

Analysis of Proposition 174
THE SCHOOL VOUCHER INITIATIVE

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On November 2, 1993 Californians will decide whether to amend the California Constitution according to the provisions of the "Parental Choice in Education Initiative," Proposition 174.

Policy Analysis for California Education (PACE) has undertaken an analysis of the initiative's provisions. This analysis is intended to provide policymakers, parents, educators, and members of the general public with objective information. PACE is not taking a position on the initiative. Rather, the PACE analysis reviews significant components of the initiative and raises the policy questions and issues for voters to consider.

PACE has produced additional informational materials related to this initiative and to the general issue of school choice. These materials are described in the attached list of PACE reports on school choice.

**OFFICIAL WORDING OF
THE PARENTAL CHOICE IN
EDUCATION INITIATIVE**

**ANALYSIS AND COMMENTARY BY
POLICY ANALYSIS FOR
CALIFORNIA EDUCATION**

The following Section, the "Parental Choice in Education Amendment," is hereby added to Article IX of the California Constitution:

Section 17. Purpose.

The people of California, desiring to improve the quality of education available to all children, adopt this Section to: (1) enable parents to determine which schools best meet their children's needs; (2) empower parents to send their children to such schools; (3) establish academic accountability based on national standards; (4) reduce bureaucracy so that more educational dollars reach the classroom; (5) provide greater opportunities for teachers; and (6) mobilize the private sector to help

Purpose

Parents may request that their child be enrolled in any participating public or private school. The initiative is silent with regard to how applicants will be admitted to various schools, public or private.

The extent to which the initiative can accomplish its goals depends in large measure on the extent to which the private sector will expand to accommodate the vastly diverse California school age population. Estimates of

accommodate our burgeoning school-age population.

Therefore: All parents are hereby empowered to choose any school, public or private, for the education of their children, as provided in this Section.

(a) Empowerment of Parents; Granting of Scholarships.

The State shall annually provide a scholarship to every resident school-age child. Scholarships may be redeemed by the child's parent at any scholarship-redeeming school.

(a)(1) The scholarship value for each child shall be at least fifty percent of the average amount of State and local government spending per public school student for education in kindergarten and grades one through twelve during the preceding fiscal year, calculated on a statewide basis, including every cost to the State, school districts, and county offices of education of maintaining kindergarten and elementary and secondary education, but excluding expenditures on scholarships granted pursuant to this Section and excluding any unfunded pension liability associated with the public school system.

(a)(2) Scholarship value shall be equal for every child in any given grade. In case of student transfer, the scholarship shall be prorated. The Legislature may award supplemental funds for reasonable transportation needs for low-income children and special needs attributable to physical impairment or learning disability. Nothing in this

the number of students who might enroll in scholarship-redeeming schools range from 10 percent to 40 percent. The number and types of scholarship-redeeming schools that might become available to accommodate students who want to transfer is difficult to predict.

(a) Empowerment of Parents; Granting of Scholarships.

(a)(1) Based on last year's expenditures, the per-pupil amount of a scholarship would be approximately \$2600. This amount could vary from year to year and could be increased at the Legislature's discretion. The initiative does not limit the amount of tuition and fees which can be charged by scholarship-redeeming schools.

(a)(2) The amount of the scholarship provided to the student is not dependent on parental income. Scholarship amounts may vary grade-by-grade. Additional funds could be allocated by the Legislature for transportation costs for low income children and students with special needs. The cost to the state of this possible additional

Section shall prevent the use in any school of supplemental assistance from any source, public or private.

(a)(3) If the scholarship amount exceeds the charges imposed by a scholarship-redeeming school for any year in which the student is in attendance, the surplus shall become a credit held in trust by the state for the student for later application toward charges at any scholarship-redeeming school or any institution of higher education in California, public or private, which meets the requirements imposed on scholarship-redeeming schools in Section 17(b)(1) and (3). Any surplus remaining on the student's twenty-sixth birthday shall revert to the state treasury.

(a)(4) Scholarships provided hereunder are grants of aid to children through their parents and not to the schools in which the children are enrolled. Such scholarships shall not constitute taxable income. The parent shall be free to choose any scholarship-redeeming school, and such selection shall not constitute a decision or act of the State or any of its subdivisions. No other provision of this Constitution shall prevent the implementation of this Section.

(a)(5) Children enrolled in private schools on October 1, 1991, shall receive scholarships, if otherwise eligible, beginning with the 1995-96 fiscal year. All other children shall receive scholarships beginning with the 1993-94 fiscal year.

assistance is unknown. Scholarship-redeeming schools would be allowed to collect or accept "supplemental assistance" from any source without restriction by the State.

(a)(3) The initiative allows parents, through the state, to "bank" the difference, if any, between the scholarship amount and the school's tuition charges, to be used at a later time for the child's education. Presumably, the state would need to establish individual student records to track the scholarship amounts to be held for later use. The cost for maintaining such individual student accounts is unknown.

(a)(4) By stating that scholarships are grants made to students rather than schools, the initiative attempts to avoid the separation of church and state issue. It is likely, however, that this language will be subject to a constitutional challenge in the courts. With regard to the taxable status of the scholarship, the initiative, as an amendment to the *state* constitution, can specify the taxable status under state law. It is unclear whether scholarships would be considered taxable income under federal law. (For more information, see the PACE legal analysis referenced on the attached list.)

(a)(5) The initiative will be voted on after the beginning of the 1993-94 school year. The State Attorney General has expressed, in an informal opinion, that all students enrolled in private schools after October 1, 1991

(a)(6) The State Board of Education may require each public school and each scholarship-redeeming school to choose and administer tests reflecting national standards for the purpose of measuring individual academic improvement. Such tests shall be designed and scored by independent parties. Each school's composite results for each grade level shall be released to the public. Individual results shall be released only to the school and the child's parent.

(a)(7) Governing boards of school districts shall establish a mechanism consistent with federal law to allocate enrollment capacity based primarily on parental choice. Any public school which chooses not to redeem scholarships shall, after district enrollment assignments based primarily on parental choice are complete, open its remaining enrollment capacity to children regardless of residence. For fiscal purposes, children shall be deemed residents of the school district in which they are enrolled.

(a)(8) No child shall receive any scholarship under this Section or any credit under Section 17 (a)(3) for any fiscal year in which the child enrolls in a non-scholarship-redeeming school, unless the Legislature provides otherwise.

will be eligible for scholarships beginning with the 1994-95 school year. It is unclear whether children enrolled in private schools on October 1, 1991 would receive scholarships beginning with the 1995-96 or the 1996-97 fiscal year.

(a)(6) Testing is allowed but not required by the initiative. Tests are permissible that reflect "national standards." Currently, no agreed-upon set of national standards exists.

(a)(7) This provision applies to public schools which are *not* scholarship-redeeming. Enrollment in public schools would be based primarily on parental choice, with priority given to students from within a school district. Parents could also choose to send their child to a public school in another school district if the district has available slots. Responsibility for transportation to a public school of choice is not provided, but is permitted. Two 1993 California statutes greatly expand opportunity for public school choice. It is too early to determine the impact of these new statutes.

(a)(8) Parents who send a child to a public school or a non-scholarship-redeeming private school cannot accumulate scholarship credit for later use.

(b) Empowerment of Schools; Redemption of Scholarships.

A private school may become a scholarship-redeeming school by filing with the State Board of Education a statement indicating satisfaction of the legal requirements which applied to private schools on October 1, 1991, and the requirements of this Section.

(b)(1) No school which discriminates on the basis of race, ethnicity, color, or national origin may redeem scholarships.

(b)(2) To the extent permitted by this Constitution and the Constitution of the United States, the State shall prevent from redeeming scholarships any school which advocates unlawful behavior; teaches hatred of any person or group on the basis of race, ethnicity, color, national origin, religion, or gender; or deliberately provides false or misleading information respecting the school.

(b)(3) No school with fewer than 25 students may redeem scholarships unless the Legislature provides otherwise.

(b)(4) Private schools, regardless of their size, shall be accorded maximum flexibility to educate their students and shall be free from unnecessary, burdensome or onerous regulation. No regulation of private schools, scholarship-redeeming or not, beyond that required by this Section and that which applied to private schools on October 1, 1991, shall be issued or enacted, unless approved by a three-fourths vote of the Legislature or, alternatively, as to any regulation pertaining to health, safety,

(b) Empowerment of Schools; Redemption of Scholarships.

Currently, there is very little state or local regulation of private schools in California.

(b)(1) The initiative is silent regarding discrimination on the basis of gender, religion, academic ability, physical ability, sexual orientation, and ability to speak English.

(b)(2) Scholarship-redeeming schools will not be permitted to teach hatred or to provide false information about the school. No system is provided for monitoring and assessing false or misleading information or for providing objective information about school options.

(b)(3) Parents who choose to teach their children at home (home schooling) will not be eligible for scholarships.

(b)(4) This section seeks to severely restrict elected officials' or the public's ability to impose new regulations on either private or scholarship-redeeming schools. The initiative is silent on the nature and extent of regulation for remaining public schools. Nothing in the initiative prohibits the Legislature from amending or eliminating current regulations for public schools.

or land use imposed by any county, city, district or other subdivision of the State, a two-thirds vote of the governmental body issuing or enacting the regulation and a majority vote of qualified electors within the affected jurisdiction. In any legal proceeding challenging such a regulation as inconsistent with this Section, the governmental body issuing or enacting it shall have the burden of establishing that the regulation: (A) is essential to assure the health, safety or education of students, or, as to any land use regulation, that the governmental body has a compelling interest in issuing or enacting it; (B) does not unduly burden or impede private schools or the parents of students therein; and (C) will not harass, injure, or suppress private schools.

(b)(5) Notwithstanding Section 17(b)(4), the Legislature may (A) enact civil and criminal penalties for schools and persons who engage in fraudulent conduct in connection with the solicitation of students or the redemption of scholarships, and (B) restrict or prohibit individuals convicted of (i) any felony, (ii) any offense involving lewd or lascivious conduct, or (iii) any offense involving molestation or abuse of a child, from owning, contracting with, or being employed by any school, public or private.

(b)(6) Any school, public or private, may establish a code of conduct and discipline and enforce it with sanctions, including dismissal. A student who is deriving no substantial academic benefit or is responsible for serious or habitual misconduct related to the school may be dismissed.

(b)(5) The Legislature may, but is not required, to prohibit individuals convicted of a felony or child abuse or molestation from owning or being employed by a public or private school. The initiative grants authority for the Legislature to impose legal penalties on scholarship-redeeming schools that engage in fraud. The initiative describes no process by which fraudulent conduct would be monitored or assessed nor is there any specified system for auditing the redemption of scholarships.

(b)(6) This section grants to both public and private schools substantial discretion to determine grounds for dismissal of students. The initiative is silent regarding the due process rights of students and parents when dismissal is considered. A student can be dismissed for serious or habitual misconduct. Students may also be

(b)(7) After the parent designates the enrolling school, the State shall disburse the student's scholarship funds, excepting funds held in trust pursuant to Section 17(a)(3), in equal amounts monthly, directly to the school for credit to the parent's account. Monthly disbursements shall occur within 30 days of receipt of the school's statement of current enrollment.

(b)(8) Expenditures for scholarships issued under this Section and savings resulting from the implementation of this Section shall count toward the minimum funding requirements for education established by Sections 8 and 8.5 of Article XVI. Students enrolled in scholarship-redeeming schools shall not be counted toward enrollment in public schools and community colleges for purposes of Sections 8 and 8.5 of Article XVI.

dismissed when the school determines that they are not benefitting academically. How the "academic benefit" standard applies to students who have difficulty learning due to a physical or mental handicap or lack of ability to speak English is unclear. The initiative is silent regarding procedures and options for students who are dismissed from a school.

(b)(7) This section authorizes the State to send payments directly to the scholarship-redeeming school. A separate financial account for each student, examined monthly, would be necessary. Funding for this administrative responsibility is not addressed. Reimbursement to the school would be based on a student's enrollment rather than the student's attendance. This provision raises the constitutional issue of separation of church and state.

(b)(8) This section relates to Proposition 98, the state constitutional amendment which guarantees that a set portion of the state general fund be set aside to fund K-12 schools and community colleges. Thus, while the scholarship program is directed at students in grades kindergarten through twelve, the funding of community colleges also may be affected. The extent to which this would impact community colleges depends on action taken by the Legislature. (For a more complete description of fiscal effects, see PACE's fiscal analysis of Proposition 174.)

(c) Empowerment of Teachers; Conversion of Schools.

Within one year after the people adopt this Section, the Legislature shall establish an expeditious process by which public schools may become independent scholarship-redeeming schools. Such schools shall be common schools under this Article, and Section 6 of this Article shall not limit their formation.

(c)(1) Except as otherwise required by this Constitution and the Constitution of the United States, such schools shall operate under laws and regulations no more restrictive than those applicable to private schools under Section 17(b).

(c)(2) Employees of such schools shall be permitted to continue and transfer their pension and health care programs on the same terms as other similarly situated participants employed by their school district so long as they remain in the employ of any such school.

(c) Empowerment of Teachers; Conversion of Schools.

This section is titled "Empowerment of Teachers," though the initiative does not specify the nature of such empowerment. However, nothing prohibits the Legislature from "empowering" teachers in both public and scholarship-redeeming schools.

The Legislature is required to determine how public schools could become scholarship-redeeming schools. It is unclear as to whether these "independent scholarship-redeeming schools" would continue to be governed in some way by a local school district.

(c)(1) Public, scholarship-redeeming schools would be regulated only to the same extent to which private schools are now regulated [see item (b)(4)].

(c)(2) Teachers who transfer from existing public schools to public, scholarship-redeeming schools could continue in their same retirement and health care systems, but would not be required to do so. Teachers who transfer from existing public schools to private, scholarship-redeeming schools have no such protection.

(d) Definitions.

(d)(1) "Charges" include tuition and fees for books, supplies, and other educational costs.

(d)(2) A "child" is an individual eligible to attend kindergarten or grades one through twelve in the public school system.

(d)(3) A "parent" is any person having legal or effective custody of a child.

(d)(4) "Qualified electors" are persons registered to vote, whether or not they vote in any particular election. The alternative requirement in Section 17(b)(4) of approval by a majority vote of qualified electors within the affected jurisdiction shall be imposed only to the extent permitted by this Constitution and the Constitution of the United States.

(d)(5) The Legislature may establish reasonable standards for determining the "residency" of children.

(d)(6) "Savings resulting from the implementation of this Section" in each fiscal year shall be the total amount disbursed for scholarships during that fiscal year subtracted from the product of (A) the average enrollment in scholarship-redeeming schools during that fiscal year multiplied by (B) the average amount of State and local government spending per public school student for education in kindergarten and grades one through twelve, calculated on a statewide basis, during that fiscal year.

(d) Definitions.

(d)(4) Under this initiative, changing private school regulations would require a majority "yes" vote, as determined by the number of registered voters, not by the number of those voting in a given election.

(d)(6) The fiscal effect of this provision is difficult to assess due to the complexity of determining a number of factors which are necessary components of the funding mechanism. Some of these unknowns are: (1) the number of existing private and public schools which would elect to become scholarship-redeeming schools, (2) the extent to which existing private schools would admit additional students from public schools, (3) the number, location, and enrollment capacity of new scholarship-redeeming schools which would become available, and (4) the extent to which

(d)(7) A "scholarship-redeeming school" is any school, public or private, located within California, which meets the requirements of this Section. No school shall be compelled to become a scholarship-redeeming school. No school which meets the requirements of this section shall be prevented from becoming a scholarship redeeming school.

(d)(8) "State and local government spending" in Section 17(a)(1) includes, but is not limited to, spending funded from all revenue sources, including the General Fund, federal funds, local property taxers, lottery funds, and local miscellaneous income such as developer fees, but excluding bond proceeds and charitable donations. Notwithstanding the inclusion of federal funds in the calculation of "state and local government spending," federal funds shall constitute no part of any scholarship provided under this Section.

(d)(9) A "student" is a child attending school.

(e) Implementation. The Legislature shall implement this Section through legislation consistent with the purposes and provisions of this Section.

(f) Limitation of actions. Any action or proceeding contesting the validity of (1) this Section, (2) any provision of this Section, or (3) the adoption of this Section, shall be commenced within six

parents would select a different public or private school for their child other than the school the child currently attends. (For a detailed description of possible fiscal effects, see the PACE report on the attached list.)

(d)(7) No public school would be required to become nor be prohibited from becoming a scholarship-redeeming school. Since the process by which public schools would become scholarship-redeeming schools is yet to be determined, the number of public schools which could, or would, redeem scholarships is unknown.

months from the date of the election at which this Section is approved; otherwise this Section and all of its provisions shall be held valid, legal and uncontestable. However, this limitation shall not of itself preclude an action or proceeding to challenge the application of this Section or any of its provisions to a particular person or circumstance.

(g) Severability.

If any provision of this Section or the application thereof to any person or circumstance is held invalid, the remaining provisions or applications shall remain in force. To this end the provisions of this section are severable.

(g) Severability.

If any one section or sections of this initiative is determined to be invalid, other components of the initiative would remain. Fiscal effects of the initiative and participation in the scholarship program would in part depend on the outcome of any challenges to any portion of the initiative.