Putting Family Choice to the Vote

Stephen D Sugarman, University of California, Berkeley

Available at: https://works.bepress.com/stephen_sugarman/135/
PUTTING FAMILY CHOICE TO THE VOTE
Stephen Sugarman

Primary and secondary education should be organized around the principle of family choice of schools. So believe some American parents who have just organized a political campaign in California designed to revolutionize their state’s educational scheme. If the effort is successful, education in California would no longer be provided in accordance with the “bureaucratic” model that largely characterizes schooling in America and Britain today; instead, education would be based on the “consumer” model.

The idea in a nutshell is that the state would no longer fund schools at all. Instead, every child would be entitled to a scholarship to be used at the school the family selected — whether private or public. Many have termed the scheme a “voucher” plan, and that is a fair enough label; but it is important to understand that the California proposal contains provisions intended to assure that family choice furthers social justice. First, participating schools would have to take all applicants, selecting by lot if demand exceeded the space available. Second, participating schools would have to accept the scholarship in full payment of their fees. Finally, while there would be little regulation of participating schools, substantial disclosure would be required.

In short, the plan seeks to move education onto the informed consumer model on the ground that this is best for children. For a fuller explanation of this idea and the arguments for family choice see my article in WHERE 147.

The people’s initiative
Equally noteworthy, this proposal is being taken directly to the citizens of California through the device of the people’s initiative.

In America (as in Britain) the usual rule is that legislation is enacted by elected legislators. At the national level this is really the only rule; people elect Members of Congress who adopt the laws. At the state and local level, however (at least in a number of American states) there are two other mechanisms available. One is the referendum by which the state or local legislative body submits a matter to the voters directly. This happens quite frequently in a state like California where many tax levies and bond issues (including those intended to finance the building of new schools) must be approved by the voters, and where the state and many cities are continually seeking changes in their basic organic documents, the state constitution and city charters respectively. It is the second device that is of more interest here — the people’s initiative.

In California if a sufficient number of registered voters (now about 600,000 in a state with more than 20 million people) validly sign the proper petitions, nearly any kind of proposition must be put to a vote at the next general election. If the proposition is approved by a majority of those voting, it becomes part of the California constitution and as such cannot be changed except by a further public vote. Although used elsewhere in America, the initiative process is most clearly associated with California where its use for controversial matters has been most conspicuous.

How it is used
Since the initiative is typically used after efforts at ordinary legislation have failed, it is not surprising that the process has been employed by the Left, the Right and those with no obvious political leaning. For example, some environmentalists have felt that the state legislature has not been concerned enough about problems of air, water and nuclear pollution or protecting California’s magnificent coastline. As a result in
recent years environmental protection initiative propositions have often
appeared on the ballot (some of which were passed). The initiative process has
also been used by those who felt the government has gone too far in providing
low income housing, in tolerating obscenity, and in permitting smoking in
public places (successfully in the first
case, but not in the latter two). In
1978 the Right scored what it felt to be a
great triumph with the enactment of so-
called ‘Proposition 13’. This self-styled
‘taxpayers’ revolt’ initiative both
dramatically cuts into state and local
spending and makes future tax increases
very difficult to enact.

How democratic?
In recent years two important
measures have been on the ballot that
were specifically aimed at education
(apart from Proposition 13 which is
important to the funding of all public
services, including schools). The first was
an ‘anti-bussing’ measure designed to pro-
hibit school authorities and the courts
from requiring a child to attend a state
school out of his neighbourhood. This
passed, but it was emasculated by the
judiciary. Indeed, many of California’s
successful initiatives have been robbed of
their teeth by judicial ‘interpretation’
Thus, what is claimed by some to be the
most ‘democratic’ form of government is
often undercut by what is said to be one
of the least ‘democratic’ forms of govern-
ment (although it is worth noting that
California judges once appointed must
stand for re-election every so many
years). In the anti-bussing case, however,
the initiative actually fell to the require-
ments of the national constitution, which
no form of state law may violate.
The other recent education initiative
was voted on this past fall. It sought, in
general, to rid the state schools of
teachers who are open homosexuals
preaching the right of sexual freedom. It
did not pass.
The group pushing the family choice
initiative is comprised of persons of quite
different perspectives. The chairman of
the group, called Education by Choice, is
a black professional man. Its intellectual
leader, John E. Coons, is a law professor,
committed to giving the family renewed
opportunities to have power over and to
take responsibility for its children. Others
in the group represent libertarian,
feminist, and cost efficiency viewpoints.
Some members have given up on the state
schools; others see choice and competi-
tion as the route to their salvation.
Religious school users are supporting the
group; but church leaders seem divided.

While Education by Choice argues that a
majority of voters will support its
proposal, at present there is no chance
that the state legislature will enact it. For

one thing virtually the entire state school
establishment is against it – most impor-
tantly the two main teachers’ unions which
are now among the most powerful lobby-
groups in the state. Hence the group
must take the issue to the public.

Gathering 600,000 valid signatures
takes free labour and money. The combi-
nation employed usually depends upon
how much of the latter is available and
what sort of impact the type of signature
gathering campaign that is used is pre-
dicted to have on the eventual vote. For
example, there are professional petition
circulating organizations that work on
the basis of something like 50p per valid
signature. Thus, for something like
£300,000 a small group could plausibly
buy its way on the ballot. However, not

Initiative sponsors must also attend to
the sources of money and labour they
receive. As such things are public, a
proposition’s image can be affected this
way. Thus, since the leaders of Education
by Choice consider themselves either
moderates or on the Left, they do not
want to be dependent on money from the
Right. Similarly, as the group does not
see itself as leading a religious movement,
it has to be concerned about how large a
role Catholic school users will play in the
signature drive. If the group is successful
in obtaining the needed signatures, the
measure will probably be voted on in
June 1980.

Stephen Sugarman is Professor of Law
At The University of California, Berkeley.