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Charter School Laws in the United States: The Good, the Bad, and Illinois, 50 J. Marshall L. Rev. 965 (2017)

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CHARTER SCHOOL LAWS IN
THE UNITED STATES:
THE GOOD, THE BAD, AND ILLINOIS

ALEXANDRA M. VERVEN

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I. THE NEED FOR CHARTER SCHOOLS

“Let us think of education as the means of developing our greatest abilities, because in each of us there is a private hope and dream which, fulfilled, can be translated into benefit for everyone and greater strength for our Nation.”¹ Education has been an idea since the establishment of America and has evolved right alongside of it.² During this evolutionary process, charter schools were introduced to the American public in 1974 through the booklet, “Education by Charter: Restructuring School Districts.”³ This booklet written by Massachusetts educator, Ray Budde, presented the idea of small groups of teachers contracting with local school boards and advocating for their students to overcome specific obstacles within their schools.⁴ By 1988, the idea of charter schools had spread.⁵ Albert Shanker, the president of the American Federation of Teachers, expanded this notion when he outlined a public school system where teachers could experiment with fresh and innovative ways of reaching students.⁶

1. John F. Kennedy, former President of the United States, Proclamation 3422 – American Education Week (July 25, 1961).

2. See *11 Facts About the History of Edu. in America*, THE AMERICAN BOARD BLOG (July 1, 2015), www.americanboard.org/blog/?p=97 (noting that “Early public schools in the United States did not focus on academics like math or reading. Instead they taught the virtues of family, religion, and community.”).

3. *Origins of Chartering Timeline*, EDUC. EVOLVING (Oct. 8, 2016, 4:20 PM CDT), www.educationevolving.org/content/history-and-origins-of-chartering.

4. See Kate Gallen, Comment, *The Role of the Judiciary in Charter School's Policies*, MO. L. REV. 1121, 1125 (2012) (using the example, “if a group of elementary school teachers thought it would be more beneficial to group students by ability level, as opposed to grade level, they could seek a ‘charter’ from their school district to do so within the school in which they worked.”).

5. See Richard D. Kahlenberg & Halley Potter, *The Original Charter School Vision*, N. Y. TIMES (Aug. 20, 2014), www.nytimes.com/2014/08/31/opinion/sunday/albert-shanker-the-original-charter-school-visionary.html (estimating that only one-fifth of American students were well served by traditional public schools).

6. See *id.* (noting Shanker was president of the American Federation of Teachers, a Chicago-based labor union, from 1974 until his death in 1997); see also Susan Saulny, *Ray Budde, 82, First to Propose Charter Schools Dies*, N.Y. TIMES (June 21, 2005), www.nytimes.com/2005/06/21/us/ray-budde-82-first-to-propose-charter-schools-dies.html?_r=0 (stating Budde became interested in education reform early in his career). He earned a bachelor’s degree from St. Louis University in 1943, master’s degree in business administration from the University of Illinois, and a doctorate degree in education from Michigan State University. *Id.*

Today, there are an estimated 6,800 public charter schools nationwide.⁷ The last few presidential administrations have put the spotlight on such schools.⁸ Most recently, former President Obama spoke at the national charter school week to both praise and recognize the importance of these schools. Specifically, he pointed out that charter schools can “ignite imagination and nourish the minds of America's young people while finding new ways of educating them and equipping them with the knowledge they need to succeed.”⁹

Although charter schools are on the rise, they still face many challenges.¹⁰ For instance, they struggle to remain autonomous and free from local school board control.¹¹ These schools also struggle to access public funding and find sufficient locations to open their doors.¹² To address these challenges, the National Alliance for Public Charter Schools (“NAPCS”) has created a model charter school law to provide both guidance for states that have charter school laws and suggestions for states that are considering enacting such laws.¹³ In the 2016 rankings, the NAPCS ranked Indiana as having the best charter school law, while it ranked Maryland in last place and Illinois in the middle.¹⁴

7. *A Closer Look at the Charter School Movement*, THE NAT'L ALLIANCE FOR PUB. CHARTER SCH. 1 (2016), www.publiccharters.org/wp-content/uploads/2016/02/New-Closed-2016.pdf.

8. Joseph O. Oluwole & Preston C. Green, III, *Charter Schools Under the NCLB: Choice and Equal Educational Opportunity*, 22 ST. JOHN'S J. LEGAL COMMENT. 165 (2007).

9. Barack Obama, former President of United States, Presidential Proclamation – National Charter Schools Week (Apr. 29, 2016) (noting that charter schools have the “flexibility to develop new methods for educating our youth, and to develop remedies that could help underperforming schools, these innovative and autonomous public schools often offer lessons that can be applied in other institutions of learning across our country, including in traditional public schools.”).

10. *New Report Examines Promises, Pitfalls of Charter School Autonomy*, THE CTR ON REINVENTING PUBLIC EDUC. (Feb. 10, 2011), www.crpe.org/news/new-report-examines-promises-pitfalls-charter-school-autonomy/

11. *Id.*

12. *Id.*

13. Todd Ziebarth, *A New Model for Supporting the Growth of High-Quality Public Charter Schools*, THE NAT'L ALLIANCE FOR PUB. CHARTER SCH. 1, 2 (2009), www.publiccharters.org/wp-content/uploads/2014/01/ModelLaw_P7-wCVR_20110402T222341.pdf.

14. Since 2009, the NAPCS has ranked charter school laws from best to worst, assessing how closely a state's law follows the model charter school law. Elaine Liu, *Solving The Puzzle of Charter Schools: A New Framework for Understanding and Improving Charter School Legislation and Performance*, 2015 COLUM. BUS. L. REV. 273, 292-93 (2015). In part, the NAPCS bases its model law off the Center for Education Reform's grading system, which includes four components: “(1) the existence of independent and/or multiple authorizers; (2) the number of schools allowed and state caps; (3) operational and fiscal autonomy; and (4) equitable funding.” *Id.* Though educators have criticized

This goal of this Comment is to highlight the areas in which Illinois can improve its charter school law in hopes of becoming the best ranked law in the nation.¹⁵ To get there, one must understand the operation and usage of charter schools in addition to the evolution of the charter school movement. It is also vital to recognize the three basic principles of charter schools to truly appreciate the NAPCS's model charter school law. After having a general comprehension of the background, this Comment seeks to compare Illinois's charter school law with that of Indiana (the best ranked state) and Maryland (the worst ranked state) in light of two main categories in which these school struggle: preserving their autonomy and accessing public funding.¹⁶ At that point, it will be clear that Illinois needs to revise its State Charter School Commission (the "SCSC") to reflect the Indiana Charter School Board (the "ICSB") and implement statutory designations for facility funding.

II. THE FOUNDATION AND DEVELOPMENT OF CHARTER SCHOOLS

An overview of the general history of charter schools and the basic principles that underlie the creation of these schools within the United States is needed to fully comprehend what goals these schools should aim to accomplish and how best to get there. Moreover, a thorough examination of the essentials of NAPCS's model charter school law will further illustrate the policies these schools should adhere to to truly achieve their main purpose.

A. *The Operation and Usage of Charter Schools*

A charter school is a non-religious public school that is publicly funded and privately operated by a charter.¹⁷ To open a charter school, an authorizing agency and a school must enter into a contract.¹⁸ After a charter school has been approved and a contract

charter law grading systems, accusing them of overlooking the main reason behind the charter school movement, and instead knit picking at the adherence to such a model law. *Id.*

15. This comparison will be based off the NAPCS's Model charter school law and its 2016 rankings.

16. The two main topics of comparison are preservation of autonomy and access to public funding.

17. *Charter Schools: Findings Out the Facts: At a Glance*, CTR. FOR PUBLIC EDUC. (Oct. 8, 2016, 2:07 PM CDT), www.ctr.forpubliceducation.org/Main-Menu/Organizing-a-school/Charter-schools-Finding-out-the-facts-At-a-glance.

18. *See What is a Charter School?*, NAT'L CHARTER SCH. RES. CTR. (Nov. 5, 2016, 12:51 PM CDT), www.charterschoolCtr.org/what-is-a-charter-school (noting that authorizing agencies are established by each state's charter school law). More specifically, "authorizers can be state education agencies, local

has been drafted, a board (whose size and responsibilities vary by state) is put in place to oversee the functions of the charter school.¹⁹ From there, to get the charter school up and running, it receives a sum of money (usually from the state) to cover the costs of educating students.²⁰ Since charter schools are publicly funded, they must have “open enrollment policies, may not charge tuition, and must still participate in state testing and federal accountability programs.”²¹ Open enrollment policies expect a charter school to accept all students who apply, and if there are more applicants than seats, to implement fair and neutral procedures.²²

Charter schools are the fastest-growing choice option in U.S. public education.²³ As of November 2015, charter schools provide 2.9 million students across 43 states (including the District of Columbia) with a public education.²⁴ This equates to about six percent of the total number of students enrolled in all public schools nationwide.²⁵ In general, charter schools are popular because of their “efforts to eliminate achievement gaps, boost graduation rates, and revitalize communities.”²⁶

Often, these schools are utilized by students living in urban areas whose traditional public schools have failed to meet their expectations.²⁷ For example, the NAPCS’s report in November 2015 revealed that the following communities had the greatest number of charter school student per school district averaged over a ten-year trend from 2006 to 2015: Los Angeles, New York City, Philadelphia, Chicago, and Miami-Dade.²⁸ Because these urban areas are generally more racially diverse,²⁹ minority students tend

school districts, higher education institutions or other designated entities.” *Id.* For instance, school districts might contract to create a charter school for a variety of reasons, such as a growing student population. *Id.*

19. *Id.*

20. See Gallen, *supra* note 4, at 1126 (noting that this funding is generally used on a per-pupil basis, meaning the amount of money granted to the charter school depends on how many students are enrolled in the school).

21. *Charter Schools: Findings Out the Facts: At a Glance*, *supra* note 17.

22. Stephen D. Sugarman & Emlei M. Kuboyama, *Approving Charter Schools: The Gate-Keeper Function*, 53 ADMIN. L. REV. 869, 873 (2001).

23. *A Growing Movement: America’s Largest Charter School Communities*, THE NAT’L ALLIANCE FOR PUB. CHARTER SCH. 1, 2 (2015), www.publiccharters.org/wp-content/uploads/2015/11/enrollmentshare_web.pdf.

24. *Id.*

25. *Id.*

26. See *id.* (noting that New Orleans remains the number one in the market share of charter schools after Hurricane Katrina, where the city’s public-school system rebuilt into an almost entirely public charter school system; 93 percent of students attended a charter school in the 2014-15 school year).

27. Gallen, *supra* note 4.

28. *A Growing Movement: America’s Largest Charter School Communities*, *supra* note 25, at 7.

29. *Id.* 86 percent of the students in the top ten highest-enrollment-share districts are from minority backgrounds. *Id.* at 2.

to enroll at higher rates than they enroll in traditional public schools.³⁰ Other minority groups unrelated to race, such as the impoverished and English-Language-Learners, have also chosen charter schools over traditional public schools – a choice, which has proven to be a success for these students as they have actually shown a higher academic growth.³¹

Such success can be attributed to charter schools increasing educational quality, focusing more intensely on the individual needs of the students, and providing safer and stronger communities.³² After all, the reason these schools exist is to make sure every child has access to a quality education.³³ Charter schools are able to provide a better quality of education because they have higher standards to meet simply to stay in business, unlike that of traditional public schools that will remain in business no matter how poorly they perform.³⁴ These standards are tailored more exclusively to the interests of the students being served by the charter school.³⁵ This is perhaps one of the most defining features of a charter school – the fact that it is set up around the needs of the students, not around the needs of the state.³⁶ Finally, charter schools foster more educational opportunities for students and also strengthen local communities because they utilize local businesses to help provide resources to the schools.³⁷

B. The Charter School Movement Expands the Role of Charter Schools Nationwide

In 1993, federal interest in supporting the development of the charter school movement began when President Bill Clinton first proposed the Public Charter Schools Program (“PCSP”),³⁸ which sought to encourage their creation.³⁹ PCSP was officially enacted

30. Gallen, *supra* note 4, at 1127.

31. *Id.*

32. *Choice and Charter Schools: Facts*, THE CTR. FOR EDUC. REFORM (Sept. 17, 2016, 12:41 PM CDT), www.edreform.com/2012/03/just-the-faqs-charter-schools/.

33. *Id.*

34. Brian Washington, *Higher Standards for Charter Schools Mean Better Education for Students*, EDUC. VOTES (Sept. 17, 2014), www.educationvotes.nea.org/2014/09/17/high-standards-for-charter-schools-mean-better-education-for-students/ (pointing out that charter schools have to be more concerned with accountability, transparency, and equity).

35. *Id.*

36. *Id.*

37. *Id.*

38. 20 U.S.C. § 7221a (1994). Though this statute is brief, it is significant because it brought a lot of attention to charter schools.

39. *Evaluation of the Public Charter School Program: Year One Evaluation Report*, PLANNING AND EVALUATION SERVICE 1, 13 (2000), www2.ed.gov/rschstat/eval/choice/pcsp-year1/year1report.pdf.

and began funding research on charter schools in 1995.⁴⁰ Around the same time, several congressmen proposed the Public Schools Redefinition Act, though it was never passed.⁴¹

Later, when President George W. Bush took office, he continued the hype on charter schools by implementing the No Child Left Behind Act (“NCLB”).⁴² This Act sought to “close the achievement gap in traditional public schools by allowing students to choose to attend other schools if their neighborhood public school was inadequate.”⁴³ By 2003, approximately 300 million dollars of the federal budget was allotted for PCSP, which was a drastic increase from its six million dollar allocation under the Clinton administration.⁴⁴

Then, the Obama administration continued the efforts of President Bush; President Obama summarized the goals and reasoning behind the charter school movement as such:

Our Nation has always been guided by the belief that all young people should be free to dream as big and boldly as they want, and that with hard work and determination, they can turn their dreams into realities. Schools help us uphold this ideal by offering a place for children to grow, learn, and thrive.⁴⁵

In support of these goals, President Obama enacted the American Recovery and Reinvestment Act,⁴⁶ which further addressed education reform.⁴⁷ President Obama also created the

40. See Oluwole, *supra* note 8 (noting that PCSP also began nationally sponsoring charter schools through conferences and competitive grants to help charter schools get their bearings).

41. *Evaluation of the Public Charter School Program: Year One Evaluation Report*, *supra* note 39.

42. Pub. L. No. 107-110, 115 Stat. 1425 (2003). The purpose of NCLB “is to ensure that all children have a fair, equal, and significant opportunity to obtain high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments.” *Id.*; Oluwole, *supra* note 8 (citing 20 U.S.C. § 6301 (2006)). Though the overall goal of NCLB was to boost proficiency in reading and math, the program was highly criticized for indirectly pushing students away from traditional public schools. *Id.*; see Michael Heise, *The Political Economy of Education Federalism*, 56 EMORY L.J. 125, 126 (2006) (noting that critics of NCLB argued that it “represents unwarranted federal intrusion into education policymaking, generates unintended policy consequences, and amounts to an unfunded federal mandate.”).

43. Gallen, *supra* note 4, at 1129.

44. *Id.* Thus, NCLB “directly contributed to the growth of charter schools throughout the country.” *Id.*

45. Obama, *supra* note 9; Gallen, *supra* note 4, at 1128 (noting that charter schools have “enjoyed bipartisan political support, creating a hospitable policy environment under which charter schools have greatly increased in number.”).

46. Pub. L. No. 111-5, 123 Stat. 115 (2009).

47. Gallen, *supra* note 4, at 1129 (citing Benjamin Michael Superfine, *Stimulating School Reform: The American Recovery and Reinvestment Act and Shifting Federal Role in Education*, 76 MO. L. REV. 81, 82-83 (2011) (noting that

Race to the Top Program (“RTTT”),⁴⁸ which pulled money from a \$4.35 billion fund to in an effort to provide grants to states with charter school laws.⁴⁹ In addition, RTTT tried to combat failing public schools by helping them convert into charter schools.⁵⁰ As recent as September 28, 2016, the U.S. Department of Education awarded 245 million dollars to support high-quality public charter schools, recognizing that “innovative charter schools are developing new and impactful practices to close achievement gaps and provide students with the skills and abilities they need to thrive.”⁵¹

C. The Three Basic Principles of Charter Schools: Choice, Accountability, and Freedom

Charter schools are founded in three basic principles: choice, accountability, and freedom.⁵² These principles represent the overarching goal of charter schools, which is to provide better opportunities for child-centered education.⁵³ These principles also enable charter schools the necessary discretion to provide alternative means of education to traditional public schools.⁵⁴ At the same time, however, the principles place limitations on charter

such reform topics included suggestions for fixing existing educational policy problems and sparking future educational reform efforts.”)

48. Regarding Race to the Top Program, the U.S. Department of Education asks states to advance reforms around four specific areas:

adopting standards and assessments that prepare student to succeed in college and the workplace and to compete in the global economy; building data systems that measure student growth and success, and inform teachers and principals about how they can improve instruction; recruiting, developing, rewarding, and retaining effective teachers and principals, especially where they are needed most; and turning around our lowest-achieving schools.

Race to the Top Fund, U.S. DEP’T. OF EDUC. (Oct. 9, 2016, 11:26 PM CDT), www.ed.gov/programs/racetothetop/index.html.

49. Gallen, *supra* note 4, at 1129-30.

50. *See id.* (noting that 35 states and D.C. applied for RTTT grants in the second round of applications, thus showing RTTT has inspired at least some movement towards certain education reforms).

51. *U.S. Dep’t of Educ. Awards \$245 Million to Support High-Quality Public Charter Schools*, U.S. DEP’T. OF EDUC. (Sept. 28, 2016), www.ed.gov/news/press-releases/us-DEP’Tment-education-awards-245-million-support-high-quality-public-charter-schools.

52. *Closing the Achievement Gap: Charter Schools FAQ*, PBS (Oct. 15, 2016, 1:02 PM CDT), www.pbs.org/closingtheachievementgap/faq.html.

53. *Id.*

54. Preston C. Green, Bruce D. Baker, & Joseph O. Oluwole, *Having it Both Ways: How Charter Schools Try to Obtain Funding of Public Schools and the Autonomy of Private Schools*, 63 EMORY L. J. 303 (2013).

schools.⁵⁵ For instance, virtually anyone can submit a charter school proposal to their state's charter authorizing entity, but charter school laws, grounded in the idea of accountability, require annual evaluations to ensure that the charter school is educating students in a safe and responsible environment.⁵⁶ Together, these principles give states the tools to formulate their own charter schools laws.⁵⁷

1. Choice for Parents, Students, and Educators

To begin with, charter schools are choice schools “designed to increase equal access to an adequate education, provide parents and children with alternatives to their current public schools,” and encourage innovation and flexibility in the classroom for teachers and administrators.⁵⁸ Relying on the economic principles of Milton Friedman, charter schools have become increasingly popular since the PCSP and RTTT movements.⁵⁹ This is true because they provide structural change in the market of education.⁶⁰ From an economic standpoint, charter schools create competition in the education market that will increase innovation and efficiency, as opposed to government-run education “monopolies.”⁶¹ As a result, these schools provide options for various different groups of people that have an interest in public education, such as parents, students, teachers, and even charter authorizers.⁶²

Overall, charter schools offer choice for families because both the parents and the children are able to find a school that best fits

55. *Id.*

56. *Id.* For purposes of this Comment, “anyone” refers to parents, community leaders, businesses, teachers, school districts, educational entrepreneurs, and municipalities.

57. *Id.*

58. Jeanette M. Curtis, *A Fighting Chance: Inequities in Charter Sch. Funding and Strategies for Achieving Equal Access to Public School Funds*, 55 HOW. L.J. 1057, 1065 (2012).

59. Dylan P. Grady, Comment, *Charter School Revocation: A Method for Efficiency, Accountability, and Success*, 41 J.L. & EDUC. 513, 520-21 (2012).

60. *Id.* In the book *Capitalism and Freedom*, published in 1962, Friedman introduced the idea of charter schools. Eric A. Hanushek, *Milton Friedman's Unfinished Business*, 1 HOOVER DIGEST 42 (2007). Specifically, Friedman pointed out that just because the government funds a school does not necessary mean it has to run the school. *Id.*; see Grady, *supra* note 59 (pointing out that Friedman believed that public education could improve only if parents were given a choice in schools).

61. *Id.*

62. An authorizer is “an entity authorized . . . to review applications, decided whether to approve or reject applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to renew, not renew, or revoke charter contracts.” Joseph A. Giambrone, *Advancing the Charter School Movement in Illinois Through Charter School Law: The Charter School Quality Law and Multiple Authorizers*, 61 DEPAUL L. REV. 1213, 1217 (2012) (citing Ziebarth, *supra* note 13, at 7).

the student's needs.⁶³ Frequently, these schools assist lower-income families because they provide an affordable alternative to a traditional public schools.⁶⁴ Instead of struggling to make ends meet to send their child to a pricey private school or being forced to pack up and move to a different district, parents can send their child to a charter because of their close-to-home proximity and public funding basis.⁶⁵ As a result, students in high-poverty communities get the chance to receive an education equal to that of students who are better served by their traditional public schools.⁶⁶

On a similar note, teachers and administrators in the community are also provided a choice with respect to their careers.⁶⁷ Educators as a whole are given much more flexibility in how they teach.⁶⁸ For instance, teachers are given the chance to "directly shape the learning environment for their students."⁶⁹ Similarly, charter authorizers,⁷⁰ of all types, have the choice to sponsor schools in areas where they see the need for an affordable alternative to traditional public schools.⁷¹ Charter authorizers can assist in developing these schools by setting high standards for charter applicants and currently operating charter schools, thus preserving school autonomy, and protecting both the public's and students' interests.⁷²

63. *Choice and Charter Schools: Facts*, *supra* note 32.

64. Robert J. Mann, *Charting the Court Challenges to Charter Schools*, 109 PENN ST. L. REV. 43, 44 (2004).

65. *Id.*

66. Curtis, *supra* note 58.

67. See *School Choices for Parents*, U.S. DEP'T. OF EDUC. (Oct. 8, 2016 12:35 PM CDT), www2.ed.gov/parents/schools/choice/definitions.html.

68. *Id.*

69. *Id.*

70. There are several different types of charter authorizers:

Higher Education Institution; Independent Chartering Board, also known as SCSCs or institutes that are statewide bodies that have been set up for the sole purpose of awarding charter and overseeing charter schools; Local Education Agency, usually a local or countywide district whose school board is the literal authorizer since it makes final decisions; Non-Educational Government Entities, mayors and municipalities that serve as the authorizer; Not-for-Profit Organizations; and State Education Agency, typically housed in a state's department of education.

Types of Authorizers, THE NAT'L ASS'N OF CHARTER SCHOOL AUTHORIZERS (Oct. 8, 2016 (12:57 PM CDT), www.qualitycharters.org/research-policies/archive/types-of-authorizers/).

71. *Choice and Charter Schools: Facts*, *supra* note 32.

72. Giambone, *supra* note 62, at 1215.

2. *Accountability on All Levels: Charter Accountability, Market Accountability, and Internal Accountability*

Next, charter schools promote accountability – the notion that schools have a duty or obligation to meet the expectations of external factors.⁷³ There are several external factors in which charter schools are held accountable, all with varying principal-agent relationships.⁷⁴ For instance, the government represents charter accountability, while parents make the market accountable, and educators are responsible for internal accountability.⁷⁵ Charter accountability, in the traditional sense, involves the government acting as the principal and the individual school acting as the agent.⁷⁶ Though most charter schools are still obliged to meet governmental educational standards,⁷⁷ these schools are still special because they decentralize the power and influence of the government on its schools.⁷⁸ Despite being publicly funded by the government, the true principal in the charter accountability realm is the governing body,⁷⁹ or the party that enters into the contract on

73. See *Closing the Achievement Gap: Charter Schools FAQ*, *supra* note 52 (highlighting that the state gives charter schools increased autonomy in exchange for increased accountability on their end); see also Walker Richmond, *Charter School Accountability: Rhetoric, Results, and Ramifications*, 12 VA. J. SOC. POL'Y & L. 330, 331 (2004) arguing:

charter schools' most significant strength is not their accountability to external actors, rather their ability to harness the shared commitment and energies of the internal actors – administrators, teachers, parents, and students – who choose to become part of the school and who share a common educational goal.

Id.

74. See Richmond, *supra* note 73, at 336 (defining accountability as “the relationship between a principal who needs . . . a task down and an agent who accepts responsibility for accomplishing the task.”).

75. *Id.*

76. *Id.*

77. See *Closing the Achievement Gap: Charter Schools FAQ*, *supra* note 52 (pointing out that such mandatory requirements include standardized tests, attendance rates, and graduation rates).

78. See Richmond, *supra* note 73, at 338.

79. By making governing bodies responsible for the performance of individual schools, charter schools promote accountability because they make it less tolerable to have a few bad schools just because the overall system is doing fine. For charter schools, if one individual school is doing poorly and fails to meet its charter expectations, it will likely close after review. *Id.* at 341.

behalf of the charter school,⁸⁰ and oversees its functions to determine educational success.⁸¹

Market accountability refers to the charter school's obligation to parents of the students who choose the school.⁸² In this scenario, the parents are the principal and the individual charter school remains the agent.⁸³ This type of accountability frames the principal as a consumer, trying to get the most out of his money spent, and the agent as a supplier, fueled by the interests and demand of the consumer.⁸⁴ Unlike traditional public schools that have a monopoly on educational services, parents have leverage with charter schools and thus empower charter schools to live up to parents' expectations if they want to remain open.⁸⁵

Last, internal accountability differs from both charter and market accountability because neither the principals nor the agents are clearly defined.⁸⁶ Instead, internal accountability presents a principal-agent duality, in which school personnel, parents, and students act as both principals and agents by promoting excellence in education.⁸⁷ Under this dynamic, each party owes one another an

80. A charter school contract is the legally binding agreement executed by its authorizing agency; it stipulates the terms and conditions by which the school will operate and defines the rights and responsibilities by which the school operates. Danielle Holley-Walker, *The Accountability Cycle: The Recovery School District Act and New Orleans' Charter Schools*, 40 CONN. L. REV. 125, 145 (2007). Once the contract is entered, the work for the charter does not end. *Id.* From there, the charter takes on the daily tasks that are usually covered by the local school district. Such tasks include: determining curriculum; managing personnel issues; and overseeing school budgets. *Id.*

81. *Closing the Achievement Gap: Charter Schools FAQ*, *supra* note 52. More recently, reformers have called for even more accountability because of evidence showing that some sponsors fail to close underperformed schools. Gallen, *supra* note 4, at 1127.

82. Richmond, *supra* note 73, at 331.

83. *Id.*

84. *Id.*

85. See John Morley, *Note, For Profit and Nonprofit Charter Schools: An Agency Costs Approach*, 115 YALE L.J. 1782, 1798 (2006) (counterpointing that parents have had a hard time monitoring charter schools and holding them accountable). Two obstacles stand in the way of parents monitoring these schools' achievement of the basic goal – to provide the best education for students. *Id.* First, parents are somewhat ill-equipped to measure and assess the output of these schools. *Id.* This issue arises primarily because parents do not sit in the classroom – they are removed from the daily environment of charter schools, making it difficult to assess their progress. *Id.* Second, even if parents are able to have enough exposure to charter schools to determine their dissatisfaction with them, they may not have the proper tools to enforce accountability. *Id.* For instance, it may be difficult to remove the child from a school in which he has become attached to teachers, friends and routines; or parents simply may not have any other affordable alternative. *Id.*

86. Richmond, *supra* note 73, at 331.

87. *Id.*

obligation to influence, contribute, and promote high quality education.⁸⁸

3. *Freedom from Government Influence*

The third principle, freedom, enables charter schools to provide an alternative mean of public education for students.⁸⁹ Freedom releases these schools from restrictions imposed by major laws and regulations, which tend to drain a traditional public school's resources, thus limiting both its budget and capabilities to meet students' needs.⁹⁰ Increased autonomy gives charter schools more flexibility with decisions relating to staffing, curriculum, and budget.⁹¹ In fact, they are ideal for education reform since they can think outside the box to create new strategies to improve opportunities for students.⁹² New strategies often include hiring uncertified teachers and offering longer school days than traditional public schools.⁹³

Though freedom can cause individual charter schools to vary widely, they still share the same general structure across the board.⁹⁴ The basic methods of educational approach are either the classical production model or the classical liberal model.⁹⁵ The production model focuses on creating well-rounded, social members of society.⁹⁶ To achieve that outcome, the production model uses "socialization, acculturation, and recreation of the prevailing status quo."⁹⁷ In the most general sense, the production model aims to give students the basic skill set and values to communicate and work with others.⁹⁸

The liberal model focuses on creating competent, functional members of society.⁹⁹ This differs from the former model in that it

88. *Id.*

89. *Closing the Achievement Gap: Charter Schools FAQ*, *supra* note 52.

90. *Choice and Charter Schools: Facts*, *supra* note 32.

91. Giambrone, *supra* note 62, at 1217 (citing *The Evaluation of Charter School Impacts*, INST. OF EDUC. SCIS., U.S. DEPT OF EDUC. 1 (2010), www.eric.ed.gov/PDFS/ED510573.pdf).

92. Gallen, *supra* note 4, at 1122.

93. *Id.* at 1126.

94. *See* Morley, *supra* note 85, at 1793 (pointing out that the "key characteristic of a charter school is that it combines public funding with private management.").

95. Andrew Broy, *Charter Schools and Education Reform: How Constitutional Challenges Will Alter Charter School Legislation*, 79 N.C. L. REV. 493, 495-96 (2001).

96. *Id.* at 496.

97. *Id.*

98. *Id.*

99. *See What is a 21st Century Liberal Education?*, ASSOC. OF AMERICAN COLLEGES & UNIV. (Sept. 16, 2017, 11:42 PM CDT), www.aacu.org/leap/what-is-a-liberal-education:

emphasizes the “process of education (inputs) rather than outcomes.”¹⁰⁰ It also aims at giving students the tools to analyze and reason for themselves.¹⁰¹ Under this approach, the ultimate goal is to teach students how to make informed decisions after analyzing situations, instead of simply mocking existing social structures.¹⁰² Regardless of which model a charter school utilizes, the significance is that they have the freedom to choose how to shape their curriculum, which often depends on the students, parents, and community being served.

D. The Model Charter School Law and its 20 Components

Since charter schools are creatures of state statutes, their characteristics and operation vary from state to state.¹⁰³ Minnesota was the first state to pass a charter school law in 1991; throughout the remainder of the 1990s, many other states began enacting similar legislation.¹⁰⁴ In 2009, 18 years after the first state charter law was enacted, the NAPCS created the model charter school law, setting out the essential components necessary to open and operate effective charter schools.¹⁰⁵

The NAPCS has acknowledged that there is great diversity of these schools across America and that not every provision in the model law will suit every state.¹⁰⁶ Therefore, the NAPCS intends for the model law to be useful in the jurisdictions with charter school laws and also influence states that have yet to enact such a law.¹⁰⁷ In its model law, the NAPCS sets out 20 essential components of a strong public charter school law that embody the core principles of

An approach to learning that empowers individuals and prepares them to deal with complexity, diversity, and change. It provides students with broad knowledge of the wider world (e.g. science, culture, and society) as well as in-depth study in a specific area of interest. A liberal education helps students develop a sense of social responsibility, as well as strong and transferable intellectual and practical skills such as communication, analytical and problem-solving skills, and a demonstrated ability to apply knowledge and skills in real-world settings.

Id.

100. Broy *supra* note 95, at 497.

101. *Id.*

102. *Id.*

103. Joseph O. Oluwole & Preston C. Green, III, *Charter Schools: Racial Balancing Provisions and Parents Involved*, 61 ARK. L. REV. 1, 7 (2008).

104. *Origins of Chartering Timeline*, *supra* note 3.

105. Ziebarth, *supra* note 13, at 3.

106. Nina Res, *Keys to Charter School Success*, U.S. NEWS & WORLD REPORT (Oct. 6, 2016), www.usnews.com/opinion/articles/2016-10-06/how-the-new-public-charter-model-law-can-guide-future-success.

107. Ziebarth, *supra* note 13.

choice, accountability, and freedom.¹⁰⁸ Here, five of the 20 components will be discussed in light of two particular areas – preservation of autonomy and access to public funding.¹⁰⁹

1. *Preservation of Autonomy Fostered by Independent Charter School Boards and Automatic Exemptions*

There are three of the NAPCS's components that relate to the preservation of autonomy. First, the model law suggests that charter schools should be fiscally and legally autonomous; one way to do this is by having independent charter school boards.¹¹⁰ As of January 2016, the NAPCS noted that 28 states currently utilize independent charter school boards.¹¹¹ Generally speaking, these boards act as authorizing bodies that are separate from governmental agencies with their sole purpose being to authorize charter schools statewide.¹¹² They act as advocates for charter schools by overseeing the daily functions and closing charter schools that are not thriving.¹¹³ Ultimately, the strength and success of independent charter school boards depends on focus and scope.¹¹⁴

108. See Todd Ziebarth, *Measuring Up to the Model: A Ranking of State Charter School Laws*, THE NAT'L ALLIANCE FOR PUB. CHARTER SCH. 1, 8-9 (2016), www.publiccharters.org/wp-content/uploads/2016/01/Model-Law-Final_2016.pdf. The National Alliance for Public Charter Schools' components follows:

(1) no caps; (2) a variety of public charter schools allowed; (3) multiple authorizers available; (4) authorizer and overall program accountability system required; (5) adequate authorizer funding; (6) transparent charter application, review, decision-making processes; (7) performance-based charter contracts required; (8) comprehensive charter school monitoring; (9) clear processes for renewal, nonrenewal; (10) educational service providers allowed; (11) fiscally and legally autonomous schools with independent charter school boards; (12) clear student recruitment, enrollment, and lottery procedures; (13) automatic exemptions from many state and district laws and regulations; (14) automatic collective bargain exemption; (15) multischool charter contract; (16) extracurricular and interscholastic activities eligibility and access; (17) clear identification of special education responsibilities; (18) equitable operation funding and equal access to all state and federal categorical funding; (19) equitable access to capital funding and facilities; (20) access to relevant employee retirement systems.

Id. This Comment will address components (11)(13)(14)(18), and (19) for the sake of time and space.

109. These five components were chosen specifically because they best relate to and represent the most common issues facing charter schools.

110. Ziebarth, *supra* note 108, at 8-9.

111. *Id.*

112. Arianna Prothero, *More States Create Independent Charter-Approval Boards*, EDUC. WEEK (Aug. 19, 2014), www.edweek.org/ew/articles/2014/08/20/01authorizers.h34.html.

113. *Id.*

114. *Id.*

Since a board's only job is to support and monitor these schools, it can develop some of the most efficient ways to accomplish that job.¹¹⁵ Also, these boards, unlike traditional school districts, are more willing to grant charters because they are not concerned with the competition that charter schools impose on the traditional public school system.¹¹⁶ Often, school districts and government agencies prefer to have local control and oversight rather than allowing others, who potentially are not as familiar with public education, make such decisions.¹¹⁷

Second, in furtherance of freedom, the model law finds it essential that charter schools have automatic exemptions from many state and district laws and regulations.¹¹⁸ Exemptions exclude those laws covering health, safety, civil rights, accountability, employee criminal history checks, the Open Meetings Act, and the Freedom of Information Act.¹¹⁹ One noteworthy exemption is the need for automatic exemptions for collective bargaining agreements.¹²⁰ Collective bargaining occurs when educators, after negotiating, agree on a set of regulations that govern working conditions and compensation rates.¹²¹ This exemption enables charter schools to hire non-certified teachers thus promoting flexibility.¹²² It also frees these schools from negotiating with teacher unions.¹²³

115. *Id.*

116. *Id.*

117. *Id.*

118. Ziebarth, *supra* note 13.

119. *Id.*

120. *Id.* Again, the collective bargaining exemption excludes rules implemented to avoid discrimination. *Id.*

121. Randall W. Eberts, *Teachers Unions and Student Performance: Help or Hindrance?*, THE FUTURE OF CHILDREN (2007), www.futureofchildren.org/publications/journals/article/index.xml?journalid=34&articleid=81§ionid=479. The article noted that:

Rules may include working conditions, such as the length of the school day, hours of instruction and preparation time, and interaction time with parents; class size; the number and responsibility of supplemental classroom personnel, such as aides; employment protection; assignment to schools and grade levels; criteria for promotion; reductions in force; professional services; in-service and professional development; instructional policy committees; student grading and promotion; teacher evaluation; performance indicators; grievance procedures; student discipline and teacher safety; and the exclusion of pupils from the classroom.

Id.

122. William Haft, *Charter Schools and the Nineteenth Century Corporation: A Match Made in the Public Interest*, 30 ARIZ. ST. L.J. 1023, 1034 (1998).

123. *Id.* Teacher unions typically have the following objectives: raising their members' wages; growing their membership; increasing the share of the public-school labor force that they represent; precluding paybased performance or aptitude; and minimizing competition from nonunion shops. Andrew J. Coulson,

2. *The Struggle for Charter Schools to Access Public Funding*

One of the most prevalent issues facing these schools is access to public funding.¹²⁴ Charter schools, like traditional public schools, are funded by taxpayers with public money.¹²⁵ Generally, public funding is broken down into two types – base funding and categorical funding – each serving a different purpose.¹²⁶ Base funding is intended to cover the basic educational needs of students, while categorical funding allots money toward additional programs like special education or summer school.¹²⁷ The NAPCS argues that both types of funding are essential to a successful charter school, and has set out two essential components to foster access to public funding – equal access to all state and federal funding and equitable access to facilities.¹²⁸

To obtain equal access to state and federal funding, charter schools need funding to flow in a timely manner and on equal footing of traditional public schools.¹²⁹ Overall, they receive less governmental funding per pupil.¹³⁰ For example, in April 2014, a study revealed that charter schools face a funding gap of 28.4 percent, meaning they received about \$3,814 less per pupil.¹³¹ Other studies have noted that funding disparities fluctuated depending on if the charter school operated on a freestanding basis or whether it was operated by multiple governing bodies.¹³²

The Effects of Teachers Unions on American Education, 30 CATO J. 155 (2010). Together, these objectives tie the hands of public schools because they are forced to please the teachers rather than focus on the needs of the students. *Id.*

124. See Liu, *supra* note 14 (explaining “most state charter school laws do not provide charter schools with the operational funding, capital funding, and facilities access that are comparable to the resources provided to traditional public schools.”).

125. *How Are Charter Schools Funded?*, IN PERSPECTIVE, www.in-perspective.org/pages/finances#sub1 (last visited Aug. 23, 2017).

126. *Id.*

127. *Id.*

128. Ziebarth, *supra* note 13.

129. *Id.*

130. *How Are Charter Schools Funded?*, *supra* note 125.

131. Meagan Bardorff et al., *Charter School Funding: Inequity Expands*, SCHOOL CHOICE DEMONSTRATION PROJECT: DEPT. OF EDUC., 1, 5 (2014), www.uaedreform.org/wp-content/uploads/charter-funding-inequity-expands.pdf.

This study was performed by the School Choice Demonstration Project at the University of Arkansas. There, the research team reviewed financial statements from the 2010-11 school year for the 30 states and the District of Columbia with substantial charter school populations. *Id.*

132. *How Are Charter Schools Funded?*, *supra* note 130, recognizing that:

Traditional public schools on average received \$12,863 in federal, state and local revenue per pupil; charter schools operated by nonprofit management organizations received about \$11,448 in federal, state and

In addition, charter schools also struggle to find equitable access to facilities.¹³³ To combat this problem, these schools have implemented the following approaches “public and private credit enhancement, tax-exempt bond financing, community development lending, commercial facilities development, state per pupil facilities aid, constitutional mandates for fair treatment, state facilities grant programs, federal tax credits, co-location with other public schools, and charter schools accessing vacant district facilities.”¹³⁴ The NAPCS recognizes this issue and has suggested that when public funds are being allotted to provide a charter school with base funding, it adds on additional finances per student with the cost of finding a facility in mind.¹³⁵

III. A LOOK AT THE LAWS OF ILLINOIS, INDIANA, AND MARYLAND

A comparative analysis of the charter school laws from the following states will be performed: Illinois,¹³⁶ Indiana,¹³⁷ and

local revenue per pupil; freestanding charter schools received \$10,113 in federal, state and local revenue per pupil; and; charter schools operated by for-profit management organizations received about \$8,352 in federal, state and local revenue per pupil.

Id.

133. For example, in California, limited state funding, expensive private leases, and school districts obstructing their ability to acquire available campus space all contribute to charter schools’ struggle to obtain equitable access to facilities. *Facilities Equity Overview*, CALIFORNIA CHARTER SCHOOLS ASS’N (Oct. 23, 2016, 1:09 PM CDT), www.ccsa.org/advocacy/facilities-adv/.

134. Jim Griffin et al., *Finding Space: Charters in District Facilities*, NATIONAL CHARTER SCHOOL RESOURCE CTR. (Mar. 9, 2015), www.charterschoolcenter.org/resource/finding-space-charters-district-facilities.

135. Ziebarth, *supra* note 13, at 3.

136. Illinois’s charter school law was enacted in 1996, much earlier than both Indiana and Maryland. Ziebarth, *supra* note 108, at 38. It was also amended in 2011 like Indiana’s law. *Id.* As of the 2014-15 school year, Illinois has 148 charter schools working within the state serving a total of 62,429 students. *Id.* The NAPCS ranked Illinois number 32 out of the 43 states with charter school laws, approving of Illinois’s appellate process for charter school applicants who are rejected by the local school districts. *Id.* Despite Illinois giving charter schools a “fair amount of autonomy and accountability,” the NAPCS was displeased with Illinois’s “caps on charter school growth” and “inequitable funding to charters.” *Id.*

137. Indiana first enacted its charter school law in 2001 and amended the law more recently in 2011. Alison Consoletti, *Charter School Laws Across the States: Rankings and Scorecard*, THE CTR. FOR EDUC. REFORM 1, 335 (2012). According to the NAPCS’s 2016 rankings, Indiana, for the first time ever, bumped Minnesota out of the number one spot. Ziebarth, *supra* note 13, at 3. The NAPCS has applauded Indiana’s changes to its authorizer and program accountability system; adoption of transparent charter applications, review, and decision-making processes; implementation of independent charter school board; clear student recruitment, enrollment, and lotter procedures; and its

Maryland.¹³⁸ These three states were selected because of the National Alliance for Public Charter School's 2016 rankings, which placed Illinois at 32, Indiana at number one, and Maryland last at 43.¹³⁹

These states have specifically been selected to highlight the areas of Illinois' law that need improvement;¹⁴⁰ to do so, it is essential that the comparison look at how each of the three states deals with the most common issues facing charter schools – maintaining their autonomy and accessing public funding and facilities.¹⁴¹

A. *Preserving Autonomy Through Independent State Boards and Automatic Exemptions, Including Collective Bargaining*

Autonomy is one of the most important principles of charter schools; it is the distinctive feature that sets them apart from traditional public schools.¹⁴² This Comment has classified three of the NAPCS's 20 components under the idea of preserving autonomy: fiscally and legally autonomous schools with

equitable access to capital funding and facilities. *Id.* While Indiana has worked hard over the last few years to reach the number one spot, the NAPCS suggests that Indiana's law continue working toward closing the inequitable funding gap between charter schools and traditional public schools. *Id.*

138. Maryland enacted its charter school law in 2003, which has allowed the state to have 53 charter schools in the state serving 20,800 students according to 2014-15 school year statistics. *Id.* at 50. Though Maryland remained in last place, the NAPCS did recognize some improvements regarding new policies for clear student recruitment, enrollment, and lottery procedures; a change in methodology for allowing for a variety of charter schools; and its clarification about its existing policy for comprehensive charter school monitoring and data collection processes. *Id.* Maryland, however, still has plenty of room for improvement. Most notably, the NAPCS suggests increasing autonomy by expanding authorizing options and ensuring equitable operational funding. *Id.*

139. Ziebarth, *supra* note 108, at 8-9. In addition, these states were also selected for comparison for the first time since 2009 – when the first rankings were released by the NAPCS – Indiana has bumped Minnesota out of its number one spot.

140. The focal point of this Comment will be to improve Illinois's charter school law because that is the State I live in.

141. Ziebarth, *supra* note 108. Both problem areas embed several of the NAPCS's essential components of a strong charter school. It is important to mention that the NAPCS gives a state a composite score based upon its scoring of each of the 20 individual components, which are individually ranked on a scale of zero to four with four being the highest. *See id.* (noting that Maryland has historically had the worst charter school law, which is yet again reflected in the 2016 rankings).

142. *Free to Lead: Autonomy in Highly Successful Charter Schools*, CHARTER SCH. CTR. (2010), www.charterschoolcenter.org/resource/free-lead-autonomy-highly-successful-charter-schools.

independent charter public school boards; automatic exemptions from many state and district laws and regulations; and automatic collective bargaining exemption.¹⁴³ To follow is a discussion of the ways in which Illinois, Indiana, and Maryland have attempted to preserve the autonomy of these schools through the usage of (or lack thereof) independent charter school boards.

1. *Illinois's Whole-Hearted Efforts to Preserve Autonomy Through the Charter School Quality Law*

In 2011, Governor Quinn created a new act, the Charter School Quality Law,¹⁴⁴ of which the Illinois State Charter School Commission was born.¹⁴⁵ Accordingly, the NAPCS gave Illinois a three out of four for its efforts to maintain fiscally and legally autonomous schools with an independent charter school board, which on the surface seems fitting.¹⁴⁶ The State Charter School Commission currently acts as a statewide authorizer.¹⁴⁷ It also allows any currently-existing charter schools to elect the SCSC to become its authorizer.¹⁴⁸ One particular issue with the SCSC, however, is that school districts are still heavily involved in the authorization process.¹⁴⁹ Instead of potential charter schools applying directly through the SCSC, they must first reach out to the local school districts, which minimizes the effectiveness of the independent school board.¹⁵⁰ The SCSC can only intervene on

143. These three components are numbers 11, 13, and 14 of the NAPCS's list of 20 components. Ziebarth, *supra* note 108.

144. 105 ILL. COMP. STAT. 5/27A-7.5 (2013). The main purpose of the SCSC is to authorize "high-quality charter schools throughout this State, particularly schools designed to expand opportunities for at-risk students." *Id.* The law defines an at-risk student as a student who, "because of physical, emotional, socioeconomic, or cultural factors, is less likely to success in a conventional educational environment." 105 ILCS 5/27A-3; see Michael A. Rebell, *The Right to Comprehensive Educational Opportunity*, 47 HARV. C.R.-C.L. L. REV 47, 50 (2012) (explaining "children who grow up in poverty are much more likely than other children to experience conditions that make learning difficult and put them at risk for academic failure.").

145. Giambrore, *supra* note 62, at 1223-24 (noting that this amendment made three changes to Illinois's charter school law "create[d] the State Charter School SCSC; delineate[d] the roles and responsibilities of authorizers and provides an avenue for revocation of an entity's authorizing authority; and transfer[red] the State Board's power to authorize charter schools through referendum or appeals to the SCSC.").

146. Ziebarth, *supra* note 108, at 40.

147. *Id.*

148. Giambrore, *supra* note 62, at 1224.

149. Senator Iris Martinez & SCSC Commissioner DeRonda Williams, *Illinois State Charter School Funding Task Force*, ILL. STATE CHARTER SCH. COMM'N 1, 15 (2014), www.isbe.net/scsc/pdf/csftf-final-report.pdf.

150. *Id.* at 29. (noting that "charter schools authorized by a school district become a school within the authorizing district's local educational agency

appeal or after the local district has denied (or failed to respond to) the charter proposal.¹⁵¹

In terms of composition, the current SCSC board has nine members with four year terms.¹⁵² The SCSC's nine individuals represent "collective expertise in public and nonprofit governance, management and finance, public school leadership, higher education, assessments, curriculum and instruction, and public education law."¹⁵³ All of the SCSC board members are proposed by the governor and then selected by the State Board of Education.¹⁵⁴ As for board member requirements, there is really only one – of the nine members, only three must have experience in urban education.¹⁵⁵

Though it is Illinois's only requirement, it is at least a beneficial one considering nearly 90 percent of Illinois's charter schools are located in Chicago.¹⁵⁶ Undoubtedly, it is important to have an independent charter school board that understands the battles facing charter schools in an urban area like Chicago.¹⁵⁷ However, there still needs to be other qualifications for the other six members of the SCSC, and the governor should not be appointing

("LEA"), whereas charter schools authorized by the Commission are their own LEAs.").

151. 105 ILL. COMP. STAT. 5/27A-7.5(k)(2013).

152. 105 ILL. COMP. STAT. 5/27A-7.5(c)(2013). There are currently two vacancies on the SCSC. Kalyn Belsha, *Parents See Stat Commission as Ally in Keeping Charters Open*, CATALYST CHICAGO (Feb. 20, 2016), www.catalyst-chicago.org/2016/02/parents-see-state-commission-as-ally-in-keeping-charters-open/. Five of the seven SCSC members have experience with education from either currently or previously being an educator or from assisting educational organizations. *Illinois State Charter School Commission*, ILLINOIS STATE BD. OF EDUC. (Nov. 20, 2016, 1:20 PM CDT), www.isbe.state.il.us/SCSC/pdf/comm_bios.pdf. Two of the seven members have experience with charter school organizations but do not appear to have been involved in the actual schools themselves. *Id.*

153. *Id.*

154. *Id.*

155. *See* 105 ILL. COMP. STAT. 5/27A-7.5(d)(2013).

Members appointed to the Commission shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, higher education, assessments, curriculum and instruction, and public education law. All members of the Commission shall have demonstrated understanding of and a commitment to public education, including without limitation charter schooling. At least 3 members must have past experience with urban charter schools.

Id.

156. *Get the Facts About Charter Schools*, ILLINOIS NETWORK OF CHARTER SCH. (Nov. 13, 2016, 2:01 PM CDT), www.incschools.org/about-charters/get-the-facts/.

157. *See id.* (pointing out that there are 144 charter school campuses in Illinois with Chicago housing 130 of those campuses).

all of the members.¹⁵⁸ By giving the governor the sole discretion to make these appointments, the SCSC is less likely to be a diverse and well-rounded entity. Conversely, multiple methods of appointment encourage the selection of individuals with differing viewpoints. Thus, these differing viewpoints from individuals with knowledge on a variety of relevant topics, are more likely to adequately assist, protect, and combat the issues facing charter schools.

When looking at Illinois's ratings for automatic exemptions, the scores fluctuate. The NAPCS gave Illinois a two out of four for state and district exemptions, but gave Illinois the highest score of four for the collective bargaining exemption.¹⁵⁹ Overall, the SCSC is very hands-off. It does nothing to stop Illinois charter schools from entering into contracts with a "school district, the governing body of a State college or university or public community college, or any public or for-profit or nonprofit private entity . . ."¹⁶⁰

Despite these schools being exempt from all state and local laws governing public schools, the NAPCS still found Illinois's operations to be imperfect.¹⁶¹ This is because Illinois gives deferential treatment to charter schools in Chicago. For those schools outside of Chicago, teacher certification requirements are more stringent. The law requires that 75 percent of instructional teachers be certified in charter schools outside of Chicago.¹⁶² On the other hand, Chicago charter schools need only 50 percent of teachers employed predating April 16, 2003 to be certified; anything after that date also required 75 percent certification.¹⁶³ Regardless, these certification requirements are vastly lower than those of other states.¹⁶⁴ Luckily, though, Illinois exempts charter schools from

158. Dissimilarly, local school boards are elected. *Frequently Asked Questions About School Boards and Public Education*, NAT'L SCH. BD. ASS'N (Nov. 13, 2016, 2:42 PM CDT), www.nsba.org/about-us/frequently-asked-questions.

159. Ziebarth, *supra* note 13, at 39.

160. *See* 105 ILCS 5.27A(h)(2013) (noting that charter schools can negotiate and contract for the following purposes:

- (i) the use of a school building or grounds or any other real property to use or convert for use as a charter school site, (ii) the operation and maintenance thereof, and (iii) the provision of any service, activity, or undertaking that the charter school is required to perform in order to carry out the terms of the charter.

Id.

161. *Measuring Up: Illinois*, THE NAT'L ALLIANCE FOR PUB. CHARTER. SCH. (2016), www.publiccharters.org/get-the-facts/law-database/states/IL.

162. *Id.* Noncertified teachers must have: a "bachelor's degree [;] five years' experience in the area of degree [;] a passing score on state teacher tests [;] and evidence of professional growth and requires charter schools to provide mentoring to uncertified teachers." *Id.*

163. *Id.*

164. *Id.* While these lax licensing requirements may appear to give Illinois

district collective bargaining agreements.¹⁶⁵ In this instance, teachers are considered employees of the charter school, and not employees of the local school district; this is significant because charter schools do not have to negotiate with teacher unions.¹⁶⁶

2. *Indiana's Strong Efforts to Preserve Autonomy with the Indiana Charter School Board*

Indiana was deservedly given the highest score (four) for maintaining fiscally and legally autonomous schools with independent charter school boards.¹⁶⁷ This success is attributed to the Indiana Charter School Board that acts as a statewide school sponsor and promotes autonomy among its schools.¹⁶⁸ The ICSB has a diverse composition that has benefitted the state's charter schools because of the varying areas of expertise. Instead of nine members like the SCSC, the ICSB has a total of seven members, who are all appointed to four year terms like those of the SCSC.¹⁶⁹ In Indiana, however, the board members are appointed in several ways and must have various qualifications. For instance, two members from different political parties are appointed by the governor.¹⁷⁰ One member, with prior charter school experience, is appointed by the state superintendent.¹⁷¹ Another four members, who may not be legislators, are appointed either by the president pro tempore of the senate, minority leader of the senate, speaker of the house of representatives, or minority leader of the house of representatives.¹⁷² Finally, the chairperson of the charter board is appointed by the governor.¹⁷³

The various means of appointment combined with the variety of qualifications promote educational diversity within the ICSB.¹⁷⁴

charter schools more autonomy, they are in fact delegitimizing their actual authority by creating schools that are not academically equivalent to traditional public schools. *Id.*

165. Consoletti, *supra* note 137.

166. *See id.* (cautioning that "charter schools must participate in state's retirement system.").

167. *Measuring Up: Indiana*, THE NAT'L ALLIANCE FOR PUB. CHARTER. SCH. (2016), www.publiccharters.org/get-the-facts/law-database/states/in/.

168. More recently, the ICSB was created in 2011 after the state legislature signed it into law. *Indiana Educ. Reform Package*, AM. LEGISLATIVE EXCH. COUNCIL (2011), www.alec.org/model-policy/indiana-education-reform-package/.

169. Four-year terms are a great reminder for the state to check on the ICSB to make sure it is carrying out its duties – to authorize charter schools and ensure that they are maintaining high student achievement. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. The current ICSB board is composed of four men and three women:

As a result, fairness is also promoted since the board's composition is designed to encompass an array of viewpoints of those committed to excellence in education.¹⁷⁵ This set up is also effective because it encourages differing political views, mandates that the members have relevant experience in education, and involves participation from multiple state actors in the appointment process.¹⁷⁶ By having a variety of governmental officials make the appointments, it prevents one person from dictating the entire process.¹⁷⁷

Another reason the ICSB has been an asset to Indiana charter schools is because it gives its schools a lot of freedom and avoids imposing unnecessary protections. Similar to the Illinois's State Charter School Commission, the Indiana Charter School Board does not get in the way of charter schools pursuing lawsuits or defending themselves in lawsuits, purchasing or selling property, or entering into contracts in their own name.¹⁷⁸ Significantly, the ICSB does not provide special exceptions for its charter schools;¹⁷⁹ instead, it strengthens the institution of its schools by allowing them to act freely in the realm of legal disputes and property transactions.

Pertaining to automatic exemptions, Indiana received a score of three out of four for exemptions from state and district laws, and it received the highest score of four for the collective bargaining exemption.¹⁸⁰ First, Indiana follows the standard rule for charter school exemptions.¹⁸¹ These exemptions from all laws adopted by

Joshua Owens, an instructor of economics and statistics at Butler University College of Business; Kreg Battles, a teacher of 30 years who is currently the hair of the Science Department at Lincoln High School; DeLyn Beard, an eLearning Coach in the Evansville Vanderburgh School Corporation; Virginia Calvin, former Chancellor at Ivy-Tech Community College-North Central; Gretchen Gutman, Vice President of Public Policy for the Cook Group; Jill Robinson Kramer, Associate Vice President for Planning and Grants at Ivy Tech Community College; and Gregory Hahn, a partner at Bose McKinney & Evans, LLP. *Board Members*, INDIANA CHARTER SCH. BD. (Nov. 5, 2016, 2:57 PM CDT), www.in.gov/icsb/2396.htm.

175. See Chenzi Grignano, *Guidance for Charter School Operators*, CHARTER SCH. PROJECT, DUQUESNE UNIV. 10 (1999), www.nyccharterschools.org/sites/default/files/resources/Building_an_Effective_Charter_School_Board_0.pdf.

176. See generally *id.* (noting common board governance problems include: becoming entangled with issues normally handled by educators; unstable leadership; internal conflict caused by unclear roles; lack of professional competence with finances and administration; and putting too much responsibility on volunteers, including board directors).

177. *Id.*

178. *Measuring Up: Indiana*, *supra* note 167.

179. *Id.*

180. Ziebarth, *supra* note 108, at 30.

181. See *Measuring Up: Indiana*, *supra* note 167 (pointing out that Indiana is exempt from all laws adopted by the state board of education, "except those covering health, safety, civil rights, student accountability, employee criminal history checks, open meetings, freedom of information, and generally accepted accounting principles."). Rules and guidelines adopted by the professional standards board that assist a teacher in gaining or renewing a license are also

the state board of education are particularly noteworthy in relation to collective bargaining agreements and teacher unions.¹⁸² The collective bargaining exemption is non-existent for start-up schools, which are the majority of charter schools within the state.¹⁸³ As such, teachers may negotiate as a separate unit with the statewide governing council.¹⁸⁴ However, this is surprisingly unproblematic for Indiana charter schools as they are free to negotiate with teachers themselves, instead of with teacher unions, which are often more difficult to accommodate.¹⁸⁵

In a further attempt to preserve autonomy, Indiana requires 90 percent of full-time charter school teachers to either hold a license, or be in the process of obtaining a license within three years after beginning to teach at a charter school.¹⁸⁶ This is exactly the type of balance needed by charter schools—a requirement implemented for the purpose of providing an excellent education

not exempt. *Id.*

182. Oddly enough, these collective bargaining exemptions differ between start-up charter schools and conversion charter schools in Indiana, yet this distinction has not been problematic for Indiana. *Conversion Charter Schools: When Teachers and Parents Lead the Charge*, NAT'L CHARTER SCH. RES. CTR. (Nov. 5, 2016, 4:32 PM CDT), www.charterschoolcenter.org/newsletter/april-2014-conversion-charter-schools-when-teachers-and-parents-lead-charge. Start-up charter schools are brand new schools that come into existence because of the execution of a charter. Conversion charter schools are traditional public schools that have been authorized to take on charter status. *Id.*

183. *Measuring Up: Indiana*, *supra* note 167.

184. *Id.* For example, teachers may bargain for wages, salaries, and healthcare benefits cost increases with separate units, though charter schools in Indiana are not bound by collective bargaining agreements in the same way that traditional public schools are. *Are Charter Schools Bound by School District Collective Bargaining Agreements?*, EDUC. COMM'N OF THE STATES (Sept. 29, 2017), www.ecs.force.com/mbdata/mbquestNB2?rep=CS1528.

185. John O'Connor, *Five Misconceptions About Charter Schools*, STATE IMPACT (Oct. 3, 2011), <https://stateimpact.npr.org/florida/2011/10/03/five-misconceptions-about-charter-schools/>.

186. *Indiana Educ. Reform Package*, *supra* note 168 (pointing out that in order to qualify for a valid instructional license for teaching in charter schools, candidates must meet one of the following criteria:

[H]old at least a bachelor's degree from a regionally accredited institution with a cumulative GPA of 3.0 on a 4.0 scale in the content area the candidate wants to teach; or hold at least a bachelor's degree from a regionally accredited institution and pass the appropriate licensure exam in the content area the candidate wishes to teach.

Id.; see also Francesca Jarosz, *Reform Law Gives Charters Leeway to Hire Unlicensed Teachers*, INDIANAPOLIS BUS. JOURNAL (May 7, 2011), www.ibj.com/articles/27034-reform-law-gives-charters-leeway-to-hire-unlicensed-teachers.

(explaining that this 90 percent teacher certification requirement is, in fact, more lenient than Indiana's original charter school law that required all teachers to be licensed by the state). Additionally, if charter schools want or need to hire more than 10 percent unlicensed teachers, they can ask the state for a waiver to increase their percentage. *Id.*

combined with an actual way to achieve that requirement.¹⁸⁷ At first, Indiana's stipulation seems to limit the autonomy of its charter schools; but a closer look indicates that such stipulation is not as rigid as it appears.¹⁸⁸ This requirement enables charter schools to have a choice in who they hire and how they go about doing so, similar to the way in which these schools negotiate with the teachers, absent teacher unions.¹⁸⁹

3. *Maryland's Non-existent Efforts to Preserve Autonomy Due to the Lack of an Independent Charter School Board and Lack of Exemptions from State and Local Laws*

One of the many reasons Maryland's charter school law was ranked dead last stems from its lack of efforts to promote autonomy.¹⁹⁰ Maryland rightfully received a zero for fiscally and legally autonomous schools with independent charter school boards.¹⁹¹ Unlike both Illinois and Indiana charter schools, Maryland's schools do not have the authority to disburse funds or incur debts; nor are they able to enter into contracts and leases, sue or be sued in their own names, or acquire real property.¹⁹² This lack of clear authority is a result of Maryland's failure to create an independent charter school board, like that of the SCSC or ICSB, to oversee its charter schools.¹⁹³ This is a huge issue because Maryland charter schools are governed instead by local school boards and enjoy no flexibility in their operations.¹⁹⁴

For Maryland charter schools, being controlled by a local school board means that they are not exempt from many state and district laws, including collective bargaining.¹⁹⁵ The local school board is very much present in virtually all operations of its schools, thus making both fiscal and legal autonomy unattainable.¹⁹⁶ Unsurprisingly, Maryland received a score of one out of four for both automatic exemption components.¹⁹⁷ Instead of having the inherent autonomy that is at the very core of charter schools, Maryland's law requires charter schools to jump through several hoops before

187. *Alternative Licensure*, INDIANA DEPT. OF EDUC. (Nov. 8, 2016, 8:44 PM CDT), www.doe.in.gov/licensing/alternative-licensure.

188. *Id.*

189. O'Connor, *supra* note 185.

190. Ziebarth, *supra* note 108, at 50.

191. *Id.* This low score was based on the fact that Maryland's law does not include any of the model law's provisions for this component. *Id.*

192. *Measuring Up: Maryland*, THE NAT'L ALLIANCE FOR PUB. CHARTER. SCH. (2016), www.publiccharters.org/get-the-facts/law-database/states/MD.

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. Ziebarth, *supra* note 108, at 50

autonomy is even an option.¹⁹⁸ For example, if a charter school in Maryland wants to be exempt from any county or state rules, it has to go out of its way to seek a waiver from the county or state board to do so.¹⁹⁹ To be eligible for an exemption, the county board requires that the charter school exist for at least five years, have a secure financial history, and have higher student achievement than local traditional public schools.²⁰⁰ Even then, the charter school is not guaranteed an exemption.²⁰¹ Again, these schools are bound by collective bargaining agreements; the teachers are technically employees of the district rather than of the independent charter school.²⁰² This means that all teachers working in these schools must be certified; they are also subject to negotiation of wages.²⁰³ Unlike Indiana, which requires 90 percent of teachers to be certified, Maryland disables its charter schools from having any discretion in terms of hiring teachers.²⁰⁴ This is an issue because it is sometimes beneficial for charter schools to either hire uncertified teachers or pay them on an hourly basis to best meet both the individual and financial needs of the charter school.²⁰⁵

B. The Struggle to Access Public Funding: How Does Each State Deal With It?

Of the National Alliance for Public Charter School's 20 essential components for a strong charter school, two of them relate to the problem of access to public funding.²⁰⁶ The first component involves equitable operational funding and equal access to all state

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Maryland's Charter School Law Earns a "D" Ranking 38th out of National's 43 Laws*, THE CTR. FOR EDUC. REFORM (Jan. 28, 2015), www.edreform.com/2015/01/maryland-charter-school-law-earns-a-d-ranking-38th-out-of-nations-43-laws/.

203. *Id.*

204. Teacher certification in Maryland includes a bachelor's degree from an accredited school plus a state-approved teacher preparation program. *The Maryland Teaching and Certification Resource*, TEACHER CERTIFICATION DEGREES (Nov. 13, 2016), www.teachercertificationdegrees.com/certification/maryland/. Often, Maryland charter schools are forced to pay their teachers on a salary basis. Martin H. Malin & Charles Taylor Kerchner, *Charter Schools and Collective Bargaining: Compatible Marriage of Illegitimate Relationship?*, 30 HARVARD J.L. & PUB. POL'Y, 885, 894 (2007). In general, however, the National Center for Education Statistics reports that only 62 percent of charter schools reported using salary schedules compared with 93 percent of traditional public schools." *Id.*

205. *Maryland's Charter School Law Earns a "D" Ranking 38th out of National's 43 Laws*, *supra* note 202.

206. These two components are numbers 18 and 19 in the NAPCS's list of 20 essential components. Ziebarth, *supra* note 15, at 9.

and federal categorical funding; the second component deals with equitable access to capital funding and facilities.²⁰⁷ Taken together, these two components guide the discussion of the funding challenges facing each state and highlight where Illinois should focus its attention on improvement. To follow is a discussion of how the charter schools of Illinois, Indiana, and Maryland each deal with their own funding disparity.

1. Illinois's Facility Funding Dilemma

Though Illinois outscored both Indiana and Maryland, it still struggles to create equitable operational funding and provide equal access to all state and federal funding to its charter schools.²⁰⁸ The main reason Illinois received a two out of four here is because the disparity between the funding received by its charter schools and its traditional public schools is much lower than its counterparts at 18.8 percent.²⁰⁹ On average, Illinois charter schools receive about \$10,182 per pupil and traditional public schools receive an estimated \$12,533 per pupil.²¹⁰ Due to Illinois's latest budget cuts,²¹¹ which have resulted in traditional public school closures, charter schools have received above average funding.²¹²

This additional funding had allowed Illinois charter schools to keep up with the student achievement at traditional public schools in Chicago.²¹³ For instance, the Illinois Network of Charter Schools ("INCS") looked at School Quality Rating Policy for Chicago Public Schools ("CPS") for the 2015-16 schoolyear, which revealed that 25.2 percent of charter schools ranked in the two plus category and

207. *Id.*

208. See *Measuring Up: Illinois*, *supra* note 161 (citing Megan Batdorff, *Charter School Funding, Inequity Persists*, UNIV. OF ARKANSAS (2014), www.uaedreform.org/wp-content/uploads/2014/charter-funding-inequity-expans-ar.pdf (pointing out that Illinois receiving a two out of four in this area)).

209. *Id.*

210. *Id.* The funding inequity in Illinois is largely attributable to its funding formula since it allows a high degree of local discretion. Megan Batdorff, *Charter School Funding: Inequity Persists, Illinois*, BALL STATE UNIV. (Nov. 19, 2016, 3:20 PM CDT), <https://cms.bsu.edu/-/media/WWW/DepartmentalContent/Teachers/PDFs/charterschfunding051710.pdf>.

211. Greg Hinz, *See How Your School Fares in the New Round of CPS Budget Cuts*, CRAIN'S CHICAGO BUSINESS (July 13, 2015), www.chicagobusiness.com/article/20150713/BLOGS02/150719965/see-how-your-school-fares-in-the-new-round-of-cps-budget-cuts.

212. Noreen S. Ahmed-Ullah et al., *CPS Approves Largest School Closure in Chicago's History*, CHI. TRIB. (May 23, 2013), www.articles.chicagotribune.com/2013-05-23/news/chi-chicago-school-closings-20130522_1_chicago-teachers-union-byrd-bennett-one-high-school-program.

213. Chicago is used as a point of comparison for Illinois charter schools because 90 percent of charter schools in the state are in Chicago. *Enrollment*, THE ILLINOIS NETWORK OF CHARTER SCH. (Nov. 19, 2016, 10:40 AM CDT), www.incschools.org/about-charters/get-the-facts/.

27.64 percent of charter schools ranked in the number one category.²¹⁴

Another reason Illinois defeated Maryland and Indiana in this category is, in part, due to its statute designating funds specifically for its charter schools.²¹⁵ Illinois law explicitly provides a guaranteed window of funding to be granted to charter schools.²¹⁶ In 2016, this ranged from a minimum of 75 percent to a maximum of 125 percent of per pupil funding awarded to traditional public schools.²¹⁷ Yet critics are not sold on this concept.²¹⁸ Instead of applauding Illinois for its statutory designation, the INCS actually blames the law for the state's funding inequities.²¹⁹ The INCS focuses on the fact that the state can, if it so chooses, fund charter schools at only 75 percent of comparable traditional public schools; yet there is not a lot of evidence suggesting that the inequity is in fact harming these students.²²⁰

Nevertheless, the bigger issue for Illinois charter schools is funding and access to property for facilities.²²¹ According to the

214. See *School Quality Rating Policy*, CHICAGO PUBLIC SCH. (Nov. 19, 2016, 10:44 AM CDT), www.cps.edu/Performance/Pages/PerformancePolicy.aspx (explaining that the School Quality Rating Policy ("SQRP") is:

[A] five-tiered performance system based on a broad range of indicators of success, including, but not limited to, student test score performance, student academic growth, closing of achievement gaps, school culture and climate, attendance, graduation, and preparation for post-graduation success.

Id.; see also *Distribution of SQRP Ratings Across School Types*, THE ILLINOIS NETWORK OF CHARTER SCH. (Sept. 12, 2017, 9:26 PM CDT), www.incschoools.org/tableau/?post=34&type=illinois_overview&index=1-0 (noting the five tiers are as follows: level 1+, level 1, level 2+, level 2, and level 3. Over half the charter schools ranked in level 1+ and level 1). It is also noteworthy to mention that unlike Indiana and Maryland, Illinois does not have a formal voucher program to attract more attention to alternative forms of education. *Id.*

215. *Measuring Up: Illinois*, *supra* note 161.

216. *Id.*

217. See 105 ILCS 5/27A-11(b) (2015) (noting "In no event shall the funding be less than 75 [percent] or more than 125 [percent] of the school district's per capita student tuition multiplied by the number of students residing in the district who are enrolled in the charter school."). However, in August 2017, the Illinois legislature revised the law to read no less than 97 percent or more than 103 percent. 105 ILCS 5/27A-11(b) (2017).

218. *Measuring Up: Illinois*, *supra* note 161.

219. *Equal Funding for All Public School Students*, THE ILLINOIS NETWORK OF CHARTER SCH. (Nov. 19, 2016, 10:40 AM CDT), www.incschoools.org/take-action/our-issues/.

220. *Id.* Notably, the Illinois legislature increased this guaranteed funding range in August 2017 to a minimum of 97 percent to a maximum of 103 percent. 105 ILCS 5/27A-11(b)(2017).

221. Senator Iris Martinez & SCSC Commissioner DeRonda Williams, *supra* note 149, at 29.

Illinois Charter School Funding Task Force Report, Illinois law does not address equitable funding or access to facilities for its charter schools.²²² Appropriately, the NAPCS gave Illinois a score of one out of four in this category because these schools desperately struggle to obtain funding for facilities.²²³ While some charter schools rent out district-owned buildings for below-market value, many charter schools are forced to use their general operating funds to afford facilities.²²⁴ Not only do charter schools within CPS receive no funding for their facilities, but they also encounter deductions from their per-pupil funding for facility maintenance.²²⁵ For those charter schools that manage to find other non-CPS facilities to start-up in, they only receive half of the true cost to occupy the building, which again is not substantial.²²⁶

On average, charter schools in Chicago use about 15 to 20 percent of their operational funding toward their facilities.²²⁷ Ordinarily, operational funding goes to paying teachers and faculty; here, schools are forced to either cut teachers' wages or reduce the total number of teachers altogether – both of which can stifle student achievement.²²⁸ This means bigger class sizes for students who are trying to avoid the chaotic overcrowding issues faced by traditional CPS schools.²²⁹

2. *Indiana's Budget Makes Great Strides Toward Equality*

The NAPCS gave Indiana a zero out of four for the equitable operational funding and equal access to all state and federal categorical funding component.²³⁰ This low score can be attributed to the disparity in funding between traditional public schools and charter schools in Indiana.²³¹ Typically, Indiana charter schools receive about \$8,045 per pupil, while traditional public schools

222. *Id.*

223. Ziebarth, *supra* note 108, at 39; *Equal Funding for All Public School Students*, *supra* note 219.

224. *Facilities Challenges for Charters*, THE ILLINOIS NETWORK OF CHARTER SCH. (Oct. 30, 2015, 6:15 PM CDT), www.incschools.org/take-action/our-issues/.

225. *Id.*

226. *Id.*

227. *Id.*

228. Melissa Sanchez and Kalyn Belsha, *Charter School Shutdowns Loom Under Planned \$700 Million Budget Cuts*, CATALYST CHICAGO (May 23, 2016), www.chicagoreporter.com/charter-school-shutdowns-loom-under-planned-700-million-budget-cuts/

229. *It's Time For School Choice in Illinois*, CHICAGO TRIBUNE (Jan. 19, 2014), http://articles.chicagotribune.com/2014-01-19/opinion/ct-edit-school-vouchers-edit-0119-20140119_1_school-choice-charter-schools-recovery-school-district.

230. Ziebarth, *supra* note 108, at 40.

231. *Id.*

receive \$12,897 for the same students.²³² This equates to a 37.6 percent reduction in access to public funds.²³³ Often, traditional public schools are favored in terms of funding. For example, in traditional public schools where 25 percent of enrollment is English-Language-Learners, those schools can get extra state aid, while charter schools with the same enrollment statistics get nothing.²³⁴ The overall funding disparity has directly harmed students attending charter schools.²³⁵ The best evidence of this comes from looking at standardized test scores. In Marion County alone, two of the 10 schools with the fewest students passing the Indiana Statewide Testing for Educational Progress were charter schools.²³⁶

When adding the competition of private schools into the equation, funding for charter schools becomes an even larger problem.²³⁷ In 2011, Indiana created its voucher program, formally known as Indiana's Choice Scholarship Program.²³⁸ Under this program, any student receiving a voucher gets 90 percent of tuition costs covered by the state.²³⁹ As of September 2015, more than 32,000 students were utilizing this program to go to charter schools.²⁴⁰ Overall, this program has given parents in Indiana a

232. *Id.*

233. *Id.* This disparity is mostly related to the lack of property tax funding. *Id.*

234. See Shaina Cavazos, *Indiana Charter Schools Miss Out on Funding Formula Boost for English Learners*, CHALKBEAT (July 28, 2015), www.chalkbeat.org/posts/in/2015/07/28/indiana-charter-schools-miss-out-on-funding-formula-boost-for-english-learners/ (noting that extra state aid included the addition of an 11-million-dollar annual grant to support English learners across Indiana). There are only two traditional public schools that qualify for such aid, and there are three charter schools that would qualify if they were eligible. *Id.*

235. *Id.*

236. *Id.*

237. Claire McNerny, *Five Years Later, Indiana's Voucher Program Functions Very Differently*, STATE IMPACT (Aug. 19, 2016), <https://indianapublicmedia.org/stateimpact/2016/08/19/years-indianas-voucher-program-functions-differently/>.

238. See *id.* (explaining that the main push for the voucher program was to give parents a broader choice in education options for their children). When the voucher program was created, a student could qualify if either he attended two semesters at a public school or was already receiving a scholarship to attend private school from a list of specific organizations. *Id.* The voucher program has overcome two lawsuits brought by Indiana state teachers who argued the voucher program was unconstitutional because it funded religious education. *Id.* In both cases, the Indiana Supreme Court held that the voucher program was constitutional. *Id.*

239. See *id.* (noting that in order to be financially eligible for a voucher, a student's family must be making less than or equal to \$44,863 per year for a family of four). In 2013, Indiana began offering 50 percent scholarships to students whose families made more than \$44,863 per year. *Id.*

240. See *id.* (pointing out that initial program allowed only up to 7,500 students to obtain vouchers, but over the last five years the program has vastly expanded and eliminated such limits). In addition to the initial two ways

great amount of choice in their children's education.²⁴¹ On one hand, the program has helped Indiana charter schools because it has brought a lot of attention to alternative forms of education. On the other hand, however, the program has primarily benefitted private schools (financially) within the state instead of charter schools.²⁴²

To combat this funding gap, Indiana passed a new budget in 2015 with charter schools in mind.²⁴³ The recently enacted budget contains two major funding ventures, which are partially why the NAPCS gave Indiana a three for the component of access to capital funding and facilities.²⁴⁴ First, the budget designated a 20 million dollar grant program that disbursed a new \$500 per charter school student allotment, thus increasing per-pupil funding.²⁴⁵ This grant was specifically meant to assist these schools by providing facilities and transportation for its students.²⁴⁶

The second part of the new budget also allocated a 50 million dollar loan for charter schools specifically; this allowed individual charter schools to borrow up to a maximum of five million dollars at a one percent interest rate when being used to obtain or maintain facilities.²⁴⁷ To be eligible for these loans, a school must meet performance expectations, which can be difficult.²⁴⁸ In order to have high student academic achievement, charter schools need the

students could obtain vouchers – two semesters in a public school or receiving previous scholarships – the state implemented five more ways for students to get vouchers. *Id.* For instance, if the student was a prior voucher recipient, if the student received a voucher in the previous schoolyear, if the student was a special education student, if the student would be required to attend a school with an “F” grade, or if the student had a sibling that received a voucher. *Id.*

241. *Id.*

242. Arianna Prothero, *Indiana's Private-School-Voucher Program Expands Rapidly*, EDUC. WEEK (Mar. 24, 2015), www.edweek.org/ew/articles/2015/03/25/indianas-private-school-voucher-program-expands-rapidly.html.

243. Tiara Beatty, *Indiana Increases Funding for Charter Schools, Creates New Loan Program*, EDUC. WEEK (July 8, 2015), blogs.edweek.org/edweek/charterschoice/2015/07/indiana_increases_funding_for_charter_school_s_despite_past_debt.html.

244. *Measuring Up: Indiana*, *supra* note 167.

245. *Id.*

246. *See id.* (noting that despite the Indiana's state efforts, its charter schools were short changed about \$122,000 in federal school poverty aid in 2016 as a result of a miscalculation by the Indiana Board of Education); *see* Shaina Cavazos, *Indiana Schools: Restoration of Poverty Funding is Too Little, Too Late*, INDYSTAR (Apr. 12, 2016), www.indystar.com/story/news/2016/04/12/indiana-schools-restoration-poverty-funding-too-little-too-late/82952558/ (explaining that this has hindered charter schools' ability to hire the appropriate teachers to help students, and specifically help impoverished students, get ready for standardized tests). To be fully functional, Indiana charter schools need equal access to both state and federal funding, and can only do so by the state properly keeping track of such funds. *Id.*

247. *Id.*

248. *Id.*

proper funding to effectively staff its schools with top-notch teachers who are likely to enhance test results.

Regardless, the NAPCS applauded Indiana's efforts to make facilities available for charter schools.²⁴⁹ The state has made strides to both increase the availability of facilities and to reduce the costs of leasing rates for charter school facilities.²⁵⁰ Presently, Indiana law requires that a school district leasing its building to a charter school charge only one dollar per year for as long as the charter school is using the building.²⁵¹ This lease agreement – in conjunction with the department's listing of schools with availability – are at the heart of Indiana's success story. Money is always a helpful aspect in the realm of public education; but the takeaway here is that the state government is interested in charter schools and protects them.²⁵² This relates back to the fact that Indiana has an independent charter school board monitoring the best interests of its charter schools.²⁵³

3. *Maryland and its County Board Barrier Leave it in Last Place*

Similar to Indiana, Maryland also received a zero out of four for equitable operational funding and equal access to all state and categorical funding.²⁵⁴ On average, Maryland charter schools received \$11,754 per pupil from public funding.²⁵⁵ On the surface, that seems generous, especially compared with Indiana's charter school average of \$8,045 per student.²⁵⁶ The difference here, however, is that Maryland's traditional public schools receive \$18,053 for those students.²⁵⁷ This creates a funding gap of 34.8

249. *Measuring Up: Indiana*, *supra* note 167.

250. *Id.*

251. *See id.* (noting that first, a school board should “make available for lease or purchase . . . any school building owned by the school district that was previously used for classroom instruction” if it is not currently being used by the school district.). When a charter school is looking for a facility, it first views the list created by the state department of education. *Id.* Then, the charter school sends a letter of intent to the department; from there, the department must “notify the school district of the charter school's intent, and the school district that owns the school building must lease the school building to the charter school for \$1 per year for as long as the charter school uses the school building for classroom instruction.”) *Id.*

Id.

252. *Vision and Mission*, INDIANA CHARTER SCH. BD. (Dec. 22, 2016, 9:29 AM CDT), www.in.gov/icsb/2395.htm.

253. *Id.*

254. *Measuring Up: Maryland*, *supra* note 192.

255. *Id.*

256. *Id.*

257. *Id.*

percent.²⁵⁸ The NAPCS, in part, acknowledged this hefty operational funding, but continued to criticize Maryland charter schools because such funding is not statutorily driven.²⁵⁹ Instead, it concluded that any funding received by Maryland charter schools was by chance.

Notably, the funding disparity has not currently harmed Maryland charter schools as some may have expected. For instance, one of the highest achieving schools in the Baltimore area is a high school charter school, Chesapeake Science Point.²⁶⁰ The success of this school is attributed to its additional tutoring programs that take place on weekends to assist struggling students.²⁶¹ Though Chesapeake Science Point has set a positive example for charter schools in Maryland, despite the funding inequity, it is by no means enough to save Maryland's charter school law. This is true because the county board can act as a barrier to operational and categorical funding for charter schools at any given moment.²⁶²

Comparable to the challenges faced by Indiana charter schools, those in Maryland are also heavily competing with private schools as a result of the new voucher program adopted in 2016.²⁶³ This voucher program, referred to as the Broadening Options and Opportunities for Students Today ("BOOST") program, assists low-income students in enrolling in private schools, with a maximum voucher value of \$14,003 per student.²⁶⁴ The program exists because of the five million dollar allocation from Maryland's budget.²⁶⁵

258. *See id.* (concluding that the NAPCS tends to deem any equity over 30 percent to be a failure of equal access to public funding).

259. *See id.* (noting the NAPCS focused its analysis on the fact that Maryland's charter school law offered no financial protections or assurances to its charter schools, unlike that of Indiana or even Illinois).

260. Liz Bowie, *Sun Analysis of PARCC Scores Ranks Baltimore-area Schools*, THE BALTIMORE SUN (Oct. 25, 2016), www.baltimoresun.com/news/maryland/education/bs-md-school-rankings-parcc-20161025-story.html.

261. *Id.*

262. *Quick Facts*, MARYLAND ALLIANCE OF PUBLIC CHARTER SCH. (Oct. 30, 2016, 12:44 PM CDT), www.marylandcharterschools.org/mod/pages/quick-facts?menu=about-chartering. A specific issue with access to operational and categorical funding is that the public funding received by charter schools is only for per-pupil funding, thus leaving no money for facilities or transportation. Recently, Maryland charter schools have been making requests for transportation money, yet the county boards are hesitant to grant such funding, in feat that it could exclude some students. Jeremy Bauer-Wolf, *Charter Schools Request For Transportation Money Divides Board of Education*, THE FREDERICK NEWS-POST (Nov. 16, 2016), www.fredericknews.com/news/education/schools/public_k-12/charter/charter-school-request-for-transportation-money-divides-board-of-education/article_5c295948-6a87-53a8-9a6b-6b99d1c0d432.html.

263. *School Choice*, ED CHOICE (Nov. 19, 2016, 1:21 PM CDT), www.edchoice.org/school-choice/state/maryland/.

264. *Id.*

265. *Broadening Options and Opportunities for Students Today (BOOST) Program*, MARYLAND EDUC. CREDIT (Nov. 19, 2016, 1:25 PM CDT), www.educ

Again, while this voucher program is helping incite the alternative education movement in Maryland, it is taking away funds that could be used for public schools, of which charter schools are categorized.²⁶⁶

Regarding equitable access to capital funding in Maryland, the National Alliance for Public Charter Schools gave it a one out of four.²⁶⁷ The main reason Maryland did not receive a zero in this category is because its law enables charter schools to be eligible for tax-exempt debt.²⁶⁸ The problem with tax-exempt debt provided by the Maryland Industrial Developing Financing Authority is that it is not secured in the “full faith and credit of the State of Maryland.”²⁶⁹ Ordinarily, state or local governments issue such tax-exemptions; but, the Maryland Industrial Developing Financing Authority is a private institution acting on behalf of the government, yet unable to provide the same guarantees as the government.²⁷⁰

The largest problem for Maryland charter schools is the county board, which often stands in the way of charter schools’ access to facilities.²⁷¹ The law itself provides no assistance in obtaining or maintaining facilities, and the county board does nothing to combat this statutory disparity.²⁷² If and when a county board determines that a school site is no longer needed for school purposes, the county board must notify the charter school of such availability; however, the county board is the one with the authority to determine such availability.²⁷³ As a result, these schools are disadvantaged because they are unable to lease or purchase facilities at or below fair market value, which vastly differs from Indiana’s one dollar lease

ationmaryland.org/boost.

266. *School Funding*, MARYLAND STATE EDUC. ASS’N (Nov. 19, 2016, 1:30 PM CDT), www.marylandeducators.org/hot-issues/school-funding.

267. Todd Ziebarth, *supra* note 108, at 51.

268. *Measuring Up: Maryland*, *supra* note 192. This means that the debt incurred and loans received by charter schools are exempt from federal income taxation. *Bond Practice: Overview of Private Activity Bond Financing and Incentives*, SMITH, GAMBRELL, & RUSSELL, LLP (Nov. 19, 2016, 2:25 PM CDT), www.sgrlaw.com/resources/briefings/bond_practice/456/.

269. Jay F. May, *Maryland*, CHARTER SCH. FUNDING: INEQUITY EXPANDS (Nov. 19, 2016, 1:51 PM CDT), www.uaedreform.org/wp-content/uploads/2014/charter-funding-inequity-expands-md.pdf. Typically, if a charter school law provides for tax-exempt debt, such exemptions are to be carried out by the state, which in turn acts as a tax-exempt bond issuer. *Fundamentals of Tax-Exempt Financing For 501(c)(3) Organizations*, ICE MILLER (2001), www.icemiller.com/publications/30/787557.htm. The benefit of this financing method is the lower interest rate for charter schools, which may be incurred when providing capital improvements on facilities. *Id.*

270. May, *supra* note 269.

271. *Measuring Up: Maryland*, *supra* note 192.

272. *Charter School Study*, MARYLAND DEP’T. OF EDUC. 1 (Nov. 1, 2014), [http://dlslibrary.state.md.us/publications/Exec/MSDE/SB194Ch451_2013\(2\).pdf](http://dlslibrary.state.md.us/publications/Exec/MSDE/SB194Ch451_2013(2).pdf).

273. May, *supra* note 269.

agreements, enacted to make facilities affordable and accessible.²⁷⁴ Furthermore, the county board does not use a consistent method to calculate funding for charter schools, and what funding the charter schools do receive is only allotted for operational use.²⁷⁵ Predictably, the county board tends to be more deferential toward traditional public schools and is often hesitant to take funding away from those schools to assist charter schools.²⁷⁶

IV. IMPROVING ILLINOIS LAW BY RESHAPING THE STATE CHARTER SCHOOL COMMISSION AND IMPOSING STATUTORY DESIGNATIONS FOR FACILITY FUNDING

After analyzing the pros and cons of these three diversely ranked states, it is clear Illinois needs to make some changes before the National Alliance for Public Charter Schools awards it the number one ranking. Illinois can improve its law by first reshaping the State Charter School Commission to look more like that of the Indiana Charter School Board, and second by statutorily allotting funding for access to and maintenance of facilities.

A. Reshaping the Illinois State Charter School Commission to Mirror the Indiana Charter School Board

Unquestionably, this comparison has revealed that Illinois is on the right track to creating a comfortable environment for its charter schools. One big step was the adoption of its own independent charter school board, the SCSC.²⁷⁷ Illinois does, however, need to revise the SCSC to be more efficient and helpful to its charter schools. This means changing the composition of the board, including the qualifications of its members, the appointment of its members, and the operations of the board. The overall goal is

^{274.} *Id.*

^{275.} See *Quick Facts*, *supra* note 262 (noting that this arrangement this leaves charter schools without proper access and funding for facilities).

^{276.} See *Maryland's Charter School Law Earns A "D" Ranking 38th out of Nation's 43 Laws*, *supra* note 205:

[F]unding for Maryland charter schools is up to the interpretation and decisions of the school district, which views as oppositional any infringement on the public's dollars for that district. Charter schools are supposed to be funded per student enrolled, not by the kinds of funding formulas that currently distribute money to school districts.

Id.; see also *Charter School Study*, *supra* note 272, at 7 (recognizing that such conflict of interest gives charter schools little leverage in negotiations for public funding).

^{277.} Giambrone, *supra* note 62, at 1223-24.

to diversify the SCSC to better assist charter schools in overcoming their struggles. To do so, Illinois law needs to require more qualifications for the SCSC members. For example, it would be beneficial for the SCSC to be composed of individuals who have experience in areas outside the direct realm of education, such as law, real estate, business, and education.

1. *Changing the SCSC's Composition to Include Members with Experience in Fields Outside the Realm of Education*

Currently, Illinois has a nine-member board with four-year terms.²⁷⁸ The four-year terms should remain the same; it ensures that unproductive members will not sit on the board forever.²⁷⁹ What should change, however, is the composition of the SCSC, and, incidentally, the size. As it stands, the only real qualification, and a broad one at that, is the requirement that three of the members have experience with urban education.²⁸⁰ On one hand, this makes sense since most of the charter schools within the state of Illinois are in the city of Chicago.²⁸¹ However, the fact that the SCSC has nine members, two more than that of the ICSB, and requires only one qualification is troubling. Virtually anyone can be appointed to the SCSC.²⁸² Even though most members on the current SCSC appear to have experience with education,²⁸³ the board could be strengthened by having a more diverse group of individuals with knowledge outside the realm of education.²⁸⁴ This way, the SCSC could help charter schools overcome their primary issues including funding and finding facilities in a more efficient manner.

To deal more precisely with these specialized issues, Illinois's independent charter school board should reduce its size to seven members with the following qualifications: two members with urban education experience, whether it be private, public, or non-profit; two members with direct charter school experience; one member with real estate experience; one member with an extensive background in business and finance relating to schools, or at the very least, municipalities; and one attorney familiar with municipal law. Illinois should limit its board membership to seven members, like that of the ICSB, to make it a close-knit group of individuals. More specifically, this proposal relies looks to the selection of the

278. *Id.* (citing 2011 Ill. Legis. Serv. 4905, 4908).

279. Grignano, *supra* note 178.

280. Giambrone, *supra* note 62, at 1224.

281. *Get the Facts About Charter Schools*, *supra* note 159.

282. *Illinois State Charter School Commission*, *supra* note 152.

283. *Id.*

284. Grignano, *supra* note 178.

ICSB as a guideline since it fosters diversity through its qualifications of its members and appointment process.²⁸⁵

Again, because most of Illinois charter schools are in Chicago, it is essential to maintain the requirement that some members have urban education experience. These members will be able to bring first-hand knowledge of the issues posed by schools in urban areas including assisting students with less support from parents at home, overcrowding, language barriers, and even undiagnosed learning disabilities.²⁸⁶ Thus, these board members may also be able to prepare charter school teachers on how to handle these daily problems. The only alteration suggested is that the SCSC reduce its three-member requirement to two members so that it can impose more qualifications for the remaining five members.

As for direct charter school experience, the ICSB requires that one member have experience with or on behalf of charter schools and Illinois should impose the same qualification.²⁸⁷ This qualification can be met by choosing either educators who have worked in charter schools or individuals who have worked with charter school organizations or networks to help promote policy favorable toward charter schools. This is important because only those who have worked for or closely with charter schools are truly aware of the daily struggles faced by charter schools, and very well may have more ideas for improvement. Accordingly, it would be beneficial to require two members with such experience. Additionally, these two members could be labeled as executive board members who are to lead the board, given their background with charter schools.

To make facilities more affordable and accessible, the SCSC should have one member with real estate experience and one member with a business and financial background. First and foremost, the member with real estate experience will be able to assist charter schools in locating facilities. From there, this member will be also able to negotiate purchasing or leasing agreements on behalf of charter schools, with the intention of obtaining facilities at fair market value or less if possible. Similarly, the member with the financial background can assist in the facility locating process. In addition, this member can create financial plans for charter schools to maintain these facilities. Equally, it would be advantageous for the SCSC to have one attorney on the board, specifically, an attorney with experience in municipal law.²⁸⁸ This way, the

285. *Indiana Educ. Reform Package*, *supra* note 171.

286. *Benefits and Challenges of Teaching in an Urban School*, TEACHERS SUPPORT NETWORK, (Dec. 22, 2016, 2:30 PM CDT), www.teacherssupportnetwork.com/corporate/KnowledgeCenterArticle.do?id=5

287. *Indiana Educ. Reform Package*, *supra* note 171.

288. Though the ICSB does not formally require there to be an attorney on the board, it currently has one attorney on its seven-member board. *Board*

attorney would be familiar with negotiations and contracts in the areas where charter schools need the most help.

In terms of selection, Illinois should avoid solely having the governor appoint all members of the SCSC.²⁸⁹ This appointment power should be split up among multiple government officials like that of ICSB.²⁹⁰ More specifically, the state superintendent, president pro-tempore of the senate, minority leader of the senate, speaker of the house of representatives, and minority leader of the house of representatives should all participate in the SCSC selection process based on the areas in which they have the most knowledge.²⁹¹ The more diverse that the board is, the more likely that it will have knowledge in a variety of areas that involve operating a school. Combined, these experts will be best suited to help charter schools overcome their problems and ultimately operate as autonomous entities.

2. *Modifying the SCSC's Operations to Be a Stronger Advocate for Funding and Facilities*

Another aspect of the SCSC that needs improvement is that way it operates. Under the current arrangement, the SCSC is utilized only when an appeal is presented, when a local education agency denies an application, or when a local education agency fails to reply.²⁹² Alternatively, after Illinois law imposes more requirements to become a board member, the SCSC can utilize its diverse experts to act as the direct authorizer for more charter schools in the state. After all, the whole purpose of having the SCSC is to strictly focus on the development of charter schools. It seems only logical that the SCSC should be the direct authorizer and sponsor of all charter schools in the state.²⁹³ Local education agencies have more to worry about than just charter schools, thus making them prone to encountering conflicts of interest as well and less likely to grant charters in the first place.²⁹⁴

Members, supra note 177.

289. *Illinois State Charter School Commission, supra* note 152.

290. *Indiana Educ. Reform Package, supra* note 171.

291. For instance, the state superintendent should appoint the two members with urban education experience and the two members with direct charter school experience.

292. Senator Iris Martinez & SCSC Commissioner DeRonda Williams, *supra* note 149. The SCSC is “currently the authorizer of four schools, two in Chicago, one in Grayslake, and one in Richton Park.” *Illinois State Charter School Commission, supra* note 152.

293. *Id.*

294. A LEA is a public board of education created to perform a service for public elementary or secondary schools in a city, county, township, or school district within the state. *Definitions*, U.S. DEP'T OF EDUC. (Nov. 20, 2016, 3:13 PM CDT), www.ed.gov/race-top/district-competition/definitions.

B. State Assistance with Funding: How a Statutory Designation Can Help

After comparing the three states, it is apparent that Indiana has the best policy for accessing funding for facilities thanks to its one-dollar lease agreement.²⁹⁵ The comparison also determined that although Illinois had the least categorical funding disparity of the three states, it still failed to designate funding for facilities for charter schools.²⁹⁶ There are two possible solutions to counteract this problem. First, Illinois could revise its law to provide charter schools with an additional 25 percent of funding, dedicated solely for facilities. Second, Illinois could offer these schools a break on facility financing, like Indiana. Either way, something needs to be done.

As of 2016, Illinois guaranteed charter schools will receive at least 75 percent to 125 percent of the funding comparable to that of traditional public schools; but this designation fails to specify how the funding is spent.²⁹⁷ For instance, charter schools may receive the exact same amount of money as traditional public schools for per-pupil funding. Yet without the explicit designation of funding (categorical, operational, and facilities), it is easy for charter schools to overlook their spending and end up short in the long run.²⁹⁸ If the law were to organize and allocate the funds, Illinois charter schools would be likely be more conscious of how much funding they have for some of their most important expenses, like leasing and maintaining facilities.²⁹⁹

As well, Illinois could take the same route as Indiana – allowing charter schools to purchase or lease facilities at below market values. However, this would also require Illinois to implement more lenient policies for charter schools to take over closed school buildings. CPS schools have been against this idea, arguing that it is a waste of time and resources to help charter schools, which typically have low enrollment.³⁰⁰ CPS fails to realize,

295. *Measuring Up: Indiana*, *supra* note 170.

296. Senator Iris Martinez & SCSC Commissioner DeRonda Williams, *supra* note 149, at 29.

297. *Measuring Up: Illinois*, *supra* note 164; see 105 ILCS 5/27A-11 (2017) (noting the guaranteed rates have been increased so as to address the funding disparity).

298. *Equal Funding for All Public School Students*, *supra* note 219.

299. Senator Iris Martinez & SCSC Commissioner DeRonda Williams, *supra* note 149, at 19.

300. See Lauren Fitzpatrick, *Reversing its Promise, CPS May Allow Charters Into Closed School Buildings*, POLITICS (May 20, 2015), <https://chicago.suntimes.com/politics/reversing-its-promise-cps-may-allow-charters-to-move-into-closed-school-buildings/> (noting that current CPS CEO, Barbara Byrd-Bennett, was adamantly against adding charter school students to CPS).

however, that this arrangement would benefit them it as well; it would help alleviate the financial burden that is currently on CPS to maintain these unwanted and unused facilities.³⁰¹ Regardless, the SCSC needs to be more involved in locating these closed school buildings and obtaining them for charter school usage.

V. CONCLUSION

In short, charter schools are still dealing with an uphill battle, revolving primarily around their struggle to access public funding. One of the most effective ways to protect charter schools, in theory, is through the enactment of independent charter school boards. To best serve these schools, the boards must be composed of experts in a variety of fields pertaining to the issues facing charter schools. For Illinois, this means amending its charter school law to impose more requirements for board member positions, in hopes of creating a well-rounded board ready to problem solve. These boards then need to be more involved in the start-up process of charter schools. They need to be on the lookout for available facilities and assist these schools in obtaining facilities by negotiating for purchasing and rental agreements for fair market value or below. Even then, a board can only do so much on its own.

To support these boards, there needs to be statutory provisions in place to assist charter schools to overcome their issues with access to public funding. Illinois should amend its law to designate funding specifically for facilities. While Illinois charter schools are guaranteed anywhere from 75 to 125 percent of the funding given to traditional public schools, this provision alone is ineffective. Since Illinois's law fails to set out how these funds are to be spent, charter schools are often left without enough funding for facilities. The law should also provide and guarantee these schools with a break on financing for facilities to help ease the categorical funding disparity. Either way, Illinois, like both Indiana and Maryland, has

buildings with too few children in 2013 to justify keeping them open). On the other hand, CPS spokesperson, Bill McCaffrey, seems more open minded about the idea:

[Although] CPS continues to follow the commitment made during the 2013 consolidations to not permit closed school sites to be repurposes as charter schools, [it] has also committed to a community driven process to identify a future use for each former school site that meets the needs of the surrounding community.

Id.

301. *See id.* (explaining that "CPS has meanwhile been paying to secure and maintain the empty buildings). *Id.* Similarly, taxpayers are paying twice as much for charter schools that exist in private buildings, instead of receiving space from CPS. *Id.* They pay once to maintain empty CPS facilities, and then again house students in private charters. *Id.*

options and it needs to make some changes before becoming the number one ranked charter school law.