

**Are school vouchers a good idea?  
Opinions remain divided as a judge  
strikes down Colorado's statewide program**

**By Glenn Cook**

# VOUCHERS CHOICE & CONTROVERSY

**T**amarah Quansah and Cynthia Cearley have a number of things in common beyond their roles as church pastors.

Described by friends and church members as loving, caring mothers, both are politically active and are among a growing number of female clergy in Colorado's largest city. Both believe government should have a role in helping underprivileged children succeed, and neither is too happy about how the Denver Public Schools have addressed the achievement gap between whites and low-income minority students.

What Quansah and Cearley want to do about this problem, however, is where the similarities end. Quansah, who operates a small church school in one of Denver's poorest sections, supports school vouchers. Cearley, a pastor in one of the city's most affluent neighborhoods, is part of a lawsuit to stop a state-run voucher program that could serve up to 20,000 Colorado students.

Today, because of that lawsuit, the Colorado Opportunity Contract Pilot Program is on hold. On Dec. 3, Denver District Judge Joseph Meyer issued an injunction that prevents the state from implementing the voucher plan this fall in 11 of Colorado's 178 school districts.

Meyer's decision, which was appealed immediately by state leaders, likely is the first of numerous legal steps that Colorado's voucher advocates and opponents will take in the coming months and years. Somewhat ironically, it came the day after the U.S. Supreme Court heard *Locke v. Davey*—its second case in the past two years on the public funding of religious education.

The ultimate fate of the Colorado program and *Locke v.*

*Davey*, a higher education case with strong K-12 implications, is unknown. But both illustrate the many twists and turns—as well as a dash of well-litigated irony—that characterize the voucher debate across the nation.

"I wish it wasn't this way," Quansah says. "But it is."

## **Colorado's voucher story**

In baseball terms, Colorado's voucher supporters came back from a two-strike count and countered with a base hit up the middle in April 2003. But the other team—voters who twice rejected voucher programs in statewide referendums—claims the legislature did so with a corked bat.

A little history: In 1992, voters turned down a universal voucher program by a 66-34 margin, then returned to the polls six years later to reject tuition tax credits by a 60-40 vote. All remained quiet on the voucher front until 2002, when two things happened that changed everything.

The first, in June, was the U.S. Supreme Court's 5-4 ruling in *Zelman v. Harris*, the Cleveland case that allows tax money to be funneled to private and religious schools. Then, in November, Colorado Republicans took control of the governor's office and the legislature for the first time in generations. Within six months, a voucher bill authored by Rep. Nancy Spence was approved, and voters did not get a third chance to just say No.

"Voters turned it down twice, and they still pushed to have it passed," says Danielle Waagmeester, an Aurora parent and a plaintiff in the lawsuit against the state. "It makes you feel like your say didn't even count."

Cearley, pastor of Montview Boulevard Presbyterian Church and a parent of two school-age children, notes that the state has had an open "school of choice" program since 1993. The pro-

gram allows students to attend schools outside their home district as long as space is available.

“We do have choice here. It takes some advocacy and energy on the part of the parent to figure that out, but we have choice,” says Cearley, whose children attend schools in the suburban Cherry Creek district even though the family lives in Denver. “Are the parents going to take the time to look for a school if they have a voucher?”

Spence says the legislation, which allows only low-income, low-achieving students in the 11 districts to qualify for vouchers, is more about children than choice.

“When people discuss choice and vouchers, they talk about it from the perspective of the parent having a choice, or the school system losing dollars or not having the resources it needs,” says Spence, who served on the Cherry Creek school board from 1980 to 1993. “When do they start talking about the child and the difference that schools are making in the life of the child? What can we do to make a difference in the individual lives of children?”

Quansah opened the Love Christian Fellowship Education and Technology Center in 1998 with her husband because she was disappointed in the quality of education in her children’s neighborhood school. Denver’s Montebello High, which is in the Quansahs’ attendance zone, has been rated as one of the district’s lowest-performing schools for several years.

The center now serves as both a K-12 church school and a state-licensed vocational/cosmetology training site. Quansah says her school is designed for “children who fall through the cracks,” noting that only four of the 75 students in 2002-03 came from two-parent households.

“What we’re trying to do is give people a way here in the neighborhood where they live to be able to acquire life skills, something that can keep them from being on the welfare sys-

tem,” says Quansah, who is president of the Denver/Aurora chapter of the Black Alliance for Educational Options, a pro-voucher group. “We’ve got to keep them from having to rely on someone else to realize the potential that God has given them.”

### Are vouchers the answer?

Spend a few hours talking about education in Greeley, 60 miles northeast of Denver, and a familiar pattern emerges: Community members are upset with failed reforms and low student performance in the Greeley Public Schools, one of the voucher districts.

They point to the achievements of the Catholic and Lutheran schools in town, noting that they don’t have “the same problems” as the public school district. They’re glad the state is doing something—anything—to bring improvements to a district that has struggled for decades.

But dig a little deeper, and those same community members conclude that vouchers are not necessarily the answer. Indeed, their answers mirror national polls showing that support for vouchers declines considerably when questions are asked about accountability and church-state issues.

“If I were a parent in this community right now, I’d want something different,” says Nancy Brown, a former kindergarten teacher who owns a dry cleaning business in the northwest corner of town. “This district has had problems for a number of years. ... But I wouldn’t want a church to teach my child the Bible if I didn’t want them to.”

At a nearby restaurant, a Hispanic man with a teenage step-daughter in school says the district’s bilingual education program has been a failure—both for his child and for non-Spanish-speaking students.

“They’ve tried too many things. One year it’s this. The next year it’s that. They can’t seem to settle on any one thing,” says



Denver pastor Tamarah Quansah, with her adopted daughter and grandchildren, says vouchers would help students in her small school.



The Rev. Cynthia Cearley, with her daughter, joined the lawsuit against Colorado’s statewide voucher program.

the father, who asked not to be identified by name. “Something’s got to change here, but it needs to be something that lasts. We need to know that our schools are making progress over a long period of time.”

Waagmeester, the Aurora parent who has two children enrolled in public schools, believes vouchers are not a long-term solution. She and her husband joined the lawsuit because she

is not convinced that vouchers will help students without harming public education at the same time.

“Aurora has its problems, but vouchers are going to make the problems bigger by taking funds away from an underfunded district,” she says. “That’s not fair to all of the kids in this district.”

Spence says her legislation addresses Waagmeester’s com-

## VOUCHER PROGRAMS AT A GLANCE

If it is put in place this fall—a big “if” now that a judge has ruled it unconstitutional—the Colorado Opportunity Contract Pilot Program will be the fourth major voucher program in the nation. And it soon could be joined by a fifth as Congress wraps up debate on a program for the Washington, D.C., public schools.

Six states—Arizona, Florida, Illinois, Iowa, Minnesota, and Pennsylvania—allow for tuition tax credits, programs similar to vouchers in that they give parents a tax break for private school expenses.

Below is a look at each of the voucher programs:

### MILWAUKEE

**Year started:** 1990-91 school year.

**Students served:** 12,950 students attend 102 private and religious schools this year. Enrollment in the program is capped at 15 percent of the public school population, or about 15,000 students.

**Who is eligible:** Limited to K-12 students who live in Milwaukee. Family income cannot exceed 175 percent of the federal poverty level. Students who were enrolled the previous year in the Milwaukee Public Schools are eligible. Children entering kindergarten and private school students in grades K-3 the previous year also qualify. Children with disabilities can be denied admission if the school has to make more than minor adjustments to its programs or facilities.

**Noteworthy information:** The longest-running, largest, and most costly program to date, the Milwaukee Parental Choice Program started with 337 students attending private schools in 1990-91. Religious schools joined the program after the Wisconsin Supreme Court upheld the constitutionality of the change in 1998.

Cost has risen from \$733,800 in the first year to more than \$76 million in 2003-04. In October 2003, the state Senate joined the Wisconsin Assembly in approving a controversial bill to eliminate the enrollment cap, but Gov. Jim Doyle has vetoed it, saying it would damage the public schools further.

### CLEVELAND

**Year started:** 1996-97 school year.

**Students served:** 5,200 students enrolled in 50 private and religious schools in 2002-03.

**Who is eligible:** Limited to K-3 students who live within the Cleveland school district. Once a student qualifies, he or she can continue to receive a voucher through the 10th grade. Despite budget woes, Ohio’s legislature agreed in June 2003 to expand the program by 1,000 students, create vouchers for ninth- and 10th-graders, and increase funding for private schools by 44 percent.

No income cap is set on eligibility, but priority is given to students from families whose incomes do not exceed 200 percent of the federal poverty level. Private and religious schools are not required to admit students with disabilities.

**Noteworthy information:** Enacted by the state legislature in 1995, the Cleveland Scholarship and Tutoring program was the first to include religious schools in a publicly funded voucher plan. The U.S. Supreme Court, in *Zelman v. Harris*, declared the program constitutional in a June 2002 decision.

### FLORIDA

**Year started:** 1999-2000 school year.

**Students served:** 663 in the A+ Opportunity Scholarships program; 12,200 students in the McKay Scholarships program. Another 14,000 to 16,000 students—figures vary depending on published reports—use the Corporate Income Tax Scholarship.

**Who is eligible:** A+ Opportunity Scholarships are for students in persistently failing public schools, while McKay Scholarships provide unlimited tuition aid to students in special education. Corporate tax credits provide \$3,500 vouchers to students from low-income families.

**Noteworthy information:** The first statewide programs in the nation, Florida’s have also been the most heavily criticized, with repeated reports of financial corruption, lack of state oversight, and lax or nonexistent academic standards. In one case, the Department of Education provided tax credits to a Muslim school in Tampa that has been linked to terrorist activity. Lawmakers are looking at new rules that would require private schools to be audited and report test scores, among other things, for former public school students they serve.

### COLORADO

**Year started:** Was scheduled to begin in fall 2004, but a district judge’s ruling has halted implementation. The ruling is

plaint, noting that parents would not receive the entire per-pupil allocation. Instead, she says, 25 percent of the K-8 allocation—15 percent in high school—would stay with the local district. The new law, she notes, also has a 6 percent enrollment cap per district—about 3,300 students would be eligible in the 2004-05 school year—and voucher students must participate in the state testing program so the legislature can evaluate the pilot.

being appealed by the state.

**Students served:** Enrollment would be capped at 1 percent of K-12 students from eligible districts this year, to grow by 1 percent per year until it reaches 6 percent in 2007-08. About 3,300 students would be eligible to participate this year; the program could serve up to 20,000 when it is fully implemented.

**Who is eligible:** Low-income students from 11 Colorado districts that have the greatest number of low-performing schools. Students must have failed at least one of the state tests to be eligible. Private and religious schools can't refuse students based on academic ability. How much the voucher is worth depends on the child's grade and the district's per-pupil allocation. Districts will lose 75 percent of the allocation in grades K-8 (85 percent in grades 9-12) but keep the rest as long as the student stays in school. Estimated cost to districts: About \$4,500 per student, or \$90 million per year once the program is fully implemented.

**Noteworthy information:** After voters rejected universal vouchers in 1992 and tuition tax credits in 1998, Colorado's legislature pushed through what could be the largest program in the nation if the judge's ruling is overturned.

## WASHINGTON, D.C.

**Year started:** Tentatively scheduled to start in fall 2004 if approved by Congress.

**Students served:** At least 1,700 K-12 public school students in the nation's capital.

**Who is eligible:** Low-performing students in the school's worst-performing schools would be eligible to receive up to \$7,500 per year toward private or religious school tuition.

**Noteworthy information:** The last surviving piece of President Bush's \$75 million multicity school choice initiative, the \$13 million program would be the nation's first federally funded voucher effort. Approved by one vote in September 2003 in the U.S. House, the five-year plan stalled in the Senate and action was delayed until at least mid-December, putting implementation for 2004 in jeopardy. It has received support from Mayor Anthony Williams, school board member Peggy Cafritz, and U.S. Sen. Diane Feinstein, a California Democrat. The program would require students to take the same standardized tests as public and charter school students.—G.C.

Those measures are not enough for parents like Waagmeester.

"When people want an accounting of their tax dollars, they should understand that taking funds and paying for vouchers is not accountable. Parents can't just decide that they don't like public education, take their tax dollars, and go wherever they want with public money," Waagmeester says. "That's just not the way it works."

## The next voucher battleground

The role of religion in publicly funded institutions has always been a hot topic, but 2003 was an especially contentious year. The chief justice of Alabama's Supreme Court recently was removed from office after defying a court order to pull a monument to the Ten Commandments from his courthouse, and the U.S. Supreme Court agreed to determine whether the Pledge of Allegiance should contain the phrase "under God."

In a move that surprised some observers, the nation's top court followed its 2002 Cleveland voucher ruling by deciding to take on a case involving the Blaine Amendment, a 19th century-era law that prohibits states from using public dollars to fund religious education. In *Locke v. Davey*, the court will determine whether the state of Washington could legally prevent a low-income college student from receiving a state scholarship to major in theology.

Washington and Colorado are two of the 37 states that have Blaine Amendments, which are considered key to school voucher opponents. If the court rules against the state in *Locke v. Davey*, voucher supporters seemingly would have a clear legal path to compel states to pay students' tuition at private and religious schools.

"Any time you give power or authority to a sectarian group of the government, it's very risky," Cearley says after a Sunday morning sermon. "The whole separation of church and state is there for a reason. It's not appropriate, it's unconstitutional, and it eats away at the foundation of public education."

The Colorado lawsuit, which was joined by various civil liberties groups, the state PTA, religious groups, and a number of parents, attacks the voucher law as a violation of the Blaine Amendment and other aspects of the state constitution. In a nod perhaps to the pending Supreme Court case, the amendment was not mentioned in Meyer's Denver courtroom in mid-November.

Instead, National Education Association attorney John West said Colorado's constitution places the responsibility for public education on local districts—not the legislature. Giving state money to private and religious schools, West said, prevents local districts from having control over how their money is spent.

Rabbi Joel R. Schwartzman, president of the Interfaith Alliance of Colorado, joined the lawsuit as an individual because he believes church and state should remain separate. Just as important, he notes, is keeping the "public" in public education.

"By giving voucher money to religious organizations, you are requiring Coloradoans to support religion, and in some

cases a specific religion, depending on the school the child attends,” says Schwartzman, whose organization is also a plaintiff. “The constitution of this state is explicit in prohibiting that, and I am incredulous that our governor does not understand the document he is sworn to uphold.

“Have any 12-year-old read the state constitution, and he or she would understand that this is absolutely prohibited. It’s just as plain as it can be: You don’t use public money to fund private schools. That’s it. End of discussion.”

### **A pragmatic approach**

Litigation has proven to be synonymous with vouchers, and organizations and advocacy groups on both sides of the debate line up to take part in every lawsuit. In Colorado, pro-voucher advocates such as the Washington, D.C.-based Institute for Justice and the Coalition for Latino Children in Education support the state. The Americans United for Separation of Church and State and the People for the American Way Foundation, both voucher opponents, represent the plaintiffs.

One organization that has stayed on the legal sidelines, however, is the Colorado Association of School Boards (CASB),

which has taken a pragmatic approach to the state’s voucher bill since the legislature came under Republican control in fall 2002.

“Our position has been in opposition to every tuition tax credit and voucher bill—no public money to nonpublic schools,” says Jane Urschel, CASB’s associate executive director. “However, with the political climate changing in Colorado, as it did with the last election, it became obvious that something was going to happen, and we began to alert our members that this would be a bill that we would not be able to kill.”

At that point, Urschel says, CASB decided to work with Spence in crafting the legislation.

“Even though we openly opposed the bill, we tried to be at the table and put something in place that would be more workable,” says Urschel, who facilitated sessions with the state and the local school districts before Judge Meyer’s ruling.

CASB has faced questions from other education associations, both statewide and nationally, about its role in the voucher process and its decision not to enter the lawsuit. Still, Urschel says, she believes the association “made the right call.”

“We’ve got people sitting at the table who haven’t spoken to

## **THE ACCOUNTABILITY QUESTION**

**D**espite reams of research by supporters and opponents, much of it one side debunking the other, vouchers have proven more popular in rhetoric and theory than in practice. A Google search on the topic turns up 93,900 references—more than two times the number of students now served by voucher programs in the United States.

One reason is that vouchers have taken on a number of different guises, each a variation on Milton Friedman’s 1955 theory that turning education into a wide open, competitive marketplace would promote improved teaching and student achievement. Friedman’s support of universal vouchers has never been politically popular, however, and even targeted programs with limited accountability have come under fire due to questions about fraud and lack of oversight.

“I can’t imagine a program like Florida’s—a program that doesn’t really have any meaningful accountability—passing anywhere anymore,” says Marc Egan, director of the National School Boards Association’s Voucher Strategy Center. “There have been too many instances of scandals ... for lawmakers to be willing to embrace it.” Plus, says Egan, what programs like Florida’s accomplish is “an unknown quantity.”

The public hasn’t embraced vouchers either. Over the past three decades, referendums on vouchers and tuition tax credits have failed at every turn in states from California to Maryland. Opinion polls show that support is mixed at best, but opposition increases dramatically if the voucher program would take money away from the public schools.

In recent years, what have proved palatable for some leg-

islators—predominantly Republicans—are targeted programs that give low-income children in failing schools a chance to succeed. That these schools are predominantly in urban areas, and that a strong support base for these programs has been built among some traditionally Democratic African-Americans, is an irony not lost on many analysts.

“It’s a puzzling alignment,” says Clive Belfield, associate director for research at the National Center for the Study of Privatization in Education. “The political support for vouchers comes largely from the right, even though the biggest losers economically are the families from the wealthy suburbs. The opposition comes from the left, even though the biggest winners are students from low-income families.”

Belfield and others who have studied vouchers for much of the past two decades note that choice—not achievement—has become the buzzword for the program’s proponents. Opponents say that’s because vouchers have not made a significant difference for children academically while siphoning money from public schools.

“Choice is key, but achievement and quality are equally important,” says Todd Ziebarth, a policy analyst with the Denver-based Education Commission of the States. “What makes the debate interesting is that one set of folks are saying, ‘Whatever it takes. Allow private and parochial schools to come in because the demand for good schools outweighs the need for public schools.’ The other side is drawing the line that public is public, private is private, and you shouldn’t mix the two.”

And neither side is budging—much.—G.C.

each other in the past, let alone worked together,” she says. “The point is that we are working through these issues.”

To illustrate why she thinks CASB’s role is important, Urschel tells a story about how the private schools were surprised to learn that they could not use academic criteria to reject a student.

“This is for academically and economically disadvantaged students,” she says. “You can’t give them a test to see whether they fit into your program. We were at the table when they discovered this fact, and we were able to help them work through it.

“It actually put us in the role of being advocates for these children. I would take nothing for being at the table in that circumstance.”

### ‘Really, really difficult’

The passion inspired by school voucher debates was evident outside the Denver courthouse in mid November, when 300 private school parents and their children rallied in support of Colorado’s program. Meanwhile, as Judge Meyer debated his ruling, the 11 participating school districts spent hundreds of hours working through how to implement the law.

Much of the time was spent approving applications, using a strict set of state guidelines, from private and religious schools that want to take voucher students. Denver’s board approved Quansah’s application, and she says she wants to work with the public school system.

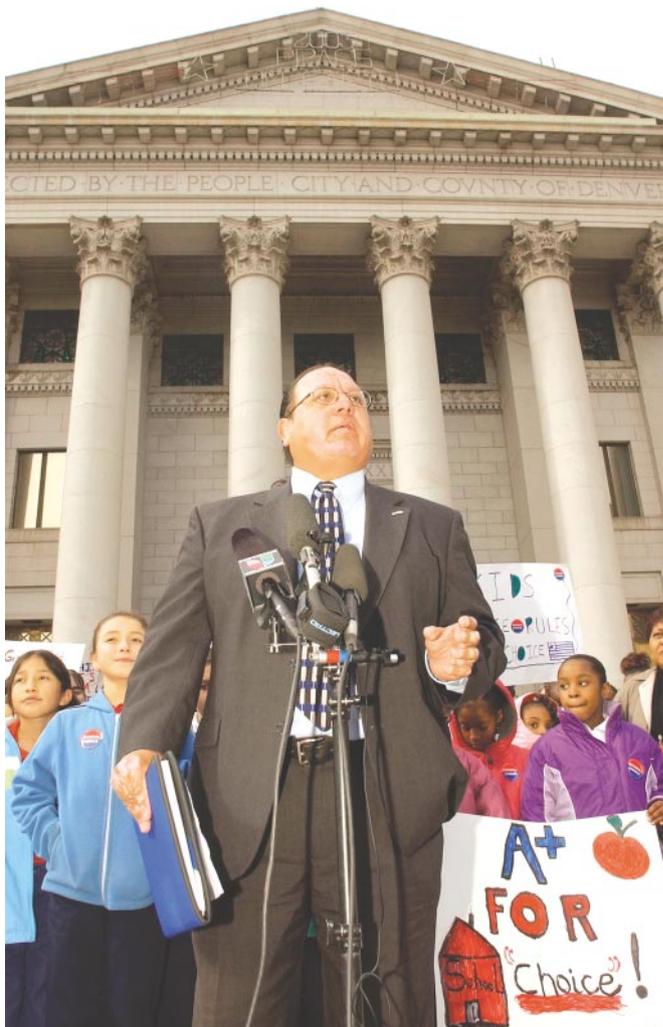
“People get tired of hearing me say this, but this is about the kids,” she says. “We may not agree about how to go about it, but this is not about competing for students. It’s all about helping kids succeed.”

While many private and religious schools had experiences similar to Quansah’s, the school board in Adams County District 50 was not happy with the applications it received. In meetings in late October and early November, the board rejected 39 of 44 applications, saying the private schools did not meet the state criteria for finances and admissions.

“The board took a hard-line stance and followed it to the letter of the law,” Superintendent George Straface says, estimating that the reviews cost his district \$30,000 to \$40,000. “Logistically this was really, really difficult. The amount of time that was spent to review the applications, from our staff’s time to the board’s, was just incredible.”

Then, on Dec. 3, everything screeched to a halt. In his ruling issued on the same day that state report cards showed improvements across Colorado, Judge Meyer acknowledged the efforts of the General Assembly to improve student achievement. At the same time, he said the state constitution clearly prohibits the legislature from taking matters—and money—out of the hands of local school districts.

“The goals of the voucher program are laudable, and providing vouchers so that select children may use public funds to attend private schools may be an effective means of addressing the educational disparities the General Assembly has recognized,” Meyer wrote in his ruling. “... However, even great



Surrounded by private school students who support vouchers, Jorge Amayo, director of the Colorado Alliance for Reform in Education, makes a point during a mid-November rally in front of the Denver City/County Building. The rally was held as a judge heard arguments in a lawsuit to abolish the state’s voucher system.

ideas must be implemented within the framework of the Colorado Constitution. “

Gov. Bill Owens and Attorney General Ken Salazar quickly announced plans to appeal. Spence predicted that at least one district would continue to implement the program.

“The ruling the judge made is the first step in a lengthy process,” Spence says. “It was not unexpected. We’re not discouraged.”

Marti Houser, general counsel for the Colorado Education Association, agrees that a long legal fight is ahead. “It’s just the first round,” she says. “We’ll see what happens from here on out, but it sure is nice to be up by 10 points at the end of the first quarter.”

Urschel says she is pleased with the judge’s ruling but believes unresolved issues remain.

“The bottom line is that people do value choice,” she says. “With or without vouchers, we do have to work at how we provide choice and make decisions that are fair, equitable, and responsible to the needs of local communities. That’s the key.”

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