applications on notionally race-neutral grounds. This language fits with the racial orders framework.

Some policymakers changed the designation of the vouchers to help minimize the association between racist purposes and state action. For example, Virginia relabeled its tuition grants “scholarships” in 1959, and Mississippi christened its grants “loans” a decade later.<sup>53</sup> In Virginia’s Prince Edward County, local segregationists closed the public school system for five years rather than submit to desegregation. Officials justified public funding of tuition grants for students at the whites-only Prince Edward Academy in terms of opaque “patriotic constitutionalism” rather than full blown “diehard segregation.” In this view, it was merely black parents’ irksome rejection of tuition grants for African American private schools that prevented black children in the county from receiving an education. This perverse logic exposes the segregationist intent of tuition grants beneath the superficial color-blind framing.

The thread between segregation and the modern era is palpable, as we show next. The sociologist Chris Bonastia makes this link, too: “In their views that tax money primarily should benefit the largest taxpayers, that government should fund private school education, and that segregation could be justified in non-racial terms, Prince Edward whites anticipated the ‘color-blind,’ conservative strain of rhetoric that gained currency in the late 1960s and the 1970s, and that continues to strive.”<sup>54</sup> The racialized nature of the rights of taxpayers over how funds are spent persisted in America’s racial orders.<sup>55</sup>

Even in states such as Arkansas and North Carolina that passed but did not distribute tuition grants, the

passage of tuition grant legislation had powerful symbolic functions for segregationist elites. It rallied supporters, roused segregationists, and placated fears of federal takeovers. In Arkansas, Governor Orville Faubus—famous for refusing to protect black children at Little Rock in 1957—deployed the individualized rhetoric of color-blindness to express confidence that his tuition grants proposal would not be overturned by the courts: “It is just carrying a little bit further the rights of an individual. All students have constitutional rights—not just members of one race or group, although the present Supreme Court seems interested in only one race.”<sup>56</sup> Grants were justified on the grounds of “individual liberty” of association for parents and students.<sup>57</sup>

Despite this homage to color-blindness, policymakers in the Jim Crow South were not always circumspect about their segregationist purposes. Representative Risley C. Triche of Assumption Parish, Louisiana, for instance, argued in the Louisiana House of Representatives in December 1960 that the grant-in-aid system was the most effective weapon against the integration of public schools.<sup>58</sup> Alabama Governor George C. Wallace called for tuition vouchers in order to hold the line against the threat of integration.<sup>59</sup>

The racist motives of the sponsors of these state schemes did not escape some judges’ attention. A federal district court noted in its 1967 *Poindexter* ruling that Louisiana officials enacted tuition grants to deny black students equal educational opportunities: “For a hundred years, the Louisiana legislature has not deviated from its objective of maintaining segregated schools for white children. Ten years after *Brown*, declared policy became undeclared policy.”<sup>60</sup> Justice Wisdom added: “Open legislative defiance of desegregation orders shifted to subtle forms of circumvention although some prominent sponsors of grant-in-aid legislation have been less than subtle in their public expression. *But the changes in means reflect no change in legislative ends.*”<sup>61</sup> The federal courts in this case, and in other segregation voucher cases, saw through the color-blind justifications proffered by Southern politicians and struck them down as unconstitutional.

#### 1.4. White Supremacist Policy Design and Administration

The educational expense grants were directed according to racial criteria to support segregation

52. Associated Press, “White School Faces Challenge in Selma,” *New York Times*, July 28, 1965.

53. Bonastia, *Southern Stalemate*, 96; Charles Bolton, *The Hardest Deal of All: The Battle Over School Integration in Mississippi, 1870–1980* (Jackson: The University Press of Mississippi, 2005), 175; Muse, *Virginia’s Massive Resistance*, 134.

54. Bonastia, *Southern Stalemate*, 7–8.

55. N. D. B. Connolly, *A World More Concrete: Real Estate and the Remaking of Jim Crow South Florida* (Chicago: The University of Chicago Press, 2014); Martin Gilens, “Race and Poverty in America: Public Misperceptions and the American News Media,” *Public Opinion Quarterly* 60, no. 4 (1996): 515–41.

56. “State Tuition Aid Urged by Faubus.”

57. Carl, *Freedom of Choice*, 29.

58. Jack Walter Peltason, *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation* (Urbana: University of Illinois Press, 1971), 228–29.

59. *Lee v. Macon County Board of Education*.

60. *Poindexter v. Louisiana Financial Assistance Commission*.

61. *Ibid.*, emphasis added.

academies, entangling the state with racist purposes. Several tuition grant programs paid state funds not only to parents but also to the schools directly. New segregation academies were “private in name only.”<sup>62</sup> Their boosters’ notionally color-blind “freedom of choice” rhetoric notwithstanding, these earliest voucher programs were designed specifically to sustain the racial hierarchies of the Jim Crow era by embedding racial categories in the design and administration of policy.

Subsequent iterations of tuition grant laws excised explicit mentions of race, but the racial purposes of the statutes were clear. Under threat of court action, states attempted to camouflage the connection between government and segregated academies by funding parents and not schools directly. A key rationale was first articulated in *Borden v. Louisiana* (1928).<sup>63</sup> The court allowed parents a “free choice” as to where they use their state-funded tuition grant. This trope made the program “constitutional” by benefiting the child rather than the school directly (even if the school ultimately banked the money and thereby benefited “incidentally,” the benefit to the student was the statute’s primary purpose).<sup>64</sup> In another effort to shield their program from legal challenge, lawmakers in Louisiana transferred administrative authority from the state Board of Education to a new arms-length agency, the Louisiana Financial Assistance Commission.<sup>65</sup>

But these efforts to suppress the connection between state and school did not deceive federal courts, as revealed by cases such as *Griffin v. County School Board of Prince Edward County* in 1964. In *Griffin*, the “personal, parental, and race-conscious choice to discriminate was rendered de jure by virtue of state funding, which was used to support the voucher program.” In effect “the Supreme Court thus determined that this “exercising of school choice” with a voucher was a violation of *Brown*’s desegregation mandate.”<sup>66</sup>

In *Hall v. St. Helena Parish* in 1961, the court said that tuition grant programs were a “transparent artifice” designed to circumvent blacks’ “constitutional right to attend desegregated public schools.”<sup>67</sup> In 1967, in *Poindexter* the court stated explicitly: “The United States Constitution does not permit the State

to perform acts indirectly through private persons which it is forbidden to do directly.”<sup>68</sup>

The temporality of early tuition grant vouchers reveals four different legal and political strategies on the part of southern states to stop desegregation using both direct and indirect methods (Table 3). Vouchers were an element in each strategy.

First, states such as Virginia and Louisiana pursued immediate “massive resistance” policies in response to *Brown*, a belligerent, all-in, up-front approach that included school closings, outlawing public school desegregation, and espousing tuition grant payments and open defiance, and that ran the greatest risk of legal challenge. Vouchers were one part of the miasma of violent incidents and legal challenges by white segregationists.

Second, other states, such as North Carolina, deployed a measured approach to slow the pace of desegregation, placate segregationists, and reduce the likelihood of court override by authorizing (but not implementing) tuition grants.

Third, the border-south states—Maryland, West Virginia, Kentucky, and Tennessee—did not pursue tuition grants because they were resigned to at least token integration, particularly those with a small African American population.

Fourth, states such as Mississippi and South Carolina did not pursue tuition grants at first because, at least initially, they were unnecessary. Policymakers were committed to absolute school segregation and “most blacks understandably feared violent or fatal repercussions if they chose to press their case legally.”<sup>69</sup> This last group of states did eventually adopt tuition grants, but many years later than the massive resistance group and only when these states’ bulwarks against desegregation had begun to crumble at last.

In summary, vouchers were part of the general white supremacy effort to get white children out of the public school system to avoid inter-racial contact. This imperative was most acute in states such as Virginia that overlapped the southern Black Belt, which had adopted a defiant position to federal desegregation lawsuits but could not rely upon sheer brute suppression to prevent public school desegregation.

To a free market economist such as Milton Friedman, it made perfect economic sense that racist legislatures would enact measures such as vouchers to prop up segregation in schools (and logically in other policies such as housing and labor markets);<sup>70</sup> indeed, Friedman encouraged the arguments developed by University of Virginia economist James Buchanan in favor of opposing *Brown* by using

62. Joseph Crespiro, *In Search of Another Country: Mississippi and the Conservative Counterrevolution* (Princeton, NJ: Princeton University Press, 2007), 240.

63. *Borden v. Louisiana State Board of Education*, 168 La. 1005 (1928).

64. There are a handful of instances of parents utilizing state-funded tuition grants to send their children to integrated schools.

65. Carl, *Freedom of Choice*, 47.

66. Mark A. Gooden, Huriya Jabbar, and Mario S. Torres Jr., “Race and School Vouchers: Legal, Historical, and Political Contexts,” *Peabody Journal of Education* 91, no. 4 (2016): 522–36, <https://doi.org/10.1080/0161956X.2016.1207445>.

67. *Hall v. St. Helena Parish School Board*.

68. *Poindexter v. Louisiana Financial Assistance Commission*.

69. Bonastia *Southern Stalemate*, 77.

70. Friedman, “The Role of Government.”

Table 3. Vouchers in the Era of Segregation

Four Approaches	Characteristics	States
Massive resistance	Early adopters of tuition grants alongside an all-out assault on the <i>Brown</i> ruling: school closures, abolition of compulsory attendance, interposition, etc.	Virginia, Louisiana, Georgia, Alabama
Safety valve	Adoption but no actual distribution of public tuition grants. An effort to strike a balance between placating segregationists and avoiding legal challenge.	North Carolina, Arkansas
Resignation	No tuition grant legislation. Slow and unenthusiastic but steady progress toward desegregating the public schools.	Maryland, West Virginia, Kentucky, Tennessee
Violent suppression	Tuition grant legislation not needed at first because fear of violent reprisals stifles the prospect of legal challenge. Much later adopters of tuition grants, after barriers to desegregation finally start to fall.	Mississippi, South Carolina

vouchers.<sup>71</sup> But the practice and the theoretical argument were products of and integral to the political supporters of the segregationist racial order. Their chief opponent was the National Association for the Advancement of Colored People (NAACP), and the NAACP's chief weapon in the fight against segregation tuition grants was the courtroom.

## 2. SHIFTING RACIAL REGIMES: VOUCHERS FOR LIBERALS AND RACE TARGETING

### 2.1. The Origins of Midwestern Voucher Programs

In Mississippi, South Carolina, Alabama, Virginia, and Louisiana, lawsuits ended the segregation vouchers. Congress and the courts became more decisive in embedding civil rights in the decade between 1964 and 1973. As these laws and rulings took effect, the blatant use of publicly financed tuition grant vouchers for white students to escape desegregation was finally defeated. By 1970, segregation tuition grants had been struck down as unconstitutional across the South,<sup>72</sup> though segregated institutions, including private segregated academies, remained.<sup>73</sup>

More broadly, segregation was legally displaced by the civil rights legislation in the 1960s enacted in

71. Nancy MacLean, *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America* (Melbourne: Scribe, 2017), 69–70.

72. The relevant cases are *Harrison v. Day*, 106 S. E. 2d 636 (Va. 1959); *Hall v. St. Helena Parish School Board*; *Pettaway v. County School Board of Surry County*; *Griffin v. County School Board*; *Lee v. Macon County Board of Education*; *Poindexter v. Louisiana Financial Assistance Commission*; *South Carolina Board of Education v. Brown*, 393 U.S. 222 (1968); *Coffey v. State Educational Finance Commission*.

73. Sarah Carr, "In Southern Towns, 'Segregation Academies' Are Still Going Strong," *The Atlantic*, December 13, 2012.

response to the demands of the reform movement.<sup>74</sup> Legal and federally upheld segregation encountered decisive legislative defeat in the 1960s as Congress eventually passed laws against it in the mid-1960s. Combined with busing programs and new federal funding made available as a condition of desegregating schools, Southern states made dramatic strides to integrate schools between 1968 and 1973.<sup>75</sup>

Court orders were also crucial in ending vouchers as tools of segregated schools. In the north, the voucher cause experienced further setbacks during the 1970s. Segregation was mostly not de jure in the North, but de facto present and resistance to school integration was fierce, and often violent.<sup>76</sup>

A federal effort to institute a voucher program in New Hampshire foundered on local-level resistance in 1976.<sup>77</sup> A public school voucher demonstration project lasted just five years in the Alum Rock district, California. Voter referenda quashed voucher plans by large majorities. Scattered tuition reimbursement programs in Illinois, Nebraska, New York, Ohio, and Pennsylvania were struck down as unconstitutional between 1972 and 1974 on the grounds that they violated the separation of church and state. Unlike

74. Francis, *Civil Rights and the Making of the Modern American State*, Richard P. Young and Jerome S. Burstein, "Federalism and the Demise of Prescriptive Racism in the United States," *Studies in American Political Development* 9, no. 1 (1995): 1–54, <https://doi.org/10.1017/S0898588X00001164>.

75. Desmond King, "Forceful Federalism against American Racial Inequality," *Government and Opposition* 52, no. 2 (2017): 356–82, <https://doi.org/10.1017/gov.2016.52>; Charles T. Clotfelter, *After Brown: The Rise and Retreat of School Desegregation* (Princeton, NJ: Princeton University Press, 2004).

76. Davison M. Douglas, *Jim Crow Moves North: The Battle over Northern School Segregation, 1865–1954*, Cambridge Historical Studies in American Law and Society (Cambridge, UK: Cambridge University Press, 2005).

77. Carl, *Freedom of Choice*.

segregation tuition grants, these tuition reimbursement programs had incorporated the Catholic schools, which constituted a large section of all private schools then in existence.

Despite support for the idea of vouchers among members of the Office of Economic Opportunity during the Great Society Era, the Nixon and Reagan administrations, and even liberal academics such as Diane Ravitch and sociologist Christopher Jencks, no major voucher tuition programs were instituted during the 1970s and 1980s.<sup>78</sup> This was an era in which the race-conscious policy alliance's commitment to activist federal policy to advance racial equality enjoyed national political support, even if voter resentment toward affirmative action and related measures was brewing.<sup>79</sup>

## 2.2. Voucher Designs as Race Targeting

The reinvented place of vouchers in America's racial hierarchies seemed to arrive in the early 1990s when two major voucher programs passed. Each targeted large urban school systems. The trajectory of America's racial hierarchies subsequently gave a new role to vouchers as part of a color-blind approach to policy. But first, some advocates for racial equality were drawn to the potential efficacy of vouchers as a race-targeted instrument. These two phases of race-conscious controversies correspond to the expansion and subsequent retrenchment of minority political rights within the larger trajectory of racial politics in the United States.<sup>80</sup>

Responding to a perceived crisis of city schools, high drop-out rates, low test scores, and a growing urban African American population still enduring segregation and discrimination, the Wisconsin and Ohio legislatures passed the Milwaukee Parental Choice Program (1990) and the Cleveland Scholarship Program (1995), respectively. Amid mounting disillusionment and an expanding racial achievement gap, Republican politicians saw a wedge issue on which they could ally with nonwhite Democrats.

The racial dynamics of predominantly African American cities within overwhelmingly white states, combined with anger at stalling desegregation, weak public school performance, and growing black political power at municipal level, generated sufficient support for change.<sup>81</sup> Polls in the 1990s generally found that African American support for vouchers

exceeded that of other racial groups (although responses varied with question wording).<sup>82</sup>

In 1990 Milwaukee and Cleveland were 30 percent and 47 percent African American, respectively, compared to statewide populations that were 92 percent and 88 percent white (Table 4).

Population data in Table 4 underestimate the percentage of African American enrollment in Milwaukee's and Cleveland's public schools because many white students had left the system for parochial schools over the preceding four decades.

The Milwaukee program initially excluded religious schools, but in 1995 the legislation was amended to include them. The program started to grow. From an initial enrollment of 258 students in the 1990–91 school year, the Milwaukee program swelled to 27,606 by 2016–17. In Ohio, the Cleveland program temporarily outstripped the Milwaukee program in enrollments but grew more modestly to 8,594 by 2017.

As vouchers moved into a new phase during the 1990s, the separation between the state and the private schools became sharper than it had been even during the era of Jim Crow. Since the Wisconsin and Ohio vouchers allowed religious schools to participate (unlike the segregation vouchers), it was essential to disguise the connection between state and school by the intervention of private parental choice. Both Wisconsin and Ohio have state constitutional provisions known as “no-aid provisions” that prohibit public funding of denominational institutions.<sup>83</sup> To avoid running afoul of these constitutional

82. Polls during this period generally showed that African Americans were more supportive of vouchers than other racial groups: 76 percent support in a 1992 National Catholic Education Association poll; 62 percent support in a 1997 Phi Delta Kappa/Gallup poll (compared to 47 percent among white respondents); 57.3 percent support in a 1997 Joint Center for Political and Economic Studies poll (compared to an evenly divided white response) (Millicent Lawton, “Gallup Poll Finds Wide Support for Tuition Vouchers,” *Education Week*, September 23, 1992, <https://www.edweek.org/ew/articles/1992/09/23/03-3cho.h12.html?qs=african+american+support+vouchers>; Adrienne D. Coles “Poll Finds Growing Support for School Choice,” *Education Week*, September 3, 1997; David Hill, “Class Action,” *Education Week Teacher*, April 1, 1998, <https://www.edweek.org/tm/articles/1998/04/01/07denver.h09.html?qs=african+american+support+vouchers+daterange:1981-07-01..2000-01-01>). However, exit polls in California and Michigan voucher ballot initiatives showed no difference or lower support for vouchers among blacks than among whites, and other nationwide polls displayed greater skepticism of vouchers by African Americans: for example, 41 percent of African Americans strongly opposed vouchers in a 2001 Zogby International poll, compared to 32 percent in the whole sample (Karla Scoon Reid, “Poll Finds Support for Vouchers Wanes If Public Schools Affected,” *Education Week*, October 3, 2001; David L. Leal, “Latinos and School Vouchers: Testing the ‘Minority Support’ Hypothesis,” *Social Science Quarterly* 85, no. 5 (2004): 1227–37). Voucher opinions are highly sensitive to question wording.

83. Ursula Hackett, “Republicans, Catholics and the West: Explaining the Strength of Religious School Aid Prohibitions,” *Politics and Religion* 7, no. 3 (2014): 499–520.

78. Ibid.; Diane Ravitch, *The Right Thing: Why Liberals Should Be Pro-Choice* (Washington, DC: Brookings Institution Press, 2001), <https://www.brookings.edu/articles/the-right-thing-why-liberals-should-be-pro-choice/>.

79. Paul Frymer and John David Skrentny, “Coalition-Building and the Politics of Electoral Capture during the Nixon Administration: African Americans, Labor, Latinos,” *Studies in American Political Development* 12, no. 1 (1998): 131–61.

80. James Jones, “Serving Up Racism: Examining the Racial Order of Congressional Cafeterias” (in press).

81. Carl, *Freedom of Choice*.

Table 4. Racial Characteristics of Milwaukee and Cleveland's Populations, 1990

	White	African American	Other	Total
Milwaukee	398,033 (63%)	191,255 (30%)	38,800 (6%)	628,088
Wisconsin*	4,512,523 (92%)	244,539 (5%)	134,707 (3%)	4,891,769
Cleveland	250,234 (49%)	235,405 (47%)	19,977 (4%)	505,616
Ohio*	9,521,756 (88%)	1,154,826 (11%)	170,533 (2%)	10,847,115

\*State as a whole. Source: U.S. Census Bureau. *1990 Census of Population: General Population Characteristics* (Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census: 1990).

provisions, policymakers designed programs that funded parents rather than schools directly.

In the Supreme Court's 2002 *Zelman v. Simmons-Harris* case, this indirect program design acquired legal significance.<sup>84</sup> The majority justices held that "Our decisions have drawn a consistent distinction between government programs that provide aid directly to religious schools . . . and programs of true private choice, in which government aid reaches religious schools only as a result of the genuine and independent choices of private individuals."<sup>85</sup> Although 96 percent of recipients used the Cleveland voucher at religious schools, the Court found "no evidence that the State deliberately skewed incentives toward religious schools" in the way that the Jim Crow segregationists had skewed the administration of tuition grants toward segregated schools. In the most extreme case—*Griffin v. County School Board of Prince Edward County*—there had simply been no nonsegregated in-county options for tuition grant recipients.

Immediately challenged in court by plaintiffs acting for public school administrators, teacher unions, and students, both voucher programs survived Supreme Court review and continued to expand. Figure 3 displays the expansion of voucher enrollments in these two programs as a proportion of the school-age population in each city. A quarter of Milwaukee's school-age population used a voucher in 2017.

### 2.3. Patterns of Support for Race-Targeted Vouchers

Wisconsin's program is an important punctuation in the movement from conservative Democrat to overwhelmingly Republican patterns of voucher support. It rested on a "strange-bedfellow" alliance launched in the late 1980s by Wisconsin state Representative Polly Williams. Williams, an African American Democrat, sponsored the Milwaukee Parental Choice Program legislation, allied with conservatives and the state's Republican governor, Tommy Thompson, to pass Wisconsin's first voucher program in an

effort to improve an urban school system wracked with weak results and growing poverty rates.<sup>86</sup>

A native of Mississippi whose family had moved to Wisconsin prior to school integration, Williams's advocacy of vouchers was unusual. Her colleague, former schools superintendent and founder of the pro-vouchers group Black Alliance for Educational Options (BAEO) Howard Fuller, recalled in a 2014 interview: "In '88 being a black Democrat saying 'I support vouchers,' that was an unbelievably brave stand."<sup>87</sup>

Williams proved to be an outlier from most supporters of activist policy for racial equality, who campaigned for more spending on public schools *in general*, rather than selective voucher schemes. Although the use of vouchers as a mechanism for maintaining racial segregation did not appear explicitly in voucher discussions of the 1990s, the presence of race-conscious alliance members within the pro-voucher camp may have helped counter the impression that school choice was "a white, conservative movement that takes advantage of unwitting minority families."<sup>88</sup>

Representative Williams's work on behalf of the voucher cause was an instance in voucher history when the alignment of vouchers with the color-blind racial policy alliance broke down. While Republican conservatives never wavered in their support for vouchers—Governor Thompson had included a voucher proposal in his 1988 budget, and Governor George Voinovich pushed Catholic dioceses to join his voucher effort in Ohio<sup>89</sup>—Representative

86. Frederick M. Hess, *Revolution at the Margins: The Impact of Competition on Urban School Systems* (Washington, DC: Brookings Institution Press, 2004).

87. Arianna Prothero, "Q&A with Howard Fuller on 'The Mother of School Choice,' Annette Polly Williams," *Education Week—Charters & Choice*, November 21, 2014, [http://blogs.edweek.org/edweek/charterschoice/2014/11/qa\\_with\\_howard\\_fuller\\_on\\_the\\_mother\\_of\\_school\\_choice\\_annette\\_polly\\_williams.html?cmp=SOC-SHR-FB](http://blogs.edweek.org/edweek/charterschoice/2014/11/qa_with_howard_fuller_on_the_mother_of_school_choice_annette_polly_williams.html?cmp=SOC-SHR-FB).

88. Karla Scoon Reid, "Minority Parents Quietly Embrace School Choice," *Education Week*, December 5, 2001, <https://www.edweek.org/ew/articles/2001/12/05/14introminority.h21.html?qs=african+american+support+vouchers>.

89. George Voinovich, Letter to Daniel Edward Pilarczyk, "Voinovich to Pilarczyk," June 14, 1991, box GVV 42, CAP-CHI, Catholic Diocese—Pilarczyk, Dan Archbishop, Voinovich Archives; Daniel

84. *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

85. *Ibid.*

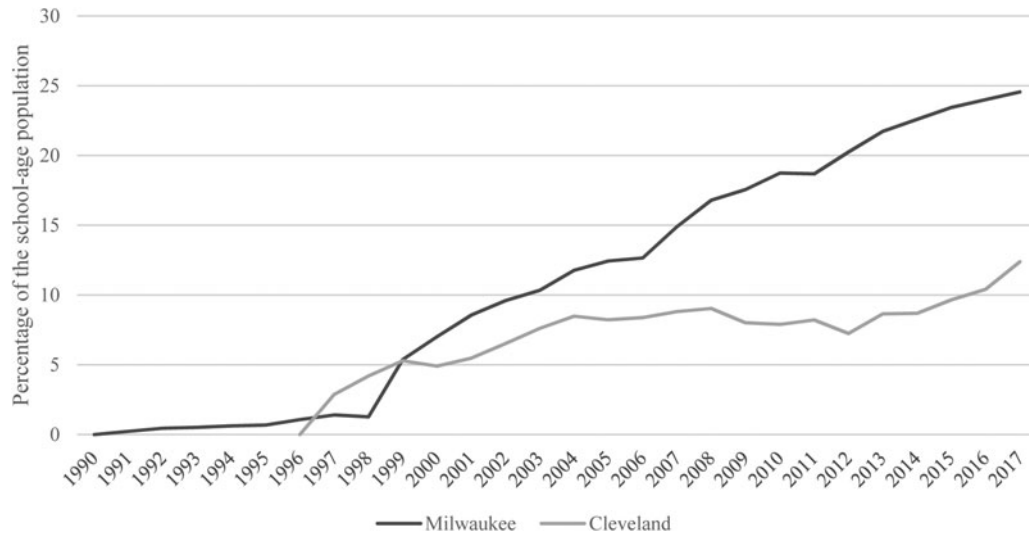


Fig. 3. Enrollment in the Milwaukee and Cleveland Voucher Programs as a Proportion of the 5- to 18-Year-Old Population in Each City.

Sources: “School Choice in America Dashboard,” EdChoice, 2018, <https://www.edchoice.org/school-choice/school-choice-in-america/>; Ohio Department of Education, “Charter Schools Program Monitoring Report: Final Report Prepared for the U.S. Department of Education,” WestEd, 2017, <http://education.ohio.gov/getattachment/Topics/Community-Schools/Charter-Schools-Program-Grant-CSP/Ohio-CSP-Final-Monitoring-Report-2017.pdf.aspx?lang=en-US>; U.S. Census Bureau, *2010 Census of Population, General Population Characteristics: United States Summary* (Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, 2010), <https://www.census.gov/prod/www/decennial.html>; Wisconsin Department of Public Instruction, “Milwaukee Parental Choice Program—Enrollment and Payment History,” Wisconsin Department of Public Instruction, 2017, <https://dpi.wi.gov/sms/choice-programs/data/mpcp-historical>.

Williams’s stance broke the race-conscious alliance’s opposition to vouchers and helped give birth to a new constellation of race-conscious groups seeking to boost vouchers for race-conscious ends. Launched in 2000, BAEO was the lynchpin of that race-conscious pro-voucher alliance. They found some judicial support.

#### 2.4. Judicial Patterns of Support for Vouchers

Patterns of political support shifted during the era of race-conscious controversies, and these shifts were mirrored in changing patterns of support by judges in voucher cases. Throughout the 1960s and 1970s, courts often found voucher programs unconstitutional. But from the mid-1980s and particularly since *Zelman v. Simmons-Harris* in 2002, courts became more likely to uphold vouchers’ constitutionality, a vital legal prop for programs enduring fierce criticism from many race-conscious alliance members including the NAACP. This legal imprint complements the post-1970s Supreme Court

majority’s dilution of affirmative action, set aside hiring and even voting rights.<sup>90</sup>

To examine patterns of support for vouchers among judges, we collected and analyzed information on all judicial opinions in voucher cases from 1955 to 2017, unearthing several empirical trends. First, Republican justices (and those appointed by Republican executives) have been consistently more sympathetic to vouchers than Democratic justices, mirroring Republican policymakers’ support for voucher bills. Second, Southern justices were more sympathetic to vouchers than western ones. Third, justices have become more likely to uphold vouchers as constitutional over time, a finding consistent with Hackett’s analysis of the broader universe of religious school aid programs.<sup>91</sup> This last trend extends the judicial patterns of the 1960s.

These findings show how during the transition of racial regime from segregation to the civil rights era, judicial decisions played a key role in facilitating the revival of vouchers despite their earlier rulings. This is part of America’s racial trajectory. It illustrates

Edward Pilarczyk, Letter to George Voinovich, 1991, “Pilarczyk to Voinovich,” July 3, 1991, box GVV 47, ED:AD-ED:GEM, folder Education Choice Committee, Voinovich Archives; Daniel Edward Pilarczyk, Letter to George Voinovich, 1993, “Pilarczyk to Voinovich,” August 27, 1993, box GVV 47, ED:AD-ED:GEM, folder Education Choice Committee, Voinovich Archives.

90. Desmond King and Rogers M. Smith, “The Last Stand? *Shelby County v. Holder*, White Political Power, and America’s Racial Policy Alliances,” *Du Bois Review: Social Science Research on Race* 13, no. 1 (2016): 25–44.

91. Ursula Hackett, “Theorizing the Submerged State: The Politics of Private Schools in the United States,” *Policy Studies Journal* 45, no. 3 (2017): 464–89, <https://doi.org/10.1111/psj.12170>.

how racial hierarchies are reconfigured along new divisions between active racial equality reformers and those opposing the use of federal policies for equality, a dichotomy along the lines of King and Smith’s race-conscious versus the color-blind policy alliances.

Our database contains 229 individual justice votes on voucher cases, including opinion writers, concurring decisions, and dissents. This is the universe of cases. We subjected our database to logistic regression with standard errors clustered by court to examine the effect of justice and state characteristics upon judges’ likelihood of voting in favor of vouchers (Table 5). The dependent variable is coded 1 if the justice voted to uphold a voucher as constitutional, and 0 otherwise.<sup>92</sup>

Our regression shows that the patterns of support in courtrooms mirror patterns of support among policymakers, with Republicans most likely to vote in favor of vouchers even when controlling for sex, race, and other variables. Compared to Southern judges, we find that Westerners are less likely to uphold voucher programs as constitutional. Voucher bills have been held constitutional at a much faster rate in recent years, as the statistically significant result for the date of program challenge indicates. Republican-appointed judges are more likely to uphold voucher programs than Democratic-appointed judges.

The key difference between legislative and judicial realms before the breakdown of Jim Crow is that Democratic justices struck down policies passed by Democratic majorities. This split reflects the division between the Democratic Party’s Northern and Southern wings during that racial epoch. Most baldly, Democratic federal court judges confronted measures passed by racially conservative Democratic majorities in Southern legislatures.

The clash between segregationist and anti-segregationist racial policy alliances is amply illustrated in decisions such as *Harrison v. Day* (1959), *Hall v. St Helena Parish School Board* (1961), and *Lee v. Macon County Board of Education* (1964), which found Virginian, Louisianan, and Alabaman tuition grant programs, respectively, unconstitutional.<sup>93</sup>

Since the Jim Crow era, as partisan distinctions between race-conscious and color-blind alliances have inflamed, the Republican Party has continued to move toward racial conservatism and the Democratic Party broadened its racial liberalism.<sup>94</sup>

92. There are no statistically significant effects for a justice’s race or sex likely due to the small proportion of justices that are either nonwhite (5 percent of cases) or female (14 percent of cases)

93. *Harrison v. Day*; *Hall v. St. Helena Parish School Board*; *Lee v. Macon County Board of Education*.

94. Brian D. Feinstein and Eric Schickler, “Platforms and Partners: The Civil Rights Realignment Reconsidered,” *Studies in*

Table 5. Judicial Decisions in Voucher Cases, 1955–2017: Logistic Regression with Standard Errors Clustered by Court

Partisan affiliation ( $R = 1$ )	1.268*** (.366)	1.335*** (.351)	1.329*** (.355)	1.209*** (.338)	1.217*** (.337)	1.213*** (.339)
Sex (male = 1)		-.562 (.351)	-.579 (.367)	.394 (.300)	.394 (.301)	.375 (.373)
Race (white = 1)			.204 (.507)	.709 (.498)	.715 (.498)	.800 (.526)
Date of challenge				.061*** (.010)	.060*** (.010)	.080*** (.014)
No-aid provision					.033 (.091)	.080 (.096)
Region North						.543 (.871)
Midwest						1.217*** (.459)
West						-.867*** (.509)
Constant	-1.248*** (.325)	-.807* (.477)	-.982** (.484)	-123.751*** (20.588)	-121.969*** (20.212)	-163.144*** (28.729)

Republican justices remain more sympathetic to voucher programs than Democratic justices, but they now mostly confront Republican rather than Democratic legislation. During the era of race-conscious controversies from the 1980s onward, judges became more supportive of voucher programs.

### 2.5. The Switch from the Freedom of Choice Frame to the Racial Equality Frame (and Back Again)

Although the Cleveland voucher program was held constitutional in the U.S. Supreme Court case *Zelman v. Simmons-Harris* in 2002, voucher bills grew at an indifferent rate during the following decade.<sup>95</sup> Enrollments in the Milwaukee and Cleveland programs continued to rise (Figure 3), but surprisingly few voucher bills were introduced in other state legislatures or passed by referenda. During George W. Bush's time in office, just eleven voucher programs were created at the state level, and a federally funded voucher program was inaugurated for Washington, DC. Several were struck down in court on First Amendment grounds, including programs in Colorado and Florida (see Figure 1). This period of sluggish growth extended to the 2000s.

James Forman concluded in 2007 that school vouchers failed to expand after *Zelman* because the sorts of arguments mustered in favor of vouchers did not resonate among the constituencies whose support they needed. In Forman's formulation, early advocates framed their pro-voucher arguments as a "values claim."<sup>96</sup> Vouchers protected the right of parents to send their children to a school that reinforced their values. This framing rallied Christian conservatives to the voucher cause between the 1970s and the 1990s. It was also a core element of southern segregationists' "freedom of association" framing during the 1950s and 1960s, a color-blind facade to conceal their racist purposes.

Beginning in the 1990s, Forman argues that supporters of vouchers switched from the values claim to a racial-justice claim that emphasized the right of low-income and minority parents to send their children to academically rigorous private schools.<sup>97</sup> The Wisconsin program fits this characterization. Representative Williams criticized public school desegregation plans for making black children "get up at 5 a.m., standing out in the dark and cold, so they can be bused to some faraway place where no one teaches them anything. [The white establishment] controls

everything. White bus companies, white businesses, white suburbs . . . they get millions upon millions on account of Chapter 220 [the then 25-year-old desegregation plan]."<sup>98</sup>

Forman concludes that, "the racial-justice claim asserted that vouchers provided educational emancipation for poor students, mostly black, trapped in dysfunctional urban districts."<sup>99</sup> A switch in the "public face, intellectual rationale, and legal defense" of the voucher movement toward explicitly race-conscious arguments made the legal defense of the Cleveland voucher program easier, although it failed to resonate with white constituencies.

The new focus on helping minorities, rather than First Amendment issues, appealed to a majority of the Supreme Court. In his concurring opinion in *Zelman*, Justice Clarence Thomas wrote that "the failure to provide education to poor urban children perpetuates a vicious cycle of poverty, dependence, criminality, and alienation that continues for the remainder of their lives." He declaimed: "If society cannot end racial discrimination, at least it can arm minorities with the education to defend themselves from some of discrimination's effects."<sup>100</sup>

In the 1962 reprint of his essay "The Role of Government in Education," Milton Friedman removed the footnote that had positively identified the Southern programs designed to circumvent desegregation after the *Brown* ruling as leading examples of vouchers.<sup>101</sup> Friedman could obviously scent the political times and the racial equality tilt in national politics. His caution was shared widely by voucher advocates. When vouchers re-emerged as a major force in the 1990s, proponents now advanced a different set of rationales based on race-consciousness and targeting rather than the defense of racial inequality.

Members of the pro-voucher coalition advanced the framing of school vouchers as "the civil rights issue of our time."<sup>102</sup> It was a deliberate strategy on the part of voucher supporters and their legal team in the *Zelman* decision, headed by Clint Bolick, co-founder of the pro-voucher organization Institute for Justice.<sup>103</sup> Their aim was to expand the base of support for vouchers and to help shore up its legal defense by claiming the mantle of the civil rights

*American Political Development* 22, no. 1 (2008): 1–31, <https://doi.org/10.1017/S0898588X08000011>; Eric Schickler, *Racial Realignment: The Transformation of American Liberalism, 1932–1965* (Princeton, NJ: Princeton University Press, 2016).

95. Carl, *Freedom of Choice*, Forman, "The Rise and Fall of School Vouchers."

96. Forman, "The Rise and Fall of School Vouchers."

97. *Ibid.*

98. David Ruenzel, "A Choice in the Matter," *Education Week*, September 7, 1995, <https://www.edweek.org/ew/articles/1995/09/07/04milwau.h15.html?qs=african-american-vouchers+segregation+polly+daterange:1988-01-01..2000-01-01>.

99. Forman, "The Rise and Fall of School Vouchers," 551.

100. *Zelman v. Simmons-Harris*.

101. Friedman, "The Role of Government"; J. E. Chubb and Terry M. Moe, *Politics, Markets and America's Schools* (Washington, DC: The Brookings Institution, 1990); Carl, *Freedom of Choice*.

102. McKenzie Snow, "School Choice: 'The Civil Rights Issue of Our Time,'" *ExcelinEd*, February 4, 2016, <https://www.excelined.org/edfly-blog/school-choice-the-civil-rights-issue-of-our-time/>.

103. Martha Minow, *In Brown's Wake: Legacies of America's Educational Landmark* (Oxford, UK: Oxford University Press, 2010).



struggle in education.<sup>104</sup> Dr. Martin Luther King Jr.'s niece Alveda King endorsed school choice as a civil right in a *Wall Street Journal* op-ed.<sup>105</sup> Pennsylvania Governor Tom Corbett echoed Louisiana Governor Bobby Jindal, also a Republican, in calling vouchers “the civil rights issue of the twenty-first century.”<sup>106</sup>

One signal of the extent to which vouchers had been re-imagined since their origins as instruments of segregation came in 2011, when the Pennsylvania Democrat State Senator (and African American) Anthony H. Williams compared *opponents* of vouchers to segregationists: “Standing in the way of school choice for needy kids in failing urban schools is like Gov. George Wallace standing in the doorway of a classroom to continue the segregation of the ‘60s.”<sup>107</sup> Historian Martha Minow concludes that, “Clint Bolick’s strategy . . . paid off. Identifying poor black and Hispanic children as beneficiaries and aligning school choice with civil rights rather than against it seemed to work. . . . Public attitudes about school choice depended in no small part on the framing of the issue.”<sup>108</sup>

Yet despite these efforts to claim the mantle of the civil rights movement, voucher growth was tepid into the first decade of the twenty-first century. Forman argues that such race-conscious claims repelled white conservatives.<sup>109</sup> The true voucher renaissance was still to come, nourished by the ascendance of the increasingly confident color-blind alliance.

### 3. VOUCHERS IN THE CIVIL RIGHTS ERA: THE COLOR-BLIND RESURGENCE

#### 3.1. Modern Voucher Growth and Racial Spillover in the Obama Era

The real push for vouchers by state legislatures came midway through Barack Obama’s first term as newly elected Republican legislatures started to exploit the *Zelman* clearance. This new thrust was a direct response to the heightened racial polarization of Obama’s presidency and not confined to education policy. It was abetted by a shift in governance toward Republican control of state government after 2010 in legislatures across the country. Newly unified Republican governments in Indiana, Wisconsin, Alabama, Pennsylvania, North Carolina, and New Hampshire all passed voucher bills in the two years following the 2010 elections.

104. Persson, “Vouchers on the Move.”

105. Alveda C. King, “Fighting for School Choice. It’s a Civil Right,” *The Wall Street Journal*, September 11, 1997.

106. Tom Infield, “Pennsylvania Gubernatorial Candidates Advocate School-Vouchers Bill at Forum,” *The Philadelphia Inquirer*, September 15, 2010.

107. Amy Worden and Dan Hardy, “Corbett Appears Set to Push School Vouchers,” *The Philadelphia Inquirer*, January 20, 2011.

108. Minow, *In Brown’s Wake*, 122.

109. Forman, “The Rise and Fall of School Vouchers.”

Just as his health care reform divided voters by race, so the Obama presidency galvanized opponents of racial equality to use vouchers as a means to keep education segregated.<sup>110</sup> The striking rise of vouchers is not *causally* explained by America’s increasing racial polarization, but the correlation is hardly racially neutral. Tesler explains a similar contagion as racial spillover.<sup>111</sup> In the era of an African American president, public policies—notably health care and gun control regulation—become racialized in that voters viewed these issues through the prism of their racial policy preferences. Racial spillover spread into vouchers.<sup>112</sup>

The use of race-conscious frames may have aided the legal defense of vouchers, but the literature on racialization demonstrates that the general public is negatively disposed to race-conscious measures aimed at aiding blacks.<sup>113</sup> Using racial-justice claims weakened the voucher cause by focusing on school underperformance. This emphasis opened the door for greater regulation of private schooling and alienated white conservative Christians, thus dooming the voucher cause as former supporters deserted it.<sup>114</sup> But other support was at hand. When vouchers were rediscovered again by Republican state legislatures after 2010, color-blind frames were ascendant nationally, even though these advocates felt the need to gesture toward potential race-targeted gains from vouchers.

The year 2011 was declared “the year of school choice.” It was merely a starting gun. Seven programs were created in 2011 alone, six in 2012, nine in 2013, and twelve more by the end of 2016. Designs varied: Some utilized tax credits and intermediary organizations for the distribution of grants. Other programs took an individualized savings account model. And

110. King and Smith, “Without Regard to Race”; Erica Frankenberg and Genevieve Siegel-Hawley, “Choosing Diversity: School Choice and Racial Integration in the Age of Obama,” *Stanford Journal of Civil Rights & Civil Liberties* 6 (2010): 219–52; Ursula Hackett, “Offers and Throffers: Education Policy under Obama,” in *The Obama Presidency and the Politics of Change*, ed. Edward Ashbee and John Dumbrell, Studies of the Americas (New York: Palgrave Macmillan, 2017), 181–97.

111. Michael Tesler, “The Spillover of Racialization into Health Care: How President Obama Polarized Public Opinion by Racial Attitudes and Race,” *American Journal of Political Science* 56, no. 3 (2012): 690–704.

112. Frank L. Samson, “Perceptions of Racialized Opportunities and Hispanics’ Political Attitudes: Predicting Support for School Vouchers and Government Intervention in Health Care,” *American Behavioral Scientist* 56, no. 11 (2012): 1525–64, <https://doi.org/10.1177/0002764212458278>; Tesler, *Post-Racial or Most-Racial?*

113. Tesler, *Post-Racial or Most-Racial?*; Nicholas A. Valentino, Vincent L. Hutchings, and Ismail K. White, “Cues That Matter: How Political Ads Prime Racial Attitudes during Campaigns,” *American Political Science Review* 96, no. 1 (2002): 75–90, <https://doi.org/10.1017/S0003055402004240>; Gilens, “Race and Poverty in America.”

114. Forman, “The Rise and Fall of School Vouchers.”

all of them subsidized parents' choice of private school tuition.

Southern legislatures embraced vouchers enthusiastically. Mississippi and Virginia passed their first modern voucher programs in 2012; Alabama and both Carolinas in 2013. By 2016 all seven of the original segregation tuition grant states had passed new voucher bills. Indeed, Alabama, Georgia, Louisiana, Mississippi, and South Carolina each had more than one such program. These were impeccably color-blind initiatives.

In this modern period, voucher programs stretched from Montana to Maryland and from New Hampshire to Nevada. Western states were generally less receptive to vouchers, although states such as Arizona and Nevada embraced them. Enrollments grew to more than half a million children nationwide across thirty states. In 2015, by our estimate, 665,760 students used some form of voucher. Figure 4 displays the growth of enrollments in voucher programs as a proportion of the school-age population in selected states.

As Figure 4 shows, vouchers serve around 6 to 7 percent of the school-age population in school choice hotspots Indiana and Wisconsin, three times as many, proportionately, as were served by tuition grants in the Deep South after *Brown*.

The take-up of modern voucher programs varies depending upon the characteristics of the program and the state. By 2018 we calculate that there were eighteen programs targeted at disabled students (most in the South), sixteen programs targeted at low-income groups (most in the Midwest), two programs for students in failing schools, twelve programs with multiple eligibility requirements, and twelve universal programs with no eligibility limits.<sup>115</sup> Compensatory programs (those with income limits for participation) and those targeted at cities tend to attract a greater proportion of black participants. "Universal" programs such as those enacted by Indiana place no income or geographical limits on voucher participation and so tend to be dominated by whites, mirroring the disproportionate take-up of public tuition grant funds during the era of segregation.<sup>116</sup>

115. "School Choice in America Dashboard," EdChoice, 2018, <https://www.edchoice.org/school-choice/school-choice-in-america/>. We exclude the "town tuitioning" programs in New Hampshire, Maine, and Vermont from this count, because these nineteenth-century programs apply only to districts that lack an existing public school.

116. Eric Brunner, Jennifer Imazeki, and Stephen L. Ross, "Universal Vouchers and White Flight" (Department of Economics Working Paper Series, University of Connecticut, 2006), [http://digitalcommons.uconn.edu/cgi/viewcontent.cgi?article=1038&context=econ\\_wpapers](http://digitalcommons.uconn.edu/cgi/viewcontent.cgi?article=1038&context=econ_wpapers); Halley Potter, "Do Private School Vouchers Pose a Threat to Integration?" Report: School Integration, The Century Foundation, 2017, <https://s3-us-west-2.amazonaws.com/production.tcf.org/app/uploads/2017/03/22102646/do-private-school-vouchers-pose-a-threat-to-integration.pdf>; Carl, *Freedom of Choice*, 2.

Some states conspicuously failed to pass such programs, however. None of the three most populous states (California, Texas, and New York) had passed vouchers by 2017. New York and California were bastions of the liberal, increasingly Democratic race-conscious alliance, so their absence is unremarkable. In Texas at least six legislative efforts to enact vouchers failed in committee or on the floor, defeated by a strange-bedfellow state-based coalition of Democrats, rural Republicans fearing the loss of public school provision, and homeschoolers and Baptist groups fearful of governmental intrusion into religion, which has (so far) repelled federal pro-voucher organizations by campaigning for a distinctively Texan approach.<sup>117,118</sup>

### 3.2. Racial Alliances and Patterns of Support for Vouchers

The race-conscious alliance's opposition to vouchers looked precarious during the 1990s. But the mainstream civil rights organizations mobilized and prevailed. The NAACP and its local chapters organized vigorous opposition to vouchers. Aside from BAEO, the number of race-conscious proponents of vouchers remained small, with a mere handful of state- and local-level groups, such as Hispanics for School Choice (a Wisconsin group) and Black Clergy of Philadelphia, which mobilized on behalf of school vouchers during the most recent push for vouchers starting in 2011.<sup>119</sup> BAEO disbanded in 2017.

Well over 90 percent of voucher bills passed since Representative Williams's efforts in Wisconsin were created by color-blind alliance members and opposed by race-conscious alliance members.

117. Robert T. Garrett, "Texas House Passes Budget with Provision Banning School-Voucher Funding," *Dallas News*, April 7, 2017, <https://www.dallasnews.com/news/texas-legislature/2017/04/06/texas-house-fight-funding-ban-vouchers-social-issues-marathon-budget-wrangle>.

118. Opposition to vouchers in Texas comes from an alliance of Democrats and Republican lawmakers with rural and suburban constituencies. For example, in the 2017 votes on SB1, a failed voucher bill, 62 percent of Republican lawmakers from less urbanized districts (those with an urbanized population of less than 80 percent according to the U.S. Census Bureau (2010 Census Urban and Rural Classification and Urban Area Criteria, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html>) voted against vouchers, while 67 percent of Republican lawmakers from more urbanized districts (greater than 80 percent urbanization) voted in favor. In short, Texan Republicans from less urban districts helped scupper voucher bills, alongside Democrats. This opposition may be related to practical questions about the viability of school choice in less-populated areas and concern about loss of public school jobs as much as fears of government regulation of private religious schools or perceptions of racial threat to white suburban school districts.

119. Zeus Rodriguez, "School Choice Students Are Not Pawns," *The Wisconsin Journal Sentinel*, January 27, 2011; Will Bunch, "Pennsylvania: Voucher Ground Zero," *The Philadelphia Daily News*, May 23, 2011.

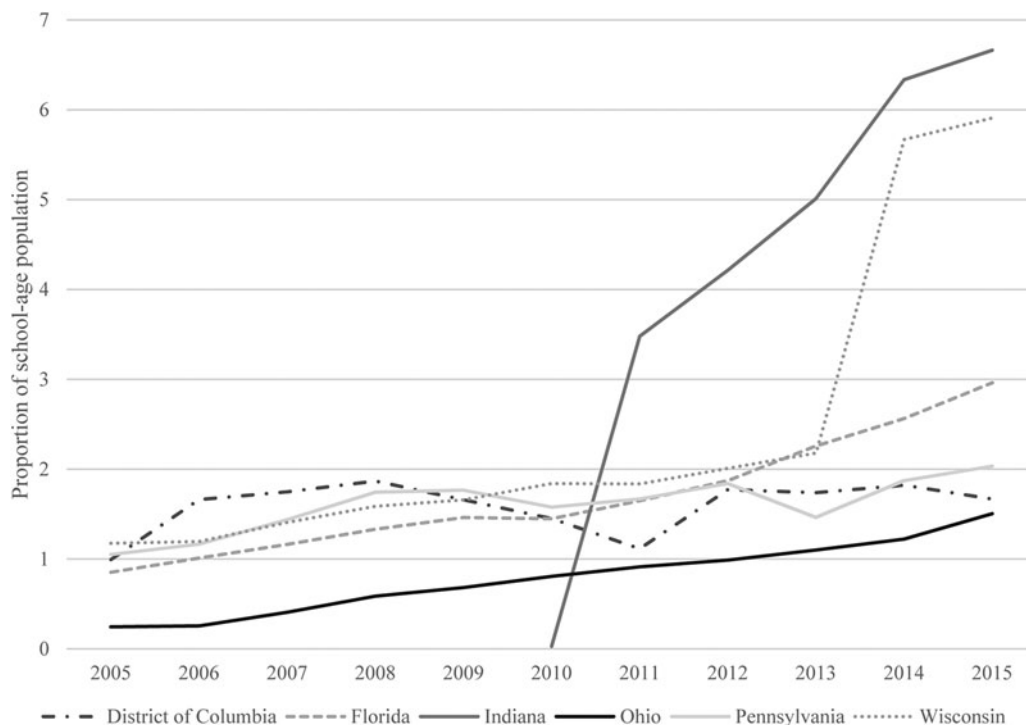


Fig. 4. Enrollments in Voucher Programs as a Proportion of 5- to 19-Year-Olds in Selected States, 2005–2015. Sources: EdChoice “School Choice in America Dashboard,” EdChoice, 2018, <https://www.edchoice.org/school-choice/school-choice-in-america/>.

U.S. Census Bureau sources: *1990 Census of Population: General Population Characteristics*, (Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, 1990); *2000 Census of Population, General Population Characteristics: United States Summary* (Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, 2000), <https://www.census.gov/prod/www/decennial.html>; *2010 Census of Population, General Population Characteristics: United States Summary* (Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, 2010), <https://www.census.gov/prod/www/decennial.html>.

Between 1990 and 2017, seven programs passed Democratic-controlled legislatures, including in states such as Louisiana and Maryland with large African American populations, but they were dwarfed by the forty-eight programs that passed under unified Republican control.

To examine patterns of voucher bill support, we collated an original data set of all state legislative votes on the forty-seven voucher bills passed in the twelve years from 2005 to 2017.<sup>120</sup> Our data set contains the universe of state legislators who voted on those bills in 6,693 votes plus twelve voucher bills that were brought to a vote before July 2017 but failed to become law because they were vetoed or voted down, yielding a total of 7,851 state legislator votes. We subjected our data to multilevel logistic regression to identify those factors that affect policymaker support for vouchers, modeling state legislators’ votes in terms of their individual and

district-level characteristics (partisan affiliation, race, sex, district ideology, private school enrollment, racial district characteristics, and government employees) and state-level characteristics (educational expenditure, unionization rates, and previous legal challenges).

Our findings in the main effects model (Table 6) underline the extent to which race-conscious and color-blind patterns of support have become polarized. As expected, Republicans are much more likely to vote for a voucher bill than Democrats, but there is a statistically significant interaction with their state legislative district ideology, displayed in the interactive model in Table 6.

To pinpoint state legislative district ideology, we used the American Ideology Project (2015) MRP (multilevel regression and poststratification) scores<sup>121</sup> on district ideology after the 2010 census

120. We exclude the Colorado Douglas County school board voucher pilot, launched in 2011, as it is the only program created at the local school district level. All other programs were passed by state legislatures.

121. MRP scores estimate the mean ideology of each state legislative district. They are based on the 2008–2014 Cooperative Congressional Election Study (CCES). For more information on the methodology used to estimate district ideology scores, see Tausonvitch and Warshaw, “Measuring Constituent Policy Preferences”;

**Table 6. State Legislator Votes on Successful and Unsuccessful Voucher Bill Votes Held 2005–2017: Multilevel Logistic Regression with Robust Standard Errors Clustered by State**

Variables	Main Effects Model	Interactive Model
Individual and district-level variables		
Partisan affiliation (Republican = 1)	4.782*** (.232)	5.553*** (.273)
District ideology	.735*** (.278)	1.468*** (.350)
Partisan affiliation*district ideology		-1.027*** (.466)
% Government employees in district	-3.267** (1.260)	-2.760** (1.230)
Legislator race (Black = 1)	-.398* (.220)	-.696*** (.222)
Legislator sex (Male = 1)	.295** (.131)	.262** (.130)
% African Americans in district	.020*** (.005)	.030*** (.006)
Partisan affiliation*% African Americans in district		-.069*** (.009)
% Private school enrollment	-.017*** (.003)	.020*** (.003)
State-level variables		
State educational expenditure	-.187*** (.069)	-.186** (.073)
Previous legal challenge	.304 (.659)	-.409 (.684)
% Unionization	-.207*** (.060)	-.217*** (.061)
Constant	7.245*** (2.790)	7.096** (2.954)

$N = 6,026$

\* $p < .1$ . \*\* $p < .05$ . \*\*\* $p < .01$ .

redistricting.<sup>122</sup> The more conservative their district, the more Democratic legislators are likely to vote in favor of vouchers. The effect is substantial and asymmetrical. A Republican state legislator has around an 85 percent chance of voting in favor of a voucher bill regardless of his or her district's ideology. By contrast, a Democratic state legislator with the most conservative district is more than twice as likely (42 percent) to vote in favor of a voucher bill than a Democratic legislator with the most liberal district (18 percent), as Figure 5 shows.

But Figure 5 finds that even a Democrat representing a conservative district still has a much smaller chance of voting in favor of vouchers than a Republican. Color-blind alliance members—Republicans and conservatives—overwhelmingly predominate among voucher supporters. Greater rates of unionization also have a statistically significant negative effect upon legislators' chances of voting for vouchers. This finding underlines the teacher union presence as part of the Democratic coalition and race-conscious voucher opposition movements<sup>123</sup> and union concern about vouchers' potential to damage public schools.<sup>124</sup>

We have already noted how racial and ideological polarization has intensified in the last decade and a half,<sup>125</sup> a trend reflected in the results. This growing polarization between the racial policy alliances means that voucher support aligns along partisan lines more sharply than during the era of Jim Crow, when Democratic judges struck down Democratic voucher legislation. Formerly enthusiastic liberal supporters of vouchers, such as Diane Ravitch, began to turn against the voucher cause after 2010.<sup>126</sup> They have become some of vouchers' fiercest critics.

The color-blind alliance on school vouchers is complicated by the characteristics of legislators' districts. White legislators (and males) are statistically significantly more likely to vote in favor of vouchers than nonwhite legislators and females. But our data show that the proportion of African Americans in a legislator's district is *positively* related to a vote in favor of vouchers (Table 6). Despite the opposition of most civil rights organizations and the dominance of conservative organizations such as the American Federation for Children, Cato Institute, Institute for Justice, and Goldwater Institute within the pro-voucher movement, the main effects model shows that legislators with the highest proportion of African Americans in their districts are 15 percentage

C. Tausanovitch and C. Warshaw, "The American Ideology Project," 2015, <http://americanideologyproject.com/>.

122. C. Tausanovitch and C. Warshaw, "Measuring Constituent Policy Preferences in Congress, State Legislatures, and Cities," *Journal of Politics* 75, no. 2 (2013): 330–42.

123. King and Smith, *Still a House Divided*.

124. Jeffrey Dorfman, "Teachers Unions, Faulty Economics, and School Choice," *Forbes*, November 13, 2016, <https://www.forbes.com/sites/jeffreydorfman/2016/11/13/teachers-unions-faulty-economics-and-school-choice/#f94e48d7c73f>.

125. Michael Barber and Nolan McCarty, "Causes and Consequences of Polarization," in *Political Negotiation: A Handbook*, ed. Jane Mansbridge and Cathie Jo Martin (Washington DC: Brookings Institution Press, 2016), 37–89; Tesler, *Post-Racial or Most-Racial?*

126. Diane Ravitch, *Reign of Error: The Hoax of the Privatization Movement and the Danger to America's Public Schools* (New York: Knopf, 2013).

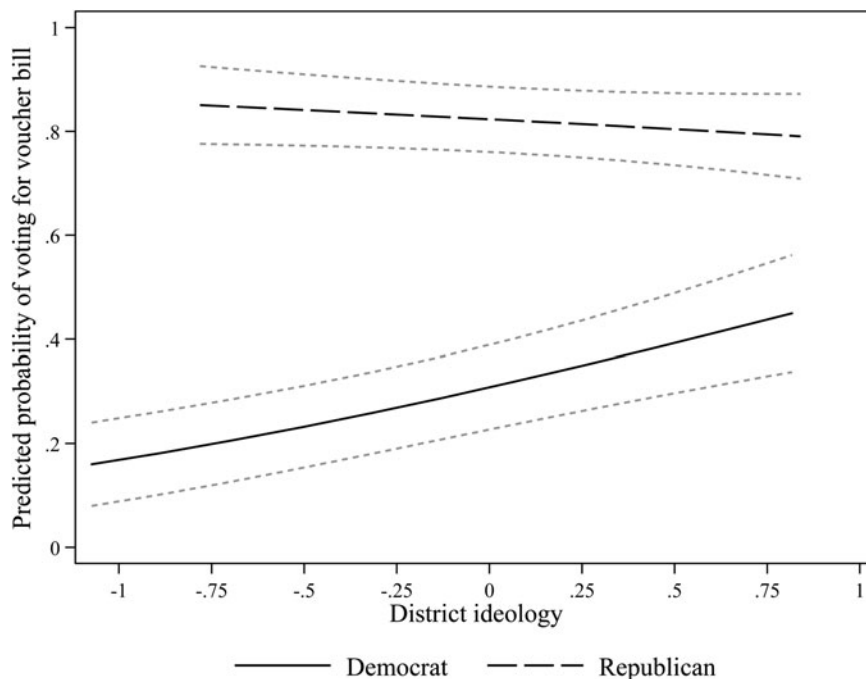


Fig. 5. Interaction between Partisanship and District Ideology.

points more likely to vote in favor of vouchers (77 percent chance) than legislators with the highest proportion of whites (62 percent chance). This striking datum recalls the patterns of support for tuition grant legislation in the Jim Crow South. Legislators with the whitest districts were, and still are, the *least* enthusiastic about the voucher cause.

One explanation for white districts' relative reluctance is Forman's argument that racial-justice claims for vouchers fail to resonate with core white voucher constituencies.<sup>127</sup> Another possibility is that, despite their color-blind presentation, the race-conscious reimagining of vouchers during the first decade of the civil rights era activates feelings of racial threat among whites.<sup>128</sup>

We cannot distinguish between these two explanations here but note the interaction between a legislator's party and his or her district racial characteristics. Republican legislators representing districts with a larger proportion of African American voters are less likely to support voucher legislation than Republicans representing whiter districts; Democratic

legislators representing districts with a larger proportion of African American voters are *more* likely to support vouchers than Democrats in whiter districts (Figure 6).

Figure 6 suggests that at least some Democratic legislators perceive demand for vouchers from black constituents—an inference we cannot make firmly on the basis of this data—but the *elite* politics of vouchers remains resolutely framed by the race-conscious/color-blind distinction. Nonwhite legislators and Democrats are significantly less likely to support vouchers than white legislators and Republicans. The racial dimensions of vouchers tend to remain implicit in the contemporary racial order and buried beneath color-blind frames, to which we now turn.

### 3.3. Back to Freedom of Choice Frames

Modern arguments for school vouchers tend to be color-blind, at least on the surface. Legislators argue in favor of vouchers for poor children, implying that racial minorities are the target population without emphasizing race directly.<sup>129</sup> Gooden et al. find: "Contemporary case law, state statutes, and politicians who are proponents of vouchers have tended to adopt a race-neutral approach to using vouchers to address equity. This does not, however, mean that race is not a part of this debate."<sup>130</sup> In the context of America's modern

127. Forman, "The Rise and Fall of School Vouchers."

128. Lawrence Bobo, "Race, Interests, and Beliefs about Affirmative Action: Unanswered Questions and New Directions," *American Behavioral Scientist* 41, no.7 (1998): 985–1003, <https://doi.org/10.1177/0002764298041007009>; Lawrence Bobo, James R. Kluegel, and Ryan A. Smith, "Laissez-Faire Racism: The Crystallization of a Kinder, Gentler Antiracial Ideology," in *Racial Attitudes in the 1990s: Continuity and Change*, ed. Steven A. Tuck and Jack K. Martin (Greenwood, CT: Praeger: 1997), 15–41; Tesler, "The Spillover of Racialization into Health Care."

129. Molly T. O'Brien, "Private School Tuition Vouchers and the Realities of Racial Politics," *Tennessee Law Review* 64 (1996): 359–408; Gooden et al., "Race and School Vouchers."

130. Gooden et al., "Race and School Vouchers," 523.

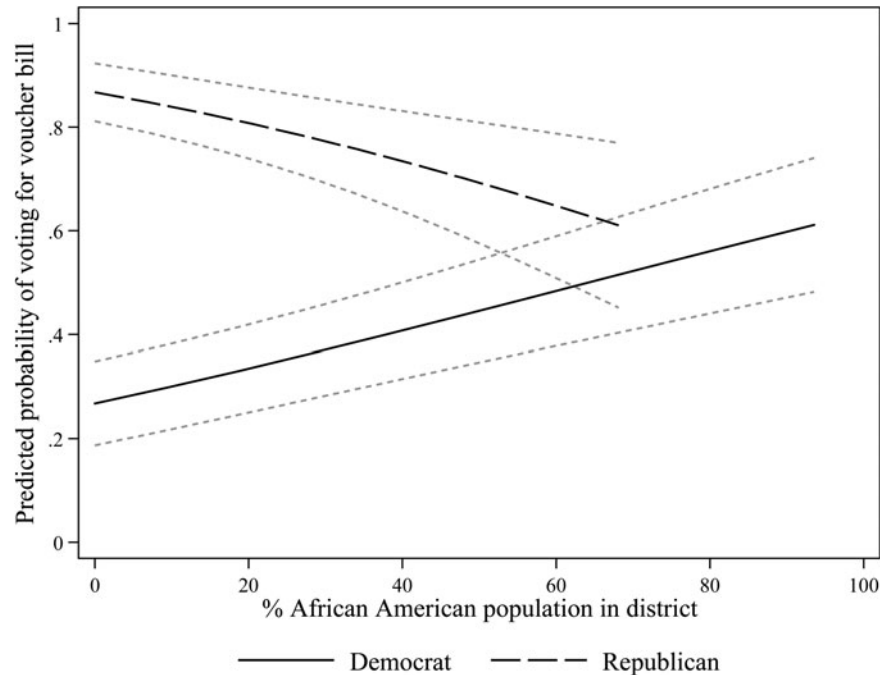


Fig. 6. Interaction between Legislator Partisanship and Racial District Characteristics.

racial hierarchies and post-2008 intensified racial and ideological polarization, color-blind claims for vouchers may be promoted as impartial, but few voters or lawmakers can fail to grasp their racial implications.

Drawing upon a sample of 526 broadsheet newspaper articles drawn from Factiva for the twelve states that passed voucher programs in 2011 and 2012, the first years of the most recent voucher expansions, we find color-blind rationales overshadow race-conscious ones. A full description of method and coding procedures is available in the footnotes.<sup>131</sup>

131. Newspaper coding procedures: Analyzing Factiva for newspapers with thirteen programs in the twelve states in which voucher scholarships were passed during either 2011 or 2012, we created an original database of 526 broadsheet newspaper articles. Articles were drawn from 65 state newspapers and nine additional online news sources in these thirteen states. Identification and coding involved all named actors and groups that took a stance on vouchers expressed by lobbying, attacking, defending, or ruling for or against the scholarships in court, sponsoring legislation or voting for or against the scholarships in the legislature, vetoing or signing a scholarship bill, articulating an editorial opinion, releasing a press statement, or otherwise making a public declaration in favor of or in opposition to scholarships. A total of 835 separate actors were individually identified and logged in our database. Newspapers in more than half of the case study states had no reporting of explicit racial claims for or against vouchers at all.

On at least three separate occasions during this period, explicit race-conscious arguments made by elites for and against vouchers attracted such criticism that they needed to be re-articulated in color-blind terms: (1) the allegations made by both proponents and opponents of the expansion of the Milwaukee Parental

Choice Program that the other side is racist (Patrick Marley, "Past School Voucher Advocate Rips Gov. Walker's Plan," *The Wisconsin Journal Sentinel*, May 16, 2013; Patrick Marley and Jason Stein, "Walker: Budget Could Expand School Choice to Other Cities," *The Wisconsin Journal Sentinel*, May 10, 2011); (2) re-articulation of voucher support in color-blind terms in North Carolina (Lynn Bonner, "Two Views of GOP Agenda," *News Observer*, April 29, 2011; Jamica Ashley, "CHCCS Joins Suit against State over Vouchers," *The Herald Sun*, January 11, 2014; J. Ravitch, "Vouchers Undermine Public Education System," *Chapel Hill News*, March 14, 2014; Gregory Childress, "Local Groups to Rally against GOP Policies," *The Herald Sun*, May 26, 2013); (3) remarks about African American families by the Racine Unified School District superintendent about the Milwaukee voucher program that surfaced during the 2013 debates about vouchers (Trevor Tenbrink, "Superintendent's Shocking Comment Reminds Us That School Choice Is an Uphill Battle," *Education Action Group News*, April 9, 2013).

Addressing bias: We addressed the dangers of bias rising from newspaper selection and coding procedures through comprehensive searches and transparent coding methods (Robert Franzosi, "The Press as a Source of Socio-Historical Data: Issues in the Methodology of Data Collection from Newspapers," *Historical Methods: A Journal of Quantitative and Interdisciplinary History* 20, no. 1 (1987): 5–16). We examined *all* of the state newspapers in the Factiva database for each of the twelve case study states, searching in each case for the terms "education voucher/tax credit scholarship," separately and in conjunction with the name of the relevant bill and the bill number. Our analysis included *all* state newspaper articles mentioning the relevant piece of legislation, however briefly: its formulation, passage, implementation, effects, and, in some cases, litigation. Certain newspapers may have chosen to cover education vouchers more frequently than other sources, and these editorial choices may be related systematically to ideological stance, support for vouchers, or other relevant variables. Indeed, we expected this to be the case. Given that we are concerned with how the media typically frames voucher arguments, any systematic biases of these kinds do not invalidate inference.

Seven of these twelve states had no reporting of explicit racial claims for or against vouchers at all. In the remaining five, claims for vouchers as a remedy for racial inequality were infrequent compared to choice, quality, and efficiency arguments.

In all states, color-blind framings predominated, focusing on individual parents rather than racial groups and eschewing racial language. The most common arguments cited in favor of vouchers were that they save money, improve educational quality, and increase access to educational opportunity for students and choice for parents. The most common arguments against vouchers were that they drain money from the public school system, defy the legislature's obligation to provide a good, uniform system of public education, and violate the separation of church and state by providing funds to religious schools. Explicitly race-conscious arguments that vouchers would address racial inequality were rare. Vouchers are framed in color-blind ways.

### 3.4. The Rise of Color-Blind Policy Design

The rise of the color-blind racial policy alliance is associated not only with color-blind patterns of support and rhetorical frames but also with color-blind policy designs. A race-conscious policy design uses explicit racial categories to confront racial inequalities directly through government action (what Justice Sonia Sotomayor calls "race targeting" measures), whereas color-blind policy designs favor a market-driven "free choice" approach by individual consumers. President Obama's Department of Justice fought some modern voucher programs in the South on the grounds that the programs had the potential to undermine existing court-ordered desegregation plans by enabling parents to opt out for private schools.<sup>132</sup>

Modern, "universal" voucher programs—such as the tax credit vouchers in Arizona and Georgia—place no income limits on student eligibility and, in some cases, no requirement to have spent time in the public school before taking up a voucher. Race-conscious policy alliance members argue that targeting is required to ensure that children of color benefit and that public money is not distributed to economically advantaged households, who would have sent their children to private school regardless. When Representative Polly Williams and former Milwaukee superintendent Howard Fuller championed vouchers in 2010, they argued that the programs should not be extended to higher-income groups but instead should focus only on low-income minorities, a further cooling in race-

132. Mark Walsh, "Louisiana Vouchers, Desegregation Case Prove Volatile Mix," *Education Week*, September 18, 2013, <https://www.edweek.org/ew/articles/2013/09/18/04louisiana-2.h33.html>.

conscious support for the new vouchers and the surge of color-blindness.<sup>133</sup>

The rise of the color-blind policy design tends to obscure the state's role in the provision of a social benefit by directing funds through private third-party organizations or through the tax system.<sup>134</sup> Voucher policy designs became more "submerged," utilizing private organizations or the tax system to deliver benefits. By funding parents rather than schools directly and utilizing tax credits and "educational savings accounts," modern voucher programs individualize social policy decisions and obscure the relationship between state action and the confrontation of racial inequalities that is the hallmark of race-conscious policymaking.

The fight between advocates of compensatory vouchers and those who favor universal vouchers mirrors the clash between race-conscious and color-blind forces. It has been sharpened by the recent finding that color-blind voucher statutes provide insufficient protection against racial discrimination in private school admissions.<sup>135</sup> In May 2017, under questioning from members of the House Appropriations Committee, U.S. Secretary of Education Betsy DeVos declined to say if the federal government would step in to prevent voucher-receiving private schools from discriminating against students.<sup>136</sup> DeVos argued that decisions should be left to parents, an approach to voucher politics that is quintessentially color-blind in its elevation of individual choice over direct and purposeful state action.

Reducing the traceability of the connection between government and policy administration is a characteristic of color-blind policymaking. Individuals make choices in private markets that are officially color-blind, and the state is merely a neutral umpire. This submerged form of governance is the opposite of race-conscious policymaking, which involves direct state action to remedy racial disadvantage.

The Trump administration's 2018 fiscal year budget includes federal grant money to pay for school vouchers, delivering money indirectly, but faces opposition from Democrats and rural Republicans. A Department of Education spokesperson stated: "To be clear, there is no federal voucher program. The

133. Marley, "Past School Voucher Advocate Rips Gov. Walker's Plan"; Marley and Stein, "Walker: Budget Could Expand"; Daniel Bice, "School Voucher Battle Erupts with Charges of Racism and Religious Bigotry," *The Wisconsin Journal Sentinel*, May 29, 2013.

134. Suzanne Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy* (Chicago: University of Chicago Press, 2009).

135. Suzanne E. Eckes, Julie Mead, and Jessica Ulm. "Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers," *Peabody Journal of Education* 91, no. 4 (2016): 537–58, <https://doi.org/10.1080/0161956X.2016.1207446>.

136. Joy Resmovits, "Betsy DeVos Would Not Agree to Bar Discrimination by Private Schools That Get Federal Money," *Los Angeles Times*, May 24, 2017.

[private school voucher] grant program would support states who apply for funding to develop school choice programs, and those States' plans must adhere to Federal law."<sup>137</sup> This color-blind arms-length form of governance is increasingly characteristic of voucher politics.

#### 4. CONCLUSION

Are vouchers truly color-blind or race-conscious? We have argued that the answer depends upon the historical context of America's racial hierarchies under examination. We have employed and refined the racial orders theoretical framework to account for the trajectory of vouchers since their origin in the 1950s.

Although the voucher schemes differ across the three eras discussed here, there are significant resonances because of the way in which public policy is shaped by America's racial orders. One such parallel between Jim Crow-era tuition grants and modern vouchers is that, when allowed to do so, parents who already send their children to private schools will tend to consume vouchers to a greater extent than parents whose children are in public schools. For example, 86 percent of Georgian tuition grant recipients in 1962 had already been enrolled in private schools before the fight over desegregation.<sup>138</sup> Thus grants tended to benefit those parents, principally whites, who already had the means to fund private education.

We argue that to understand the voucher renaissance observable since 2008, these measures must

be located historically in America's racial hierarchies. This approach reveals how vouchers were directed toward white supremacist ends, briefly harnessed by the race-conscious alliance, and are now part of the conservative ideology of color-blindness that has surged since the Reagan era, bursting into the presidential election in 2016. This historical legacy illustrates the nonlinear trajectory of vouchers in America's shifting racial orders.

This trajectory is more than the layering of new policies onto existing schemes, one form of American political development that scholars identify. It qualifies the process of displacement described by Skowronek and Orren, of which the "overthrow of Jim Crow was a major" instance.<sup>139</sup> Yes, Jim Crow was displaced in national institutions, laws, norms, and routines, but unremarkably, the resilience of racial orders ensures that the contemporary voucher programs echo the racial hierarchies prompting their origin.

We identify multiple concurrent and consecutive transformations in voucher politics over time in three arenas of racial policy alliance conflict: multiplication of color-blind policy designs, growing legal and political support from a conservative alliance, and a smorgasbord of voucher rationales rooted in color-blind framing. Vouchers have never been racially neutral, but have served key roles with respect to the evolving racial politics of the post-*Brown* era. By examining the roles vouchers have played in the making and unmaking of racial hierarchies over time, we deflate the myth of their racial neutrality and reveal their contribution to the rise of color-blind ideology in national U.S. politics.

137. Andrew Ujifusa, "Ed. Dept. Has No Plans for a 'Federal Voucher Program,' Let's Break That Down," *Education Week—Politics K-12*, May 31, 2017, [http://blogs.edweek.org/edweek/campaign-k-12/2017/05/federal\\_voucher\\_program\\_no\\_plans\\_education\\_department.html?cmp=SOC-SHR-FB](http://blogs.edweek.org/edweek/campaign-k-12/2017/05/federal_voucher_program_no_plans_education_department.html?cmp=SOC-SHR-FB).

138. Kruse, *White Flight*, 171.

139. Stephen Skowronek and Karen Orren, "Pathways to the Present: Political Development in America," in *The Oxford Handbook of American Political Development*, ed. Richard Valelly, Suzanne Mettler, and Robert Lieberman, Oxford Handbooks (Oxford, UK: Oxford University Press, 2016), 29, 27–47.