

Wisconsin Lutheran Seminary

Is School Choice the Right Choice For WELS Schools?

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In 1989 the Wisconsin state legislature passed its budget for the year that included funds to begin what has become the United States' largest and oldest school voucher program for low-income families. In 1990 qualifying families could begin receiving government aid to send their children to the non-sectarian school of their choice. This program, called the Milwaukee Parental Choice Program (MPCP; also referred to as "choice" or "school choice"), began in 1990 with 341 students who attended seven private, non-sectarian schools. In 1995 the legislature approved the expansion of the program to include religious schools. Both Act 336 of 1989, that began the program, and Act 27 of 1995, that expanded the program to include religious schools, were challenged in the courts. Both of these challenges eventually reached the Wisconsin Supreme Court. In 1993 the Wisconsin Supreme Court ruled the non-sectarian school choice program constitutional. In 1998 it ruled the same way for the expanded program. The U.S. Supreme Court declined to hear the appeal of the 1998 Wisconsin Supreme Court decision, but in June of 2002 the U.S. Supreme Court ruled that a similar program in Cleveland, Ohio was constitutional. With the program in place through legislative and judicial support, leaders of Wisconsin Evangelical Lutheran Synod (WELS) schools in Milwaukee asked themselves if participating in the Milwaukee Parental Choice Program would be the right choice for them. As of 2004 fourteen WELS schools in Milwaukee have said yes to MPCP. Thirteen of those schools are currently participating, and St. John's Lutheran School in Milwaukee has indicated their intention to participate in the 2005-2006 school year.¹ Has school choice been the right choice for these WELS schools? More history is needed to answer that question. However, as

¹ See the Appendix for the complete list of WELS schools participating in the program in the 2004-2005 school year.

the tenth year of the expanded program approaches² a look at the thoughts, beliefs, and factors that led and continue to lead these fourteen WELS schools to participate in MPCP is beneficial as more WELS schools decide whether or not they will participate in this program or similar programs throughout the country.³

Before WELS school leaders made any decisions regarding MPCP they made certain they had a thorough understanding of the program. What follows is a brief summary of MPCP's rules and regulations:⁴

The only schools that are allowed to participate in the program are those that are located within the city limits of Milwaukee. Only students of families who live within Milwaukee are eligible to participate. In addition, eligible families also must have incomes that are at or below 175% of the federal poverty level. In the 2002-2003 school year that number was \$26,140 for a family of three. "Further, in the school year prior to their initial enrollment in a private school, participants must have been either enrolled in Milwaukee Public Schools (MPS), the choice program or grades kindergarten through three in private schools located within the City of Milwaukee, or not enrolled in school."⁵

At this time the law allows no more than 15 percent of the total students enrolled in the Milwaukee Public Schools to attend private schools with state funds. In the 2002-2003 school

² In 1995 the Wisconsin state legislature expanded the program to include religious schools; however, a court injunction did not allow the implementation of the expansion until the Wisconsin Supreme Court settled the case in 1998. 1999 was the first year students attended religious schools as part of the expanded program.

³ At this time Colorado, Cleveland, Maine, Florida, Vermont and Washington DC also have similar programs.

⁴ The information provided in the next six paragraphs is primarily a summary of what is found in the following source: Russ Kava, *Milwaukee Parental Choice Program, Informational Paper 29* [paper in pdf on-line] (Madison, WI: Wisconsin Legislative Fiscal Bureau, 2003, accessed 1 December 2004); available from <http://www.schoolchoicewi.org/k12/detail.cfm?id=4>.

⁵ Kava, 1.

year the maximum number of students who could participate in MPCP was 14,900. In that school year 11,350 students participated.

Private schools participating in the program must also abide by admission and selection procedures. Students must apply using a form supplied by the state superintendent. The school has 60 days to inform a student if he/she has been accepted. The school must also ensure that it accepts students on a random basis. "This requirement has been interpreted to mean that if a school is oversubscribed in a particular grade, random selection is required in that grade."⁶ In the case that the participating school is oversubscribed, the school is allowed to give siblings of the student continuing in MPCP preference in admission. This is also the case for the sibling of a student who has been accepted on a random basis into the school for the first time that year.

In addition to admission procedures participating schools must also meet the following criteria: They, "must meet all state health and safety laws or codes applicable to public schools and a number of federal laws and regulations which apply to both public and private schools."⁷ They must comply with all non-discrimination provisions of the 1964 Civil Rights Act. (This is true for all WELS schools in Wisconsin.) According to the Civil Rights Act schools are prohibited from discriminating on the basis of race, color or national origin. Participating schools must follow uniform accounting standards established by the Department of Public Instruction (DPI). They must submit an annual, independent, financial audit of the school to DPI. They are required to meet at least one of the following standards in order to continue to be eligible to participate in the program in the following year:

1. At least 70% of the pupils in the program advance one grade level each year.
2. The school's average attendance rate for pupils in the program is at least 90%.

⁶ Kava, 2.

⁷ Ibid.

3. At least 80% of the pupils in the program demonstrate significant academic progress.
4. At least 70% of the families of pupils in the program meet parental involvement criteria established by the school.⁸

In regards to the first listed standard each participating school must do one of the following to prove they have advanced 70% of the participating students one grade level:

...each participating private school shall ensure that each pupil in the choice program who is advanced one grade level has met one of the following criteria:

- a. Achievement of 70% of the instructional objectives specific to each grade level in reading, mathematics and language arts which are introduced during each semester of the current school year. Under this subparagraph, a private school shall do all of the following: establish written objectives and performance standards for reading, mathematics and language arts for each grade level in which pupils are enrolled in the Milwaukee parental choice program; document written criteria and methodology for evaluating pupil performance for each objective and document each pupil's performance using the evaluation method specified in this subparagraph in a written record and maintain these records for 3 years.
- b. Achievement of at least .08 grade equivalent increase for each month between the spring or fall and spring administration of the standardized achievement test. Under this subparagraph, a private school shall do all of the following: report, by October 15, to the state superintendent the tests to be administered, and maintain each pupil's answer sheets and score information for 3 years.⁹

In regards to the third listed standard the administrative code lists no criteria that ensure a student has achieved significant academic progress. It is up to the individual schools to establish what criteria it will use to determine parental involvement. According to the state statute the final authority in determining whether or not a school has met one of the four standards rests in the state superintendent.

The state superintendent shall monitor the performance of the pupils attending private schools under this section. If the state superintendent determines in any school year that the private school is not meeting at least one of the standards under par. (a), that private

⁸ Kava, 2.

⁹ Chapter PI 35 Milwaukee Parental Choice Program, Wisconsin Administrative Code, Department of Public Instruction [paper in pdf on-line] (Register, June, 2004, No. 582, accessed 19 October 2004); available from <http://www.dpi.state.wi.us>, 116.

school may not participate in the program under this section in the following school year.¹⁰

Participating schools must allow students to “opt out” of religious activities. Again, the state statute reads as follows:

A private school may not require a pupil attending the private school under this section to participate in any religious activity if the pupil’s parent or guardian submits to the pupil’s teacher or private school’s principal a written request that the pupil be exempt from such activities.¹¹

An important rule in the program dictates how the state directs funds for qualifying students to the participating schools. In the original 1989 act the state directly paid the schools for each qualifying student. In 1995 the legislature changed the rules so that the state would still send the funds to the participating schools, but they would pay the check to the parent or guardian of the qualifying student. This amendment to the 1989 program was important because it was one of the factors that lead the Wisconsin Supreme Court to rule in favor of the constitutionality of the program.

Second, under the amended MPCP public aid flows to sectarian private schools only as a result of numerous private choices of the individual parents of school-aged children. Under the original MPCP, the state paid grants directly to participating private schools. As explained above, the program was amended so that the State will now provide the aid by individual checks made payable to the parents of each pupil attending a private school under the program. Each check is sent to the parents’ choice of schools and can be cashed only for the cost of the student’s tuition. Any aid provided under the amended MPCP that ultimately flows to sectarian private schools, therefore does so “only as a result of genuinely independent and private choices of aid recipients.” *Witters*, 474 U.S. at 487.

We recognize that under the amended MPCP that State sends the checks directly to the participating private school and the parents must restrictively endorse the checks to the private schools. Nevertheless, we do not view these precautionary provisions as amounting to some type of “sham” to funnel public funds to sectarian private schools. In

¹⁰ *Chapter 119.23 Milwaukee parental choice program Chapter 119 First Class City School System* [paper in pdf on-line] (Unofficial text from 01-02 Wis. Stats. database, accessed 19 October 2004); available from <http://www.dpi.state.wi.us>, 119.237b, 5.

¹¹ *119.23 Milwaukee parental choice program*, 119.237c, 5.

our assessment, the importance of our inquiry here is not to ascertain the path upon which public funds travel under the amended program, but rather to determine who ultimately chooses that path. As with the programs in Mueller and Witters, not one cent flows from the State to a sectarian private school under the amended MPCP except as a result of the necessary and intervening choices of individual parents. As a result, “[n]o reasonable observer is likely to draw from [these facts] an inference that the State itself is endorsing a religious practice or belief.” Witters, 474 U.S. at 493 (O’ Connor, J., concurring); see also Zorbreast, 509 U.S. at 9-10.

The amended MPCP, therefore, places on equal footing options of public and private school choice, and vests power in the hands of parents to choose where to direct the funds allocated for their children’s benefit. We are satisfied that the implementation of the provisions of the amended MPCP will not have the primary effect of advancing religion.¹²

The state superintendent sends the payments to the schools for the parents in four installments in September, November, February and May of each school year. Once the school receives the check the parent or guardian is required to restrictively endorse the check for use by the private school. (Many schools will become restricted Power of Attorneys for participating parents so they do not have to obtain these parents’ signatures four times a year.) Each year the state sets the maximum amount each qualifying student’s parent or guardian may receive for the upcoming school year. In the 2004-2005 school year that amount was \$5,943. Of the maximum amount per year, each student’s parent or guardian may only receive the amount the school has determined to be the per pupil cost for that year. If a participating school cannot demonstrate in their annual audit to the DPI how they spent that amount per pupil, the school must return any monies it received over and above what they actually spent that year per pupil.

With the rules and regulations in place the Wisconsin Supreme Court made its ruling in 1989. However, even though the Wisconsin Supreme Court ruled the Milwaukee Parental Choice program constitutional, it also realized its limitations in evaluating the worth of the program.

¹² *Jackson et al. v. Benson* [paper in pdf on-line] (Wisconsin Supreme Court, Case No.: 97-0270, opinion filed: 10 June 1998, accessed 5 November 2004); available from <http://www.dpi.state.wi.us>, 32-33.

Before we begin our analysis of the amended MPCP, we pause to clarify the issues not before this court. In their briefs and at oral arguments, the parties presented information and testimony expressing positions pro and con bearing on the merits of this type of school choice program. This debate largely concerns the wisdom of the amended MPCP, its efficiency from an educational point of view, and the political considerations which motivated its adoption. We do not stop to summarize these arguments, nor to burden this opinion with an analysis of them, for they involve considerations not germane to the narrow constitutional issues presented in this case. In the absence of a constitutional violation, the desirability and efficacy of school choice are matters to be resolved through the political process. This program may be wise or unwise, provident or improvident from an educational or public policy viewpoint. Our individual preferences, however, are not the constitutional standard.¹³

Politicians, educators, property owners, religious leaders, low-income families, tax-payers, and other concerned citizens have taken up the burden of evaluating the benefits of school choice for public education and society in general. Leaders in WELS schools have also participated in this secular evaluation. However, in considering school choice for their own schools, they also took on the added burden of evaluating the potential impact this program would have on their mission as ambassadors of Jesus Christ and his church.

What most of the participating WELS schools saw as a potential positive impact to their mission was the opportunity MPCP would give them to use their schools to reach out to families who otherwise could not afford attending them. Professor Allen Sorum, former pastor of Garden Homes Lutheran Church and School, summarized well the sentiment many WELS school leaders had that led them to decide to participate in the program:

The backbone of a city's social organization is its network neighborhoods. It is therefore not enough for us to be in a neighborhood in Milwaukee. We need to be part of the neighborhood so the neighborhood will be part of us. Our schools have traditionally given us a wonderful ability to do this. What better service could any church offer to an urban Milwaukee neighborhood than a fine Lutheran elementary school that evangelizes nurtures and educates students and their families? For some years now, financial circumstances in many Milwaukee neighborhoods have made it difficult or impossible for our neighbors to participate in our schools' ministry. The design and purpose of

¹³ *Jackson, et al. v. Benson*, 11-12.

School Choice—all other issues aside—is to remove the financial barriers that keep neighborhood people from participating in our schools.¹⁴

Pastor James Kleist, the superintendent of Wisconsin Lutheran High School, said that participating in MPCP opened up doors in Milwaukee that had not been able to be opened before.¹⁵ Risen Savior Lutheran School has participated in the program for two years and Pastor Ken Fisher of Risen Savior made these early observations: “Dozens of children have been baptized, and many parents are now members as a result. Scores of families have had Law-Gospel presentations who never would have welcomed us into their homes otherwise.”¹⁶

In addition to the extended opportunities to carry out the Great Commission, Professor James Rahn, chairman of the Hope Lutheran School, Inc., spoke of the role WELS schools participating in MPCP play in serving their communities. Milwaukee public schools struggle to bring their students, especially their minority male students, through all twelve grades. Without a high school diploma it is difficult for many of these former students to find jobs. In high poverty areas of Milwaukee many of these unemployed, non-graduates turn to crime and violence to survive. A solid education seems to be the best way to improve impoverished communities and lower the crime rate there. Professor Rahn sees Christian schools as better equipped to help more students reach high school graduation and deal with the pressures and temptations students face in poor neighborhoods. He spoke of the mission of The Hope School and Hope Christian School¹⁷ as saving eternal lives and also saving earthly lives from crime,

¹⁴ Allen Sorum, *Circumstances Under which WELS Congregations and Schools Might Participate in the Milwaukee Parental School Choice Program* (provided in interview with Allen Sorum, by author, Mequon, WI, 25 October 2004) 1. Hereafter cited as Sorum, *Circumstances Under which WELS Congregations and Schools Might Participate*.

¹⁵ James Kleist, interview by author, notes taken, Milwaukee, WI, 9 December, 2004.

¹⁶ Ken Fisher, survey by author, mail survey, sent to Milwaukee, WI, returned 10 December, 2004.

¹⁷ The Hope School is the name of the High School and Hope Christian School is the name of the grade school. Both schools are under the umbrella of Hope Lutheran School, Inc.

violence, and crime-related death.¹⁸ Professor Sorum stressed the fact that WELS schools are allowed to teach Christian values to students who can apply these values to their own lives and this in turn brings Christian values into their communities.¹⁹

Pastor Peter Kassulke, of St. James Lutheran Church and School, was and continues to be skeptical of MPCP's value in the community. In a letter he wrote to the Board of Directors of Wisconsin Lutheran High School discouraging them to participate in MPCP, he spoke of the potential negative impact MPCP could have in Milwaukee neighborhoods.

First of all, I do think we have to be sure that we understand that this program is a discriminatory welfare program that, at its heart, does not have the best interests of children in mind but the breaking of the Milwaukee teacher's union. I do not think there is much argument if one lists Choice as another welfare program. We are doling out money, by taxation, from one group of people and redistributing it to another. It is a welfare program that leads to greater dependency on the government and does not build responsibility in the individual.²⁰

He also disagreed with the idea that competition among MPCP schools and public schools would improve the public school system in Milwaukee. Instead, he believed that MPCP would do more harm to the public school system than good.

Some are chanting the mantra, "Competition is good. It will be good for MPS [Milwaukee Public Schools] to have competition." I could agree with this if the competition that Choice was offering was being played on an even field. Milwaukee's Choice program leaves MPS at a decided disadvantage. MPS must still comply with all state mandates about certifications and student services. Many of these mandates are expensive and time consuming. Choice schools have no such mandates that they need to follow. Teachers in Choice schools need not even be college graduates who have shown any proficiency or ability to teach...

It should be noted, that Choice has a real potential to bring the public schools down even lower. It will skim off the students whose parents will at least take the time and expend

¹⁸ James Rahn, interview by author, notes taken, Milwaukee, WI, 19 October, 2004.

¹⁹ Allen Sorum, interview by author, notes taken, Mequon, WI, 25 October, 2004. Hereafter cited as Sorum, *Interview*.

²⁰ Peter Kassulke, *Letter to the Board of Directors of Wisconsin Lutheran High School* (provided in interview with Peter Kassulke, by author, Milwaukee, WI, 8 December, 2004) 1. Hereafter cited as Kassulke, *Letter to the Board of Directors*.

the energy to register their children for Choice. It will leave the public system with those who are least motivated or cared for. This will make the public system appear to be failing even more. Will we really be serving our community if, by participating in Choice, we allow the majority in the community to suffer even more? Where is the good of all in this kind of government program?²¹

Professor Rahn insisted that those parents who participate in MPCP must take more responsibility for their children's education. Because there is not as much government oversight concerning curriculum and qualifications for teachers, parents must take on that oversight role. In MPCP the parents take control and not the government because they have the choice to send their child to a certain school or not. Professor Rahn cited the failure of one non-WELS, MPCP school as an example of school choice working the way it was supposed to. Alex's Academics of Excellence ran into financial trouble and scandal. Their curriculum and methods were questionable. The school eventually closed because, according to Professor Rahn, parents chose to take their children out of the bad school.²² In September of 2003 as Washington D.C. was deciding whether or not they would begin a similar school voucher program, *The Washington Post* reported the perceived strengths and weaknesses of the Milwaukee program. The article compared St. Marcus Lutheran School (a participating WELS school) with Alex's Academics of Excellence. The following portion of this article is an example of how both supporters and critics of the program will draw different conclusions about the same event.

"There are good voucher schools and there are poor voucher schools, just as there are good public schools and poor public schools," said Anneliese Dickman, a senior researcher at the Public Policy Forum, a nonpartisan educational think tank in Milwaukee.

At one end of the spectrum is a school such as St. Marcus, which offers a highly regarded, traditional education and has just undergone a \$5 million renovation, the result of private fundraising.

²¹ Kassulke, *Letter to the Board of Directors*, 2.

²² Rahn, *Interview*.

At the opposite end are such institutions as Alex's Academics of Excellence, which was founded by a convicted rapist fired from the public school system in 1991 after being accused of "inappropriate behavior" with female students. The school's former principal recently told the Milwaukee Journal Sentinel that he saw employees smoke marijuana at school, an allegation denied by the school's lawyer.

Wisconsin education officials say they have little control over Alex's Academics because it is a private school, even though it has received \$2.8 million in taxpayers' funds over the years.

"It's easier to start a school legally in Milwaukee and get money for it from the state than it is to open a bar or a gas station," said Bob Peterson, a Milwaukee public school teacher and prominent critic of vouchers.

School choice advocates say the free market will eventually force bad schools out of business. They note that 49 pupils signed up for Alex's Academics this year – down from 175 last year – while St. Marcus has expanded from 110 to 250 students over the past two years.²³

Besides evaluating MPCP's worth for the community, participating WELS schools have also had to resolve some other controversial issues before deciding to participate. The Wisconsin Evangelical Lutheran Synod has been sensitive about relations between the church and the state. It values the Establishment Clause of the United States Constitution because it prevents the government from interfering with the work of the church. It also recognizes the distinct roles God has given to his earthly governments and his church and the distinct means by which both the government and the church carry out their work. God's earthly governments rule with the law and the threat of punishment. God's church carries out its work in the hearts of believers through the promise of God's grace in the Word and Sacraments. In the document *This We Believe*, the WELS has made this statement concerning church/state relations:

4. We believe that the proper relation is preserved between the church and the state only when each remains within its divinely assigned sphere and uses its divinely entrusted means. The church should not exercise civil authority nor interfere with the state as the state carries out its responsibilities. The state should not become a messenger of the gospel nor interfere with the church in its preaching mission. The church should not

²³ Michael Dobbs, "For Vouchers, A Mixed Report Card; Milwaukee Program Spawns Qualms Amid Successes; [FINAL Edition]," *The Washington Post* (September 23, 2003): Section A1.

attempt to use the civil law and force to lead people to Christ. The state should not seek to govern by means of the gospel. On the other hand, the church and state may cooperate in an endeavor as long as each remains within its assigned place and uses its entrusted means.

6. We reject any attempt by the state to restrict the free exercise of religion.

7. We reject any views that look to the church to guide and influence the state directly in the conduct of its affairs.

8. We reject any attempt on the part of the church to seek the financial assistance of the state in carrying out its saving purpose.

This is what Scripture teaches about church and state. This we believe, teach and confess.²⁴

Pastor Daniel Deutschlander, professor emeritus of Martin Luther College, in his book *Civil Government, God's Other Kingdom* made this comment specific to state aid to schools:

Whether the aid is indirect or direct, parents who are unhappy with public education will put pressure on churches and church schools to accept the aid those parents need if their children are to receive a Christian education.

As understandable as the pressure of such parents may be, the church needs to exercise the greatest caution when accepting any kind of support from the state for her schools. No hard and fast rule can be made about the acceptance of aid for students or aid to schools. But those who imagine such aid comes without a price tag may well be in for a rude surprise.

We need to come back again and again to the basic principle that God gave the church the gospel and the government the sword. We do not want the government to tell our schools what to teach or how to discipline for false doctrine. That's not the government's business. But the power of the purse is the power to rule and regulate. If the government gives aid, the government assumes a right to regulate where and how that aid is used.²⁵

Would participation in MPCP dangerously combine the work of the church and state? Would participation in MPCP be an inappropriate seeking of government financial assistance? Would

²⁴ "The Church and State," *This We Believe* [paper in pdf on-line] (Milwaukee: Northwestern Publishing House, accessed 4 December 2004); available from <http://www.wels.net>, article VIII.

²⁵ Daniel Deutschlander, *Civil Government, God's Other Kingdom* (Milwaukee: Northwestern Publishing House, 1998) 184-185.

participation in MPCP mean schools would have to compromise their teachings and mission to be able to participate? These were questions WELS schools had to struggle with before they decided to participate.

Although the participating WELS schools understand the government's and the church's desire to separate church and state, these schools also understand along with the church and state that this distinction is not always clear. "The Supreme Court has repeatedly recognized that the Establishment Clause raises difficult issues of interpretation, and cases arising under it 'have presented some of the most perplexing questions to come before [the] Court.' Committee for Pub. Educ. and Religious Liberty v. Nyquist, 413 U.S. 756, 760 (1973)"²⁶ The Wisconsin Supreme Court's ruling also included this quote which shows how the courts would not even consider the distinction between church and state:

A policeman protects a Catholic, of course—but not because he is a Catholic; it is because he ... is a member of our society. The fireman protects the Church school—but not because it is a Church school; it is because it is property, part of the assets of our society. Neither the fireman nor the policeman has to ask before he renders aid 'Is this man or building identified with the Catholic Church.' Everson. 330 U.S. at 25 (Jackson, J., dissenting).²⁷

From the church's perspective Professor Deutschlander made this comment: "However, even in the United States, the church exists inside the framework of the earthly kingdom. We cannot escape that fact. Since that is so, there can be no real thought of an absolute or total separation of church and state."²⁸

Because the distinction between church and state is not absolute, in the past churches have recognized a certain amount of freedom in participating in government programs that supply financial aid to the church. Both Professor Sorum and Professor Deutschlander pointed

²⁶ *Jackson, et al. v. Benson*, 15.

²⁷ *Ibid.*, 31.

²⁸ Deutschlander, 170.

out in their writings ways WELS schools and churches have benefited from government funding.

Professor Sorum:

Many of our schools have already been receiving benefits and income from public funds by accepting:

- Title 1 grants (low income student math and science support);
- Title 6 grants (up to \$2000 for instructional materials);
- reduced lunch grants, and;
- MPS special education and therapy staff.²⁹

Professor Deutschlander cited these examples: bus transportation for students in private schools, health and counseling services, textbooks, federal and state government programs that aid students with college tuition in private or church-related schools.³⁰

Both Professor Rahn and Professor Sorum view WELS participation in MPCP as an aidaphoron, or a matter of Christian freedom. Professor Sorum was also careful to point out the “guiding principles that Christians keep in mind as they exercise Christian freedom.”³¹

- “Nobody should seek his own good, but the good of others” (1 Corinthians 10:24;
- “Everything is permissible”—but not everything is beneficial...not everything is constructive.”
- Christians will refrain from “imposing judgments upon one another (1978 RTTD, p. 188)” and;
- “Forcing their own exercise of piety on the community of fellow Christians,” (1978 RTTD p. 188).³²

Professor Sorum insisted that as long as a school used its freedom in a God pleasing way, then its participation in MPCP was appropriate. Professor Sorum also made certain that he identified the different ways participation in MPCP would no longer be a matter of Christian freedom:

Of course, participating in School Choice would cease to be a matter of Christian freedom if it should ever hurt our congregations’ desire to give freewill gifts to God. Or, School Choice would cease to be a matter of Christian freedom if by participating in it,

²⁹ Sorum, *Circumstances Under which WELS Congregations and Schools Might Participate*, 1.

³⁰ Deutschlander, 180.

³¹ Sorum, *Circumstances Under which WELS Congregations and Schools Might Participate*, 2.

³² *Ibid.*, 2.

we would give the impression of unity in faith with those whom we do not have unity in faith. The Jews accepted financial help from Persian kings to rebuild Jerusalem's temple but they did not accept help from the Samaritans. If the Jews would have accepted money from the Samaritans, it would "encourage the Samaritans in their idea that they were of one faith and worship with the Jews when in fact they were not" (1978 RTTD, p. 189).³³

As can be seen from the quotes above Professor Sorum made frequent use of the Report of the Committee on Grants found in the 1978 Report to the Ten Districts as support for participation in MPCP. One of the sensitivities that existed as schools were considering whether or not they would participate in MPCP was if it was appropriate to support the ministries of their schools with outside funds. In 1978 there were sensitivities regarding the churches' reception of grants from Aid Association for Lutherans (AAL). The Committee on Grants took on the responsibility of evaluating the broader subject as they studied, "...in the light of scriptural principles the expediency of the current practice of WELS requesting and applying for gifts, grants, and matching funds from any source outside of WELS" (BoRaM 1977. p. 174).³⁴ In his paper Professor Sorum included this quote from the 1978 Report to the Ten Districts:

While the Bible contains many injunctions that God's people should give gladly and freely on their own, there are no passages which expressly prohibit Christians from accepting or requesting resources from outside the church. In the New Testament where liberty rather than prescription in such matters is the rule, Christians have been entrusted by God to form their judgments according to what is beneficial and constructive for the spiritual upbuilding of the congregation. In the Old Testament, where prescription rather than liberty is the practical life of God's people is generally the rule, the same silence obtains in regard to whether the church may or may not look for help from the outside. The Old Testament, however, furnishes an example where the church took advantage of support from outside sources, and this with divine approval (p. 185). *The example cited is Ezra's account of the three Persian kings who provided public funds to help rebuild the temple in Jerusalem.*³⁵

³³ Sorum, *Circumstances Under which WELS Congregations and Schools Might Participate*, 3.

³⁴ Teacher John Bauer, Secretary; Prof. Armin Schuetze, Chairman, "Report of the Committee on Grants," Report to the Ten Districts (April 1978): 183.

³⁵ Sorum, *Circumstances Under which WELS Congregations and Schools Might Participate*, 1-2.

Using portions of Scripture and the findings of the Committee on Grants, Professor Sorum made this conclusion about receiving outside funding:

The bottom line is that all of the wealth of the world belongs to God. We must manage whatever portion of God's wealth that falls under our control to the glory of God. If resources come to the local congregations through the gifts of her members or through grants from foundations or grants from the government, the church is called to be faithful in her stewardship of God's wealth (Matthew 25:14-30) and to acknowledge God as the giver of wealth (James 1:17). We will exercise great care so that resources from outside sources do not make our churches dependent on outside income and the outside resources do not kill our members' spirit of joyful, generous, firstfruit, percentage giving.³⁶

Pastor Kassulke raised the caution that, in spite of great care, participation in MPCP would eventually lead to reliance on the government for financial aid. "I believe that by participating in the Choice program we will start down the slippery slope of reliance on government funding for our ministry."³⁷ In his letter to the Board of Directors of Wisconsin Lutheran High School he also quoted the Report to the Ten Districts. He included the following quote to support his position that churches and schools must be careful not to rely on financial aid from outside sources:

It should be noted that the AAL, for example, is alert to the possibility that a church group or synod may become dependent on grants for its programs. For that reason it has set up definite guidelines that place a restriction on the kind of projects for which it will offer assistance. For example, it will not allot funds for budgetary purposes. This obviates the danger that a synod or group within it may rely on the AAL to supply fund for the ongoing, essential needs of their Gospel-work. (page 192)³⁸

In a survey sent to the thirteen WELS schools currently participating in MPCP one or more representatives from each school had the opportunity to answer whether or not their school would be strong enough financially to continue without participating in MPCP. Representatives from nine of those schools responded to the question. Seven of those schools said that they

³⁶ Sorum, *Circumstances Under which WELS Congregations and Schools Might Participate*, 2.

³⁷ Kassulke, *Letter to the Board of Directors*, 2.

³⁸ *Ibid.*, 2.

either would not be able to continue, they probably would not be able to continue, or they would not be able to continue as they exist now. Representatives from Atonement Lutheran School and Siloah Lutheran School said they would be able to continue. Professor Rahn admitted that both the Hope School and Hope Christian School, which are made up of 100% MPCP students, would have to close without MPCP dollars. He said if the time ever came when the government decided to discontinue the program or they had to withdrawal from the program because the laws changed so they would have to compromise their ministry to participate, then both schools would appreciate the ministry they were able to do as part of the program and simply close. After they closed their doors each school would attempt to enroll their students into other area Lutheran schools. Professor Rahn spoke of how important it was for each participating school to have an exit strategy in the case they determined it was unwise to continue in the program or the government cut or discontinued funding.³⁹

Another issue participating schools had to discuss was under what circumstances would they stop participating in MPCP. One law, currently part of the program, has already caused some WELS schools to be reluctant to participate and for those who do participate it caused them to pause before they agreed to sign on. The law states participating schools must allow students to “opt out” of religious activities. Professor Sorum wrote about Garden Homes Lutheran School’s reluctance to participate because of this rule.

The problem for us was the “opt out” clause. The School Choice regulations requires a school to allow families to opt out of religious training in Choice schools...we did not feel we could be true to our mission if we enrolled families who were only interested in the academic aspect of our program. Our mission and our program is above all to proclaim Christ, teach Christian doctrines and nurture Christian values and behaviors. We didn’t believe that we could accomplish our mission when not everyone involved in the school had at least expressed a commitment to the mission. Also, we didn’t like the implications of compromising the mission of a Christian school in order to receive public dollars. Even though no parent has opted out of the religious training offered in any of

³⁹ Rahn, *Interview*.

the Choice parochial schools, and even if no parent ever did opt out, merely allowing for the compromise did not sit well with us. It didn't seem quite honest. We were concerned that our members, particularly our newer Christians, might think that the leadership was willing to talk out of both sides of its mouth in order to receive public dollars. After much discussion and prayer, we decided that we would not participate in School Choice.⁴⁰

In the same document Professor Sorum went on to explain what changed his mind concerning the "opt out" clause of the law.

At one point in this meeting, I went on at length to explain to Mr. McKinley [Mr. McKinley was a representative of PAVE. PAVE is an organization that gives money to schools for building projects.] that Garden Homes did not see a way to participate in School Choice because we were committed to offering the highest quality Christian ministry possible, expecting the highest possible commitment possible from our staff, children and families. We were not willing to compromise what we were trying to accomplish, in spite of the social challenges facing us, in any way. Mr. McKinley's response was something like this: "That's the best reason I have heard to participate in Choice."

Mr. McKinley's position is that by communicating our mission, explaining carefully our vision and articulating what we offer against other schools is how and why we, in his opinion, should be involved in School Choice.⁴¹

Finally, Professor Sorum, in the paper he wrote for other WELS school leaders about participation in MPCP, came to this conclusion about the "opt out" clause:

Regarding the "opt out" clause, we can so organize and articulate our mission, expectations and promises that virtually all prospective school families will opt in or out after the initial interview. In fact, this is exactly what has occurred throughout Milwaukee, only two children from one family have opted out of the "religious" activities of their school. The remaining 5251 School Choice pupils who enrolled in religious schools are choosing to participate fully in the religious activities offered by their schools. We must speak clearly. We must articulate our mission and our expectations. All of our policies that implement our mission and hold people accountable to our expectations and promises must be clearly communicated.⁴²

⁴⁰ Allen Sorum, *A Proposal To Participate In School Choice, Garden Homes Ev. Lutheran Church, December of 1999* (provided in interview with Allen Sorum, by author, Mequon, WI, 12 November 2004) 1.

⁴¹ *Ibid.*, 1-2.

⁴² Sorum, *Circumstances Under which WELS Congregations and Schools Might Participate*, 3.

Both Professor Rahn and Pastor Kleist reported that the “opt out” clause has not been an issue for WELS schools participating in the program. Pastor Kleist said the students who attend Wisconsin Lutheran High School know the Christian mission of the school. If some were going to opt out of one activity and if they were going to be true to themselves, then they would really have to opt out of the entire school because all of the school’s activities center on that Christian mission. Professor Rahn and Professor Sorum also made the point that the goal of a Christian school is not to force a child to participate in a religious activity but through the preaching of the Gospel encourage a student to want to participate in that activity.

Another rule that has caused some concern is the random selection process. The concern here is that if a classroom is oversubscribed and the school has to fill those seats through a random selection process, then the school loses control over who it accepts into its school. What if a qualifying WELS student was not picked in the random selection process and had to be turned away to go to another non-WELS, MPCP school? Professor Rahn again insisted this has not been an issue. He said that the reality is the participating schools have to work hard to fill the available seats in their schools. He said that there are many options out there for parents, so the students are not lining up to enroll in participating WELS schools. Professor Rahn said that, in fact, the participating WELS schools usually have to go door to door to promote their schools in their neighborhoods.⁴³ Pastor Kleist said that since Wisconsin Lutheran High School has participated in MPCP they have not had to turn away any students.⁴⁴

For the WELS schools that participate now the one factor that would make it impossible for them to continue in the program would be if the state required them to include items in their curriculum that were contrary to Scripture. So far the participating schools have determined the

⁴³ Rahn, *Interview*

⁴⁴ Kleist, *Interview*

state has not gone so far in their regulations, but they admit the potential for this to happen does exist. But even though the possibility is there Professor Rahn pointed out that MPCP works well for WELS schools in Milwaukee because Wisconsin has traditionally worked hard not to regulate private schools. It has been the desire of the Wisconsin state government to continue this tradition even among MPCP schools.⁴⁵ When Alex's Academics of Excellence ran into problems some Wisconsin legislators became concerned. Superintendent Elizabeth Burmaster responded to the concerns of two state senators, Michael Ellis and Robert Jauch, in a letter dated 1 October 2003. The following portion of this letter shows the original intention of the government in creating MPCP, but it also gives an example of how the intentions of the state can change.

You [Senators Ellis and Jauch] also asked whether the department [Department of Public Instruction] believes there is sufficient statutory and rule authority to protect the health, safety, and welfare of MPCP students. I believe, when the MPCP was created, there was intent to limit the department's regulation of private schools participating in the program. I also believe, as mentioned previously, that expanded regulatory authority is warranted.⁴⁶

The participating schools agree that continued vigilance is needed as they continue in the program. Each year the participating schools must renew their intention to participate for the following school year. This gives the schools a chance to review the benefits and possible dangers of the program on an annual basis.

One issue that has caused some difficulty among WELS schools is the strict accounting standards they must follow to participate. Each year participating schools must undergo a rigorous audit to determine whether or not they actually spent what they determined to be their per pupil cost on the students. Both Mr. Roger Kramp, principal of Mt. Lebanon Lutheran

⁴⁵ Rahn, *Interview*.

⁴⁶ Elizabeth Burmaster, *Letter to the Honorable Michael Ellis and The Honorable Robert Jauch*, [letter in pdf on-line] (State of Wisconsin Department of Public Instruction: 1 October 2003, accessed 3 December 2004); available from <http://www.dpi.state.wi.us>, 2.

School, and Mr. Benjamin Clemens, principal of Risen Savior Lutheran School, said the large amounts of paper work required by the state keeps them in their offices more than they would like.⁴⁷ Professor Rahn said that even though the accounting standards are rigorous, they have led participating WELS schools to get their financial houses in order.⁴⁸

One factor that seems to have encouraged some WELS school to participate was declining enrollments. The 2004-2005 school year was the first year Fairview Lutheran School participated in the program, and Mr. Kenneth Proeber, principal of the school, attributed part of their decision to enroll to their declining enrollment.⁴⁹ Mr. Henry Tyson, principal of St. Marcus Lutheran School, views MPCP as an opportunity to keep WELS elementary education alive even as many WELS schools across the country are losing large numbers of students.⁵⁰ For declining WELS schools in Milwaukee who do not participate in MPCP, the idea of participating continues to become more appealing. This is true especially in light of a current trend report that shows the majority of WELS schools in Milwaukee that do not participate in MPCP have declined in numbers or have closed in between 1999 and 2004. Those that do participate, with the exception of two schools, have increased in numbers in the past five years.⁵¹ Pastor Kleist said that it is difficult to look at numbers like this and not think school choice is a good option for our schools.⁵²

⁴⁷ Roger Kramp, surveyed by author, mail survey, sent to Milwaukee, WI, returned 9 December, 2004, and Benjamin Clemens, surveyed by author, mail survey, sent to Milwaukee, WI, returned 10 December, 2004.

⁴⁸ Rahn, *Interview*.

⁴⁹ Ken Proeber, surveyed by author, mail survey, sent to Milwaukee, WI, returned 9 December, 2004.

⁵⁰ Henry Tyson, interviewed by author, phone, Milwaukee, WI, 21 December, 2004.

⁵¹ *WLHS Conference Elementary School Five Year Trend Report (1999-200 to 2003-2000)* (Provided in interview with James Kleist, by author, Milwaukee, WI, 9 December 2004) 1.

⁵² Kleist, *Interview*.

Is school choice the right choice for WELS schools? Certainly this question has challenged leaders of WELS schools in Milwaukee. It is a question that will likely challenge these leaders as long as the program continues. For those WELS schools that do participate, MPCP is seen as an opportunity given from the hand of God to expand the ministries of their schools into new areas and serve their communities at the same time. For some of these schools (perhaps as a secondary benefit) MPCP is seen as a solution to declining enrollment among WELS schools in Milwaukee. For those schools that are considering participating in MPCP or similar programs throughout the country, they too will have to struggle to determine if participating in such programs is truly a blessing or a step closer to a dangerous interminglement of church and state. As some of these WELS schools are declining, they too will have to struggle to determine if school choice is a good solution to the problem, or a temptation to get involved in a program that could compromise their mission. WELS schools will do well to proceed with their decisions concerning school choice with wisdom, vigilance, caution, and prayer.

Appendix**WELS Schools Participating in the Milwaukee Parental Choice Program (MPCP)
2004-2005 School Year**

Atonement Lutheran School
424 W Ruby Avenue
Milwaukee WI 53209
Administrator: Stephen Schafer

Risen Savior Ev. Lutheran School
9550 West Brown Deer Road
Milwaukee WI 53224
Administrator: Mr. Benjamin Clemons

Christ/St. Peter Lutheran School
229 W Greenfield Avenue
Milwaukee WI 53024
Administrator: John Marten

Saint Marcus Lutheran School
2215 North Palmer Street
Milwaukee WI 53212
Administrator: Mr. Henry Tyson

Fairview Lutheran School
137 North 66th Street
Milwaukee WI 53213
Administrator: Mr. Kenneth Proeber

Saint Philip's Lutheran School
3012 North Holton Street
Milwaukee WI 53212
Administrator: Mr. Richard Carver

Garden Homes Lutheran School
2475 West Roosevelt Drive
Milwaukee WI 53029
Administrator: Mr. John Wesenberg

Siloah Lutheran School
3731 North 21st Street
Milwaukee WI 53206
Administrator Mr. Steven Gerner

Hope Christian School
2345 North 25th Street
Milwaukee WI 53026
Administrator: Mr. Timothy McNeill

The Hope School
3229 North Martin Luther King Jr. Drive
Milwaukee WI 53212
Administrator: Mr. Tommie Myles

Mount Lebanon Lutheran
6100 West Hampton Avenue
Milwaukee WI 53218
Administrator: Mr. Roger Kramp

Wisconsin Lutheran High School
330 North Glenview Avenue
Milwaukee WI 53213
Administrator: Rev. James Kleist

Word of Life Evangelical Lutheran School
3545 South 23rd Street
Milwaukee WI 53221
Administrator: Mr. Philip Krueger

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