Natasha LaChac

Professor Lukoff

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Charter School Federal Policy

1. Problem Statement

Education reform is a highly contested issue at the forefront of policy debate. Some education reform advocates argue that school choice is an important part of improving education. The school choice movement centers largely around charter schools, or schools that are publicly funded but privately run. Charter schools receive a charter to open a new school based on the school’s mission, which usually includes improving the quality of education and sometimes centers specialized fields of study (Prothero). Charters are subject to different regulations and funding by state (Prothero). The percentage of public school students who attended a charter school has been increasing; it rose from 3% to 7% from 2009 to 2019 (“Public Charter School Enrollment”). Charter school advocates see charters as an innovative and choice-centered alternative to public schools, while opponents argue that they are underregulated and take money away from public education.

The struggle between pro-charter and anti-charter groups means that states have wildly varied laws with different degrees of regulation or government support of charter schools. This is compounded by the fact that the federal government has historically played a limited role in education (“The Federal Role in Education”). These differences in regulations can have far-reaching consequences, as there have been numerous charter school scandals in recent years where a charter school defrauded the government for millions of dollars (Strauss). The quality of charter schools as compared to traditional public schools has also been also called into question; some studies have suggested that charters either perform similarly to (Chen) or more poorly than (Prothero) public schools. Additionally, charters often proclaim to increase diversity, but in some cases charter schools may worsen segregation (“Choice Without Equity”).

Though charter advocates tout the benefits of charters, not all schools are created equal. The main selling point of charter schools is that they are not subject to government regulation; however, this experiment has demonstrated time and again that freedom from regulation breeds corruption. The federal government has minimal power to regulate education, and it should use that power to at bare minimum restrict clearly under-performing or fraudulent schools from receiving federal funding. There needs to be a minimum standard of regulation for charter schools that ensures students will still receive a quality education, the same as those which govern public schools.

2. Goals

The government has a stated interest in ensuring a high-quality education for all students. The right to an equal quality education is also guaranteed in the Equal Protection Clause of the 14th Amendment (Johnson). The government regulates the quality of education, funds poor students, and prevents discrimination to achieve this goal.

The federal government has passed few national laws governing education. The major law was the Elementary and Secondary Education Act (ESEA) of 1965, a civil rights measure which helped fund disadvantaged students and schools and improve the overall national quality of education. No Child Left Behind was passed in 2002 as an update to ESEA to close achievement gaps between schools and increase outcomes. ESEA was most recently updated in 2015 by Every Student Succeeds Act, which required that schools teach to a high academic standard, maintained accountability measures for underperforming schools, and funded local innovations (“Every Student Succeeds Act”).

The national quality of education is also measured by the Common Core. The Common Core is a set of national standards for education. It is meant to ensure that students receive a quality education no matter where they went to school and pass specific benchmarks meant to help them succeed in college and the workforce. The Common Core arose out of fears that American students were falling behind other countries (Gewertz). A federal report released by the National Center for Education Statistics showed that most states from 2005 to 2009 were at or below proficiency according to National Assessment of Educational Progress standards (“Most States Set”). The Common Core is not a federal law; however, several governors pushed for the guidelines to be written, and after it was officially released in 2009, it was adapted by most states by 2010 (Gewertz). The Common Core was also an acceptable set of standards that President Obama’s “Race to the Top” initiative required for states to receive federal funding (“Common Core and the Law”). Though not a federal law, the Common Core is an initiative which the federal government utilizes to measure and legislate the quality of education.

The Department of Education also has some control over the national education system through financial contributions. It contributes about 8% of the country’s primary and secondary education budget annually. It provides grants, loans, and work-study aid to over 12 million students (“The Federal Role in Education”).

The federal government can prevent education discrimination through legislation. The Civil Rights Act of 1965 prohibits institutions that receive federal funding from discriminating based on race or national origin (“Education and Title VI”). Title IX of the Education Amendments of 1972 prevents any school that receives federal funding from discrimination on the basis of sex, “including pregnancy, sexual orientation, and gender identity” (“Title IX of the Education Amendments of 1972”). The Rehabilitation Act of 1973 prohibits discrimination based on disability (“Section 504, Rehabilitation Act of 1973”).

There are limits to what the government can do to prohibit discrimination. In 2007, the Supreme Court ruled in *Parents Involved in Community Schools v. Seattle School District No. 1* that the school could not use pre-determined race distributions meant to maintain diversity to choose which students were admitted (“Parents Involved”). Obama implemented “Opening Doors, Expanding Opportunities,” a diversity grant meant to help underfunded schools and promote integration. However, the grant’s funding was pulled by President Trump (Brown). The federal government has a limited role in education. It can set and enforce broad national standards, but it cannot exert too much influence over the states.

President Biden has set the current agenda to advance the aforementioned government goals. He announced a debt relief program for low- and middle-income students to receive up to $20,000 in loan forgiveness. He expressed support for initiatives to increase diversity among teachers, as well as to create a program to increase competition and performance among low-income schools. Biden also aimed to reinstate the Obama grant program (“The Biden Plan”). On the campaign train, Biden pledged to disallow for-profit charters from receiving federal funding (Stanford) (Strauss). He recently supported a new rule from the Department of Education which would impose tighter regulations on public charter schools.

3. Public Program

In March of 2022 (“Charter School Programs”), the U.S. Department of Education published a notice for a proposed rule that would change the grant application process and eligibility for the federal Charter Schools Program (“Proposed Priorities, Requirements”). The rules were open for public comment on March 14, 2022 and closed on April 13, 2022. They went into effect on October 1, 2022 (“Proposed Priorities, Requirements”).

The new provisions had three main regulatory goals. The biggest priority was to increase accountability and transparency. The Office of Elementary and Secondary Education published a fact sheet which stated: “Since 2001, 930 charter schools or proposed charter schools funded under the CSP program—14.5 percent of grantees—either never opened or closed prematurely.” These failed programs received at least $174 million in federal CSP grant money (“Rulemaking Fact Sheet”). Therefore, the rules require that charter applicants provide detailed information about their governance, conflicts of interest, and involvement with for-profit management organizations. It highly restricted the ability of for-profit organizations to apply for grants (“Proposed Priorities”).

The second goal was to ensure that the district had a “demonstrated need” for a charter. Charter applicants would be required to show that their program benefited the community. The charter’s programs and goals should be evidence-based. The rule also encourages collaboration between charter schools and traditional public schools to better suit the needs of the community. However, it does not require collaboration (“Rulemaking Fact Sheet”).

The final goal was to ensure that charter schools are committed to increasing diversity and helping underserved communities. The rules require schools to prove that they will not worsen segregation (Green) and encourages schools to show that they have higher college enrollment and graduation rates across all races.

4. Politics

The Department of Education’s rules are meant to address three main issues: accountability, need, and diversity. Because charter schools are a highly divisive topic, it is politically difficult to regulate them.

Charter advocates were not in support of the new Department of Education rules. Some protested in front of the White House (Green); others compared the rules to a declaration of war (Morrow). They eventually convinced the Department of Education during the commenting period to change some provisions of the rule. Originally, charter schools were required to collaborate with public schools, and afterwards, it was just recommended (Burke). Language requiring charter schools to show need was also rewritten to exclude a community impact analysis, which would require the charter to show that surrounding public schools were under enrolled to prove need (Burke). Federal funding for charter schools also remained level at $440 million (“Rulemaking Fact Sheet”).

The fierce resistance to minimal charter regulation, which primarily imposes stricter rules on which schools are eligible for funding, demonstrates that any federal governance of charter schools will be met with strong political opposition. Charter supporters and critics, and stakeholders including the government, interest groups, and businesses disagree on how best to ensure accountability, assess need, and facilitate diverse learning environments.

4.1. Accountability

Charter advocates do not believe that charters need more accountability; rather, they see charters as a way to hold public schools accountable. Some charter advocates see education as a business and the public education system as a “government monopoly” (Forbes). Charter schools, therefore, are a way to disrupt the monopoly on education. Businesses have a vested interest in protecting charter schools to keep control of the education market. Charter advocates say that charter schools help improve both charters and public schools. They do this by innovating new ways to teach because they are not restrained by government standards like public schools. They also do this through competition with public schools because the market model assumes that innovation thrives under competition. Studies in Arizona, Michigan, Florida, New York, Texas, and North Carolina suggested that charter school growth had a slight positive effect on public schools (Eden).

As charters are designed to keep public schools accountable, so is the government interested in keeping charters accountable. A Government Accountability Office report published in 2022 found that charter schools that received federal funding were less likely to close than charter schools which received no federal funding (“K-12 Education”). The report was the result of a congressional investigatory request (“H.R. 7614”). The GAO report would indicate that the federal government’s new rules regulating charter grants were reasonable and could keep deserving schools funded. However, executive director of the Network for Public Education Carol Burris disputed the GAO’s findings. Burris authored two previous reports - “Asleep at the Wheel” and “Still Asleep at the Wheel” - that indicated charter schools that either failed or never opened were wasting millions of dollars in federal funding. She criticized the GAO for using a flawed data set for their research and pointed out multiple instances where a charter was listed as open, when in fact, it had already closed. Burris said these inconsistencies and her independent research suggest that the GAO greatly underestimated the amount of federal funding lost to failed charters (Strauss).

Burris’s previous research indicates widespread fraud and charter school failure across the country. “Still Asleep at the Wheel” found that 37% of charter schools in a database of over 4,800 schools failed. The report also approximated that $1.7 billion in federal funding for charter schools has been spent on charters that failed or never opened (Burris).

In addition to a high failure rate, charter schools are also vulnerable to fraud. In 2019, 11 people were indicted for defrauding California of over $50 million education funds. A network of online charter schools managed by a nonprofit brought in millions in revenue and paid only two employees, according to tax returns. The charter network engaged in multiple suspicious practices, including charging enrollment fees for thousands of summer school students who never took classes, a high turnover rate for trustees, and overlapping trustees who sat on multiple school boards. California has some of the most relaxed charter laws in the country (Strauss).

Another charter school operator was fined $1 million for dealing between the school they operated and a real-estate company that they owned, stealing taxpayer money (Hensley-Clancey). Yet another report found that millions of New Jersey tax dollars were used by private interests to pay for buildings. Government documents indicate that the charters used state funding to pay rents higher than the building cost and hid several expensive, unexplained fees in leases (Koloff and Rimbach). There is a pattern of behavior, negligent at best and fraudulent at worst, that costs taxpayers millions in schools that the public never benefits from. Charter schools, in their independence, also shirk responsibility.

Though charter schools claim to keep public schools accountable by providing competition and a higher quality of education, studies find this claim to be unsubstantiated. One study found that charters run by for-profit groups performed significantly worse than nonprofit charter schools (Prothero). This demonstrates that, even among charter schools, the business angle is inappropriate for education. When education is treated as a business, profit is the main priority, not providing a quality education. Competition and profit incentives, rather than bring out the best in schools, hindered school quality.

4.2. Demonstrated Need

Americans are increasingly dissatisfied with the quality of K-12 education (“Education”). Similarly to the fears that stoked the Common Core, charter schools present themselves as the solution to failing public schools. Charter advocates say that if a public school is failing, the solution isn’t to give them more money but to try something new, the charter being the new approach. One study found that students who attended a charter high school were more likely to attend college, perform well, and earn higher wages in their 20s (Sass et al.).

Katie Burke is a member of the National Alliance of Public Charter Schools, an interest group which supports charters. She worked with the D.C. Public Charter School Board, the sole charter authorizer in D.C., for nine years. Burke spoke in an interview about the history of D.C. charters and their importance:

[Congress’s] original charter school law with the one that the D.C. Counsel had written was something called the School Reform Act. So, the way the charter schools came to exist in D.C., it was not at all organic, very much forced onto the city at a time. When charter schools were still relatively new and experimental, it kind of took off. Today I think 45% of public students in the district are served by charter schools, which is the second highest market share after New Orleans, of course, which is 100%.

Burke emphasized that though charters were initially forced on D.C., they were quickly embraced to fix the failing school system and have since been successful.

Charter critics agree that public schools are struggling and that changes need to be made to the education system. However, they disagree with the method. Teachers and public schools have an interest in restricting charter growth so that they do not lose funding because most public schools are funded based on the number of students they enroll. Students who transfer to public charters take their money with them (Sugarman). Charter schools also receive federal funding that would presumably be spend on the public school system otherwise. The root of most public schools’ failings is a lack of adequate funding. Low-income districts suffer from inequitable distribution of funds. There are teacher shortages across the country, in large part because of low wages (Retta).

There is little evidence to support the claim that charter schools outperform public schools and more evidence to the contrary. One study by the Department of Education found that there was no difference in academic performance between charter schools and public schools (Gleason et al.) A GAO report found that students enrolled in virtual charters from 2018-2019 performed significantly worse on state achievement tests (“K-12 Education: Department”). As the virtual school sector grows, this becomes equally relevant and concerning. Charters may also provide a worse education because they hire underqualified teachers. While traditional public school teachers must be licensed, charter schools do not all require licenses. Some states do not require any traditional certification, while others only require that a certain percentage of teachers are licensed (Exstrom). While there is demonstrable need for education reform, there is no reason to believe that charter schools are the solution. As charters continue to grow, it is important to regulate their performance alongside traditional public schools.

4.3. Diversity and Racial Justice

Charter advocates say that charters are most helpful to low-income families and minority students who are historically disadvantaged. Charter schools are free like public schools, but public schools can suffer from lack of funding when they are financed by taxes from a low-income area. The appeal of charter schools is that they can provide a high-quality education at no cost to the family that does not limit a student by their ZIP code (“Equity in Access”). Some national studies of charter schools indicate they improve performance among Black students. In one study of 41 urban areas, researchers estimated that charter schools provided low-income students with an extra 59 days of math and 44 days of reading instruction per year (“Urban Charter School Study”). In D.C., where almost 90% of public school students are non-white, an increase of charter schools has also led to an increased enrollment and graduation rate of nearly 20% each (“Charter Schools are”).

Charter schools are politically interesting because there is not a clean split across party lines. The surface level political split shows that Republicans support charters and Democrats oppose them (Barnum). The official Democratic party statement, as well as Biden’s 2020 campaign progress, reads: “Democrats believe that education is a public good and should not be saddled with a private profit motive, which is why we will ban for-profit private charter businesses from receiving federal funding” (“Where We Stand”). Democrats who do not support charters are likely to oppose school privatization and support teachers’ unions (Green and Shapiro). Teachers’ unions are also likely to oppose charter schools. The National Education Association, which is the largest labor union in the United States, officially “opposes the failed experiment of largely unaccountable privately managed charter schools” (“Charter School Accountability”). The NEA and other interest unions like the American Federation of Teachers supported the new rules (“AFT Responds”). However, some Democrats are in favor of charter schools. Democrats are more likely to support racial justice policies than Republicans (“Deep Divisions”), and charter schools purport to highly benefit students of color. Additionally, a study by Democrats for Education Reform found that a majority of Black and Latino Democratic primary voters favor charter schools, while only about one quarter of white Democratic primary voters supported charters (Barone et al.).

Though the support for charter schools among communities of color is strong, further research indicates that charter schools worsen existing racial disparities. A 2016 study examined charter school choice among high-income parents in the Denver suburbs. The study found that white and high-income families are still at an advantage when it comes to selecting charter schools. They were more likely to conduct research before sending their children to a school and they also had access to wealthier social networks. The study highlighted that social networks were composed of people who shared similar traits, namely race, religion, and culture (Altenhofen et al.).

If the selection process for charter schools is influenced by existing class and race divisions, then charters do no better than traditional public schools at limiting segregation. What’s more — multiple studies showed that charter schools were more likely to increase segregation (“Choice Without Equity”). Another study found that Florida’s charter schools were 82% white whereas the public schools were 51% white. Black students attended charters and public schools in Florida at approximately the same proportion, but the racial distributions within the charter schools skewed heavily white. In Arizona, charter enrollment was 20% more white than public school enrollment, and research in California suggests that charter schools underrepresent Latino students (Renzulli and Roscigno).

Black Americans are more likely to suffer when isolated from Black peers (Do et al.). In highly segregated charter schools, this could negatively impact their mental health and academic performance. In addition, research shows that Black students are more likely than their white peers to be harshly disciplined. Students can be disciplined for infractions as minor as “... a shirt untucked, eyes averted” (Carwin). Examples of discipline include being criticized for having an accent, being placed in a solitary room, and wearing different clothing from other students as a punishment. These exclusionary practices single the student out, which is only compounded when they are one of the few Black students in the school. Exclusionary discipline can harm graduation rates, academic achievement, and attendance. Students who become withdrawn from their education are also more likely to be victims or perpetrators of violence and earn less money later in life (Carwin). Additionally, Black students are even more likely to be disciplined at charters schools in majority-Black communities. In D.C., New York City, and Boston, the charter schools with the highest levels of exclusionary discipline were also located in majority-Black communities (Carwin). Black and low-income communities understandably want access to better education, but despite their marketing, charter schools make the problem worse.

5. Impact

Biden’s new rules for charter school funding went into effect on August 5, 2022 (“Tracking regulatory changes”). Given that it has only been a few months from then to the time this paper was written, it is difficult to determine whether the new rules will reduce wasted spending or disrupt charter openings.

Burke, who works for a charter advocacy interest group, said that it is too early to tell whether the new rules will impact charter schools’ funding access. She said that charter advocates will be watching to see if the new rules impact how many charters receive federal funding:

The crux of our arguments about why we’re concerned about the roles is going to be in that state entity to sub-grantee. So, if a bunch of teachers want to open a charter school and they, you know, can’t make a case for demands that is strong enough in alignment with the new rules, that’s when the kind of the issues will play out. And so unfortunately right now just a little bit too early, but I think starting next spring is when we're really going to be able to tell what the longer-term impact will be.

Burris, whose work is highly critical of charters, agreed that it is too early to tell the impact of the new rules. She said that we will likely start to see impacts when the new Congress convenes in January. Burris did have insight on the purposes and potential impacts of the new rules. “They run these schools with what’s called a sweeps contract, and it was actually mentioned in the legislation,” she said. A sweeps contract is a contract where the charter management organization runs the school, and in exchange, they can take up to 95% of the revenue (Greene). The management organization is not required to disclose spending. Burris said one major victory of the new rules was that they would not fund sweeps contracts, which should greatly increase transparency and ideally reduce fraud.

Burris is writing a third “Asleep at the Wheel” report that is set to release in January. The new report includes policy recommendations that go further than the current rules:

In terms of other regulation, one of the things that we're going to call for in our new report is the banning of these sweeps contracts. We just believe that it’s a violation of, if not the letter of the law and certainly the spirit of the law, and schools that are run by for-profit organizations that are taking all of their funds. And you don't even know how those funds are being spent. That shouldn't happen.

Any impacts the new charter funding rules have should be present by January 2023. Though it is too early to say definitively, the rules appear weak. They do not reduce federal funding and only slightly regulate the institutions which are allowed to receive funds. There is a pattern emerging of charter schools that spend government money and harm the communities they were supposed to serve. Interested groups should watch the impact of the new rules closely; if the charter quality shows some improvement, then it is a sign that not only is the regulation working, but that the federal government can and should impose harsher regulations on charter schools.

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