



PRI PACIFIC
RESEARCH
INSTITUTE

New and Emerging Obstacles
Facing Charter Schools

Lance Izumi

ISSUE BRIEF

JANUARY 2021



New and Emerging Obstacles Facing Charter Schools

Lance Izumi

January 2021

Pacific Research Institute
PO Box 60485
Pasadena, CA 91116
Tel: 415-989-0833
www.pacificresearch.org

Nothing contained in this report is to be construed as necessarily reflecting the views of the Pacific Research Institute or as an attempt to thwart or aid the passage of any legislation.

©2020 Pacific Research Institute. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopy, recording, or otherwise, without prior written consent of the publisher.

Contents

Executive Summary	5
Introduction	5
Recent Research on Charter Schools	6
Restrictive State Laws Against Charter Schools	8
Teachers Unions, Teacher Strikes, and Anti-Charter Demands	12
Conclusion	16
Endnotes	19



Executive Summary

- Recent research from Harvard and others show that charter schools are doing a better job improving the achievement and meeting the needs of students compared to regular public schools.
- Despite the success of charter schools, lawmakers have crafted state laws that handicap both the establishment of charters and their operation. These laws range from capping the number of charter schools to funding them at lower levels than regular public schools to giving local school boards open-ended opportunities to stop charters from opening or continuing operation.
- Teacher unions are using new and powerful tactics such as strikes to target charter schools. Unions are also using the COVID-19 crisis to attack charter schools. And the unions are organizing teachers at charter schools to become a fifth column to undermine charters and their ability to innovate.
- To combat these attacks, charter schools will have to become more pro-active in their own defense. In addition to reforming deficient charter school laws and mobilizing their grassroots supporters, charter schools are starting to use the court system aggressively to vindicate their rights.

Charter schools
are under
massive attack on
multiple fronts.

Introduction

For charter schools, which are publicly funded schools independent of school districts and which have greater flexibility to be innovative, it is, as Charles Dickens wrote in his novel *A Tale of Two Cities*, the best of times and the worst of times.

On the one hand, the most recent research evidence shows that charter schools are raising the achievement of children compared to regular public schools, plus they are better meeting the needs of students during the COVID-19 pandemic. On the other hand, charter schools are under massive attack on multiple fronts.

This briefing will examine these various offensives against charter schools and will discuss the best strategies to protect them.

Recent Research on Charter Schools

A pioneering September 2020 study by education researchers at Harvard University used nationally representative data to track changes in student achievement growth in regular public schools and public charter schools over time.¹

The study tracked cohorts of students taking the National Assessment of Educational Progress exams from 2005 to 2017. Previous studies have compared charter and district school performance at a single point in time.

Overall, according to the Harvard researchers, “we find a larger increase in student achievement for students at charter schools than for students at district schools.” That increase translated to a “half-year’s worth of learning.”²

African-American charter school students made especially large gains.

“For African-American 8th-grade charter students,” the study found, average math scores improved by an amount “which was four times larger than for students attending district schools.”³

In reading, average scores for African-American charter eighth graders improved by an amount “twice those of students attending district schools.”⁴

“Given the importance of closing the Black-white test score gap, the much steeper upward trend at charters is particularly meaningful,” noted the study. Importantly, the study points out, “one in three charter students is African American.”⁵

In addition to African-American students, the Harvard researchers found that charter schools had an especially significant impact on students from low socioeconomic backgrounds: “Compared to their district-school peers, the 8th-grade charter students in the lowest socioeconomic status quartile made more progress on reading and math tests from 2005 to 2017, with a difference equivalent to an additional half year of learning.”⁶

The researchers say that “improved teaching and learning environments in the charter sector account for most, if not all, of the improvement not explained by background characteristics [of students].”⁷

In addition to raising the achievement of children, charter schools have also been more adept at meeting the challenges posed by the COVID-19 crisis, especially when it comes to providing high quality distance learning to students.

A 2020 analysis by the Center on Reinventing Public Education at the University of Washington Bothell compared the pivot to online learning at 18 charter school management organizations, which run networks of charter schools, and 82 public school districts across the country.⁸

Of the 18 charter networks, 14 reported that they were distributing devices to students, which allows the networks “to expect more from students and families in their remote learning plans.”⁹

Among the charter networks, the analysis found “rapid leaps from the classroom to the cloud,” while such practices “remain somewhat rare” in the 82 school districts.¹⁰

Specifically, “Several charter school networks we reviewed have quickly rolled out plans that include synchronous instruction — meaning they bring groups of students together virtually to receive instruction at the same time — as well as tracking students’ attendance and grading their work.”¹¹

Also, “Compared with the districts we have examined, the charter school networks were far more likely to monitor student progress,” and they did this by “holding frequent one-on-one check-ins between students and adults, assigning and grading student work, and using digital platforms that enable real-time monitoring and attendance tracking, such as Google Classrooms, Microsoft Teams and Canvas.”¹²

The charter networks were also very nimble at “flexing teacher roles to serve students remotely.”¹³

The analysis’ authors point out that the COVID-19 crisis’ “unprecedented disruption to learning will require unprecedented solutions” and that the innovative efforts of the charter networks “can inform efforts in other schools.”¹⁴

In addition to the University of Washington Bothell analysis, a report by the Fordham Institute came to a similar conclusion about the effectiveness of networks of charter schools in switching to distance or remote learning. According to Gregg Vanourek, author of the Fordham analysis:

These networks shifted nimbly and effectively to remote learning. All were up and running with online instruction within days of the mid-March shutdowns; together, they distributed tens of thousands of devices and Internet hotspots; they offered a robust mix of live and recorded instruction which lead to high levels of student engagement; and their teachers and leaders, though exhausted, embraced the chance to innovate like they hadn’t in years.¹⁵

Vanourek observed, “At a time when so many U.S. institutions appear to be struggling or flailing to meet the moment, here are examples of organizations that are not just surviving, but thriving.”¹⁶

“Surely,” he concluded, “we should want to see them replicate and grow so they can serve even more students, families, and communities that choose them.”¹⁷ One might think that such a desire should be widespread not just among parents and the public, but also among policymakers and education groups. Unfortunately, among the latter, the opposite turns out to be the case.

In addition to raising the achievement of children, charter schools have also been more adept at meeting the challenges posed by the COVID-19 crisis, especially when it comes to providing high quality distance learning to students.

Restrictive State Laws Against Charter Schools

The biggest obstacles facing charter school expansion, which Vanourek and so many others support, are restrictive laws against charter schools. These laws fall under two broad categories: restrictive laws regarding the establishment of charter schools and restrictive laws that hamper the operation of charter schools.

While the vast majority of states permit charter schools, many states make it very difficult for charters to actually be established.

The National Alliance of Public Charter Schools (NAPCS) has put together model legislation, which contains 21 components that it deems essential for a good charter school law. These elements include:

- No caps on the growth of charter schools
- A variety of charter schools allowed
- Authorizer and overall program accountability system required
- Adequate authorizer funding
- Transparent charter school application, review, and decision-making processes
- Performance-based charter school contracts required
- Comprehensive charter school monitoring and data collection
- Clear processes for renewal, nonrenewal, and revocation
- Transparency regarding educational service providers
- Fiscally and legally autonomous schools with independent charter school boards
- Clear student enrollment and lottery procedures
- Automatic exemptions from many state and district laws and regulations
- Automatic collective bargaining exemption
- Multi-school charter contract and/or multi-charter school contract boards allowed
- Eligibility for, and access to, extracurricular and interscholastic activities
- Clear identification of special education responsibilities
- Equitable operational funding and equal access to all state and federal categorical funding
- Equitable access to capital funding and facilities
- Access to relevant employee retirement systems
- Full-time virtual charter school provisions¹⁸

Although 44 states and the District of Columbia permit charter schools, many of these laws are significantly flawed when compared to the NAPCS list of essential components.

Take, for example, the first essential component that there be no cap on the growth and expansion of charter schools. This component embodies Greg Vanourek’s sensible observation that successful charter schools be able to replicate. Sadly, many states place an artificial ceiling on the number of charter schools in their state.

Twenty-one states have caps on the number of charter schools they allow.¹⁹

In West Virginia, for instance, the recent law permitting the establishment of charter schools states: “The total number of public charter schools authorized and in operation under approved contract in this state shall be limited to 3 pilot public charter schools until July 1, 2023” and “Beginning July 1, 2023, and every three years thereafter, an additional 3 public charter schools may be authorized and in operation under an approved contract in this state.”²⁰

Thus, in the next decade only a handful of charter schools would be allowed in West Virginia, where three out of four eighth-graders statewide failed to perform at the proficient level in reading and math.²¹

Even in states where there is no charter school-growth cap, state laws are deficient in other areas.

In Oregon, NAPCS says, “While Oregon’s law does not contain a cap on public charter school growth and provides adequate autonomy to charter schools, it also includes limited authorizing options, insufficient accountability, and inadequate funding.” Specifically, with regard to funding, “Oregon’s law needs significant work on ensuring equitable operational funding and equitable access to capital funding and facilities.” Such deficiencies combine to push Oregon’s ranking down to 33 out of the 44 states and the District of Columbia, with charter school laws.²²

Even states that had relatively good charter school laws have seen their rankings fall because of decisions by state lawmakers to add restrictions into their laws.

Even states that had relatively good charter school laws have seen their rankings fall because of decisions by state lawmakers to add restrictions into their laws.

Nina Rees, NAPCS president, and Todd Ziebarth, NAPCS senior vice president, noted, “instead of having supportive Governor Jerry Brown in California, charter school advocates had to deal with Democratic Governor Gavin Newsom, hardly the supporter Brown was.”²³ Such a political change had immediate negative consequences for charter schools.

NAPCS noted that California’s ranking fell from the 18th to the 20th position “because it weakened the state’s appellate process and eliminated teacher certification flexibility for charter schools.”²⁴ California’s rank fell even more precipitously in other ranking systems.²⁵

Yet, the NAPCS down-ranking of California does not tell the whole story of the state's recent undermining of charter schools.

Under a 2019 law signed by Governor Newsom, local school boards can deny a charter petition if it finds that the proposed charter "is demonstrably unlikely to serve the interests of the entire community," which is a carte-blanche reason to deny any charter petition.²⁶

This anti-community-interests provision requires the inclusion of "considerations of the fiscal impact of the proposed charter school."²⁷

Of course, every school board will claim that charters adversely impact the district bottom line, making budgetary mountains out of tiny charter molehills.

Also, proposed charter schools can be denied if they "would substantially undermine existing services, academic offerings, or programmatic offerings," an excuse big enough for school boards to run a train through.²⁸

In addition, school boards can disapprove proposed charters if they "duplicate a program currently offered within the school district," with nothing said about whether the district is effectively providing the duplicated program.²⁹

Further, in districts that have been judged as being unlikely to meet their financial obligations, a rebuttable presumption of denial of a charter petition will now be the standard, which Governor Newsom's office interprets to mean, "The presumption in those districts will be that new charters will not open."³⁰

Yet, districts in dire financial straits have inflicted their wounds upon themselves, through union contracts they cannot afford and agreeing to unsustainable health and pension benefits, and often have students in the most need of better educational alternatives such as charter schools.

Indeed, the Center for Reinventing Public Education at the University of Washington Bothell examined the impact of charter schools on local school district finances in California. In a 2019 study, the Center concluded:

We find no evidence that charter school enrollments increase the likelihood of school districts entering fiscal distress. Prior research suggests a variety of factors contribute to fiscal distress and as a result, state policymakers are unlikely to find resolution to the problem in the charter sector.³¹

Unfortunately, this empirical evidence did not stop California lawmakers from using the fiscal-distress excuse to stop charter school growth.

Erick Premack, head of the Sacramento-based Charter School Development Center, concluded that the new law is a "major setback for charter reform efforts here in California." "I think," said Premack, "it severely stunts growth going forward."³²

In other words, the future of charter schools in California looks very rocky at best.

Restrictions on the establishment of charter schools are not the only hurdles that charters must overcome. Laws that restrict their operation have also been enacted, with some of the worst examples coming during the COVID-19 crisis. Many of these new laws undermine NAPCS's model requirement that there be equitable funding for charter schools.

In Michigan, the state has adopted a financing formula that bases 75 percent of a school's per-pupil funding on 2019-20 enrollment numbers and only 25 percent on the actual current 2020-21 enrollment.³³

This formula defunds growing schools, such as online charter schools.

For example, Michigan Great Lakes Virtual Academy is a charter school which will have 400 new students for the 2020-21 school year, but the school will only get a quarter of the funding it would ordinarily receive for these students.³⁴

Mark Weinberg, National Charter Schools Institute vice president, observed, "For a long time, Michigan has embraced the ability of parents to choose where they send their kids and this [75-25 formula] certainly discriminates against that."³⁵

"So," said Ben DeGrow, director of education policy at the Mackinac Center, "just when families need more flexibility and choices during today's pandemic pressures, the 75-25 rule punishes schools and districts that work to provide them with quality, attractive options."³⁶

"Education funds should support the schools and programs parents choose," concluded DeGrow, "because they are offering what students need."³⁷ That principle should inform funding decisions in Michigan and other states as the effects of COVID continue to reverberate across the country. Hurting children during a pandemic is simply wrong.

In the midst of the COVID crisis, however, California lawmakers changed charter school funding rules that will inhibit the growth of charter schools. The state will fund higher enrollment at charter schools based on either the projected number of students in schools' own 2020-21 budgets or on their enrollment figures as of October 1st, but whichever figure is lower.³⁸

To understand the impact of this new stipulation, one can imagine a charter school that projects 400 new students in its 2020-21 budget. However, on October 1st, the school actually has 500 new students. According to the funding rule, the state will not pay for the added 100 students as of October 1st because the projected number of students in the school's budget was the lower amount vis-a-vis the actual number of students that eventually enrolled.

John Fensterwald, a respected longtime education reporter in California noted, "Charter schools that recruit students over the summer while budgeting conservatively for the upcoming year also may be adversely affected."³⁹

In the midst of the COVID crisis, however, California lawmakers changed charter school funding rules that will inhibit the growth of charter schools.

While California lawmakers are handicapping growing charter schools generally, they are torpedoing any growth of online virtual charter schools.

In the 2020-21 state budget, California lawmakers froze online-charter school funding at last year's levels, even if online charters experienced student enrollment growth, which many had because of increased demand of parents and students during the COVID crisis.⁴⁰

Janell Smiley, board member of California Parents for Public Virtual Education, pointed out, "Online charter schools, in particular, have seen an unprecedented number of applications during the pandemic."⁴¹

"Many of these schools," said Smiley, "have committed to enrolling thousands of new students, and as a result they've needed to hire teachers, purchase technology and secure the additional resources necessary to provide every student with a quality educational experience."⁴²

"If funding no longer follows the student, school choice will be severely undermined in the state," concluded Smiley.⁴³

By failing to fund every student, California lawmakers went against state court rulings requiring equal treatment for all students and state education reform laws that guarantee that funding must follow a child to the child's new school.⁴⁴

Beyond such oppressive laws, charter schools are facing attacks on other fronts from powerful opponents.

Teachers Unions, Teacher Strikes, and Anti-Charter Demands

It is no surprise that teachers unions are long-time opponents of charter schools. Just look at NAPCS's model charter school law, which lists an "automatic collective bargaining exemption" as an essential component, to understand the fierce opposition of the unions. But over the last couple of years the unions have taken their anti-charter activism to a new level and have used teacher strikes as one of their key weapons of choice.

In 2019, teachers unions across the country went on strike. While the usual issues of wages and benefits were part of the impetus for the strikes, a new and major reason for the strikes was to stop the growth of charter schools.

"Strikes in California, Oklahoma, Illinois, Wisconsin, and West Virginia," noted the *Washington Examiner*, "have provided an opportunity for unions to ramp up their opposition to charters in places where they have been starting to serve a larger portion of students."⁴⁵

In West Virginia, a statewide strike by the teachers unions was called specifically to stop proposed legislation to create charter schools. Although Republicans are in control of the governor's office and a majority of both houses of the legislature, the strike was successful in initially stopping the bill.

Union teachers filled the West Virginia State Capitol and chanted: “Public schools yes, charter schools no.”⁴⁶

Eventually, West Virginia lawmakers did enact a charter school law, but the number of charter schools allowed was greatly reduced. An early version of the charter school legislation would have allowed for unlimited numbers of charter schools.⁴⁷ The law that was finally enacted allowed for only three charter schools per three-year periods.

In Los Angeles, 30,000 teachers walked off the job. The salary increases to which the union, the United Teachers of Los Angeles, agreed was exactly what the city’s school district had previously offered. So why go on strike?

According to *The New York Times*, “When the Los Angeles mayor, Eric Garcetti, announced a deal between the teachers’ union and the school district after the weeklong strike, it became immediately clear that the fate of charter schools was part of the bargain: The union extracted a promise that the pro-charter Board of Education would vote on a call for the state to cap the number of charters.”⁴⁸ Thus, the prime political reason for the union to strike was to send a message to local and state policymakers to stop approving new charter schools. As Jeanne Allen, CEO of the Center for Education Reform, observed:

The UTLA’s final, most revealing demand was a moratorium on charters. They said that charters are the problem—but the opposite is true. Charter schools in L.A. and across the country are achieving higher outcomes with lower funding.⁴⁹

“Let’s be clear,” said Allen, “this strike was not just about teacher pay, class sizes, student outcomes or school spending.” Rather, “It is about a union increasingly losing power as more and more students exit the traditional system for better options, like those in the charters that serve almost 25 percent of [Los Angeles] students.”⁵⁰

After the Los Angeles teachers strike, union teachers in Oakland also went on strike. The Oakland Education Association demanded that the city school board vote on a charter school moratorium, which they achieved in the strike settlement.

In the end, UTLA and OEA succeeded in getting state lawmakers to acquiesce to their objective of limiting the growth of charter schools. *EdSource*, the respected California education publication, pointed out that union leaders “believe that labor conflicts played a role in forcing the hand of legislative leaders—including Gov. Newsom” to change California’s charter law to “allow districts, like Oakland and Los Angeles, to take into account the financial impact of a charter school on the district when deciding whether to allow it to open.”⁵¹

As noted previously in this paper, giving school districts such a vague open-ended excuse to turn down proposals for new charter schools effectively stops any new charter from being established.

“There is no question that the L.A. strike drove a lot of that,” bragged Alex Caputo-Pearl, who served as president of UTLA during the Los Angeles teachers strike.⁵²

University of Southern California education professor Julie Marsh, who co-directs the Policy Analysis for California Education research organization, said that teacher activism “is playing a part in the national political dynamic, and in weakening political support for charter schools and school choice policies.”⁵³

In addition to calling for strikes of regular public-school teachers, the teachers unions have made strides in their efforts to unionize charter school teachers. Once unionized, the unions have used their control of these teachers to then call strikes at those charter schools.

In Chicago, a quarter of all charter school teachers are now unionized through the Chicago Teachers Union, which represents teachers in the Chicago Public Schools district. In 2019, union teachers at 24 charter schools in the city went on strike.⁵⁴

The union teachers at these charter schools succeeded in forcing new contracts that increased salaries and shortened school days. The negative impact of the new contracts has been significant.

“It’s very disappointing that we have a situation in which schools are being forced to lay off teachers, because they are not allowed the autonomy and flexibility to staff in the way that best meets student needs,” explained Andrew Broy, president of the Illinois Network of Charter Schools.⁵⁵

“The [hallmark] of the charter movement is innovation,” Broy pointed out, and “it’s hard to innovate when you’re bound by a very restrictive contract.”⁵⁶

LeeAndra Khan, the CEO of Civitas Education Partners, which manages a number of Chicago charter schools where strikes occurred, worried that “contracts like this make charter schools look just like [traditional] CPS schools.”⁵⁷

In order to pay for the new expensive union contracts, the charters have had to lay off college counselors, deans of students, librarians, and coaches.⁵⁸

Unionized charter school teachers also supported the teacher strike in Oakland. A letter supporting the strike signed by these union charter teachers mimicked the union party line: “The continued proliferation of [charter] schools is preventing all of our students—both district and charter—from receiving the [support] they deserve. That is why we are calling for an immediate stop to charter school growth in Oakland.”⁵⁹

These union charter school teachers said they were “concerned that some of our own organizations continue to irresponsibly push for expansion”—a fifth-column statement if ever there was one.⁶⁰

Besides using strikes and fifth-column tactics to advance its anti-charter objectives, the teachers unions have also used the current COVID-19 crisis to stop the growth of charter schools.

A July 2020 report by the United Teachers of Los Angeles laid out the conditions for reopening public schools. In the report, the union states: “The benefits of restarting physical schools must outweigh the risks, especially for our most vulnerable students and school communities.”⁶¹ What ingredients go into the union’s cost-benefit analysis?

Besides the expected sections on testing and tracing protocols, physical distancing, and hygiene issues, the report included a section on “Well-funded Schools and Communities for Well-Being” where the union demanded defunding the police, giving government benefits to undocumented persons, and a moratorium on charter schools.⁶²

According to the UTLA report, “charter schools drain resources from district schools.” Further, because many charter schools are co-located at campuses of regular public schools, the union claimed, “we need to reduce the number of students to allow for physical distancing.”⁶³

It is important to note that using the COVID-19 crisis as an excuse to attack charter schools is a tactic not limited only to the UTLA.

An August 2020 statement, endorsed by the teachers unions from Los Angeles to Chicago, Oakland to Milwaukee, and Little Rock to Boston, called for “a safe, scientific, racially just and fully funded approach to reopening schools.”⁶⁴

The union-endorsed statement, entitled “We Want Safe Healthy Equitable Schools,” then demanded, among other things, a “Moratorium on new charter or voucher programs and standardized testing.”⁶⁵

The teachers unions, as all these various strategies and tactics demonstrate, are the biggest obstacles for charter schools to overcome. The unions are willing to use whatever bare-knuckled action they deem necessary to destroy charter schools.

Writing in his 2020 book *Charter Schools and Their Enemies*, renowned economist Thomas Sowell observed: “Since teachers unions have millions of members and spend millions of dollars on political campaigns, they do not need logic or evidence to gain the support of elected officials who need campaign contributions to finance their re-election campaigns.”⁶⁶

Thus, while political actors from governors to state legislators to local school board members can be obstacles to charter schools, the elephant in the room are teachers unions. Politicians come and go, but the interests of the powerful teachers unions are constant, unyielding, and often irresistible.

Even in the wake of the United States Supreme Court’s decision in the *Janus* case, which gave public employees like teachers the freedom to not pay fees to unions, teachers unions have become more politically aggressive. This aggressiveness will certainly continue into the future, so charter schools and their supporters need to brace themselves and be ready to take the offensive themselves.

The teachers unions, as all these various strategies and tactics demonstrate, are the biggest obstacles for charter schools to overcome.

Conclusion

The paradox for charter schools is that they are doing a better job of educating children than ever before, but they are in greater danger of being undermined and destroyed than ever before as well. Thomas Sowell points out incisively:

If the more numerous and intrusive “reforms” of charter schools being proposed and enacted today, closely following the agenda of the teachers unions, are successfully carried out, the consequences may not be so much a reduction in the number of charter schools as the undermining of the qualities that have enabled many of these schools to outperform traditional public schools in their communities as to pose an existential danger to those unionized schools. . . . Even if political trends later became more favorable to charter schools, restoring that success can be very unlikely.⁶⁷

Given the current political situation, what should charter schools and their supporters do going forward?

Of course, there is the conventional recommendation to entreat policymakers to imitate as closely as possible thoughtful and carefully crafted charter school laws, such as the NAPCS’s model law.

The Center for Education Reform, which puts out its own rankings of state charter school laws, accurately points out:

Charter schools are popular and innovative. They are also effective. But charter school success depends on the policy environments in which charter schools operate. Some state laws and regulations encourage diversity and innovation in the charter sector by providing multiple authorizers to support charter schools and allowing charters real operational autonomy. As Michael Q. McShane has pointed out, **where diversity exists, charter schools have the opportunity to innovate.**

Too many states, however, hamper charter schools with weak laws and needless regulations. These make it difficult to distinguish charters from their district counterparts.

Weak charter school laws have proven that when we apply the same old rules to district and charter schools, we get more of the same. Overregulation and underfunding force charters to behave as district schools by another name. **Wouldn’t it make more sense to allow charters the room to innovate and succeed so that they could, in turn, help district schools subvert the status quo?** [Bolded in the original]⁶⁸

Center for Education Reform CEO Jeanne Allen warned, “When politicians yield to special interests to curb or stop charter schools from being developed or expanded, the effect is a lack of education equity.”⁶⁹

Nina Rees, the NAPCS president, has said that in order to prevail against powerful opponents like the teachers unions, charter schools will require greater grassroots activism at the state and local level. She warned, “we cannot re-imagine anything if we are not ready to fight for our schools.”⁷⁰

To battle union-led teacher strikes and the megaphone those events give to the unions, Rees has urged: “The world needs to hear the voices of our students, our families, and our teachers.”⁷¹

The short-term political reality, however, is that there are states where large majorities of policymakers are hostile to charter schools because of the power and influence of special interests such as the teachers unions. In such cases, then, a different forum for battle, such as the courts, must be chosen.

In West Virginia, where lawmakers in 2019 enacted a law to create a small handful of charter schools, organizers of the first potential charter school in the state are threatening to sue local education officials who are blocking the establishment of the proposed charter, despite the new charter law.⁷²

The planned West Virginia Academy would open in the Morgantown area of the state, but county education officials have dragged their feet in approving the charter.

As one attorney advising county education officials in West Virginia has said, “It’s not possible for you to just say, ‘We’re not going to have any in our county and your application is denied.’”⁷³

In 2020, charter schools in other states have filed lawsuits seeking to overturn anti-charter laws.

Charter schools in California have been especially aggressive in filing lawsuits against anti-charter school laws. This paper has described how lawmakers in California have short-changed both charter schools that offer in-person instruction and also virtual charter schools with reduced funding compared to regular public schools. To fight this unjust disparity, charter schools have filed two separate lawsuits.

One group of charter schools, which offer in-person instruction and which are experiencing significant student growth, sued the state, arguing that California law requires that the state fund every student who attends a publicly-financed school. Under a funding formula adopted by lawmakers, the state does not have to fund every student who actually enrolls in a charter school for the 2020-21 school year.

The lawsuit makes a basic factual point: “If funding did not adjust each year to reflect the number of students actually enrolled in each public school, then public schools with declining enrollment would have more financial resources to serve fewer students the following year, and public schools with increasing enrollment would have fewer resources to serve more students.”⁷⁴

The lawsuit charges the state with violating the state charter school law, which guarantees “full and fair funding” to charter schools, the California Constitution’s equal protection clause, plus other statutory and constitutional provisions.⁷⁵

Similarly, in another lawsuit, a group of virtual online charter schools in California have sued the state for denying them any funding for new students who enroll in their schools for the 2020-21 school year.⁷⁶

Charter schools in California have been especially aggressive in filing lawsuits against anti-charter school laws.

According to the lawsuit, “non-classroom-based schools will not be funded for the new students they enrolled, [yet] they are still required to serve them this year, and incur all of the expenses and labor costs associated with serving incremental [new] students, all the same.”⁷⁷

“Schools that are best serving families in a time of unprecedented challenges are being left behind by the state,” warns Cameron Curry, CEO of Classical Academy charter school in San Diego County. “In a year where every school is a non-classroom-based school, how can California justify not fully funding the education of students enrolled in a non-classroom based program?”⁷⁸

Charter schools have a relatively good track record in courts. For example, in 2018, the Washington Supreme Court upheld the constitutionality of charters schools, while the Mississippi Supreme Court came to a similar conclusion in 2019. It may end up that, like in the battles over state funding for private-school-choice programs and forced union dues and fees collection, charter school battles will have to be fought before judges just as much as in state legislatures.

Thomas Sowell notes, “even the most successful charter schools have been bitterly attacked by teachers unions, by politicians, by the civil rights establishment and others.” Thus, “With the growing political threats to charter schools, the stakes could not be higher for poor and minority youngsters, for whom a good education is their biggest opportunity for a better life.”⁷⁹

Similarly, the 2020 Harvard study discussed earlier in this paper concluded:

Given the rising achievement levels at charter schools, the slowdown in the sector’s growth rate cannot be attributed to declining quality. It is more likely that political resistance to charters is increasing as both the management and labor sides of the district sector become increasingly concerned that charters might prove to be as disruptive an innovation as the transistor.⁸⁰

Against these threats, charter schools and their supporters must fight hard, and as good generals always do, select battlefields most conducive to victory.

Endnotes

- 1 M. Danish Shakeel and Paul Peterson, “Charter Schools Show Steeper Upward Trend in Student Achievement Than District Schools,” *Education Next*, Fall 2020, available at <https://www.educationnext.org/charter-schools-show-steeper-upward-trend-student-achievement-first-nationwide-study/>
- 2 Ibid.
- 3 Ibid.
- 4 Ibid.
- 5 Ibid.
- 6 Ibid.
- 7 Ibid.
- 8 Robin Lake and Bree Dusseault, “How 18 Top Charter School Networks Are Adapting to Online Education, and What Other Schools Can Learn From Them,” *The 74*, April 7, 2020, available at <https://www.the74million.org/article/analysis-how-18-top-charter-school-networks-are-adapting-to-online-education-and-what-other-schools-can-learn-from-them/>
- 9 Ibid.
- 10 Ibid.
- 11 Ibid.
- 12 Ibid.
- 13 Ibid.
- 14 Ibid.
- 15 Gregg Vanourek, “Schooling Covid-19: lessons from leading charter school networks from their transition to remote learning,” The Fordham Institute, August 25, 2020, available at <https://fordhaminstitute.org/national/research/schooling-covid-19-lessons-leading-charter-networks-their-transition-remote>
- 16 Ibid.
- 17 Ibid.
- 18 Todd Ziebarth, “Measuring Up to the Model: A Ranking of State Public Charter School Laws 2020,” National Alliance for Public Charter Schools, January 2020, pp. 8-9, available at https://www.publiccharters.org/sites/default/files/documents/2020-01/2020_model_law_ranking_report-single-draft2%20%281%29.pdf
- 19 Ibid, p. 10.
- 20 West Virginia Code Section 18-5G-1. See <https://www.wvlegislature.gov/WVCODE/code.cfm?chap=18&art=5G>
- 21 See <https://nces.ed.gov/nationsreportcard/subject/publications/stt2019/pdf/2020014WV8.pdf> and <https://nces.ed.gov/nationsreportcard/subject/publications/stt2019/pdf/2020013WV8.pdf>
- 22 Todd Ziebarth, “Measuring Up to the Model: A Ranking of State Public Charter School Laws 2020,” op. cit., p. 78.
- 23 Ibid, p. 5.
- 24 Ibid, p. 6.

- 25 According to the ranking of charter school laws put out by the Center for Education Reform: “In a huge drop, California fell 16 spots. The Golden State plummeted because of adoption of a new law that allows districts enormous power over charter schools’ fate and operations.” See “State policies fail to keep up with the need for more and better education opportunities for students,” Center for Education Reform, September 2020, available at <https://edreform.com/2020/09/national-charter-school-law-rankings-and-scorecard-released/>
- 26 See https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1505
- 27 Ibid.
- 28 Ibid.
- 29 Ibid.
- 30 John Fensterwald, “Governor, lawmakers agree on new controls on California charter schools,” *EdSource*, August 29, 2019, available at <https://edsources.org/2019/governor-lawmakers-agree-on-new-controls-on-california-charter-schools/616877>
- 31 Robin Lake, Ashley Joachim, Paul Hill, and Sivan Tuchman, “Do Charter Schools Cause Fiscal Distress in School Districts,” Center for Reinventing Public Education, University of Washington Bothell, May 2019, p. 2, available at https://www.crpe.org/sites/default/files/do_charter_schools_cause_fiscal_distress.pdf
- 32 Mikhail Zinshteyn, “Latest version of sweeping California charter school bill waters down original draft, is ‘setting the clock of progress way back,’ says opponent,” *LA School Report*, September 9, 2019, available at <http://laschoolreport.com/latest-version-of-sweeping-california-charter-school-bill-waters-down-original-draft-is-setting-the-clock-of-progress-way-back-opponent-says/>
- 33 Kyle Kotecki, “Per-pupil funding lags behind virtual school’s growth,” *Manistee News Advocate*, September 18, 2020, available at https://www.manisteenews.com/local-news/article/Per-pupil-funding-lags-behind-nbsp-virtual-15578444.php?utm_source=Michigan+Education+Digest&utm_campaign=92999b2f26-MED_2017_COPY_01&utm_medium=email&utm_term=0_df021925c2-92999b2f26-260919153
- 34 Ibid.
- 35 Ibid.
- 36 Ben DeGrow, “Lawmakers Need to Fix This Year’s Funding Formula,” Mackinac Center for Public Policy, August 26, 2020, available at https://www.mackinac.org/lawmakers-need-to-fix-this-years-school-funding-formula?utm_source=Michigan+Education+Digest&utm_campaign=92999b2f26-MED_2017_COPY_01&utm_medium=email&utm_term=0_df021925c2-92999b2f26-260919153
- 37 Ibid.
- 38 See https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB820
- 39 John Fensterwald, “Legislature fixes funding problem for growing districts and some charter schools,” *EdSource*, September 2, 2020, available at <https://edsources.org/2020/legislature-fixes-funding-problem-for-growing-districts-and-some-charter-schools/639515>
- 40 See https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB820
- 41 Janell Smiley, “Despite growth, online charter schools get short shrift,” *Capitol Weekly*, August 17, 2020, available at <https://capitolweekly.net/despite-growth-online-charter-schools-get-short-shrift/>
- 42 Ibid.
- 43 Ibid.

- 44 See *Serrano v. Priest*, 557 P. 2d 929 – Cal: Supreme Court 1976, available at https://scholar.google.com/scholar_case?case=13633818682294589185&hl=en&as_sdt=2006 and see California Code, Education Code – EDC Section 42238.02, available at <https://codes.findlaw.com/ca/education-code/edc-sect-42238-02.html>
- 45 Sean Higgins, “Teachers’ unions step up fight against charter schools,” *Washington Examiner*, March 29, 2019, available at <https://www.washingtonexaminer.com/policy/economy/teachers-unions-step-up-fight-against-charter-schools>
- 46 Alexia Fernandez Campbell, “West Virginia teachers are on strike again. Here’s why,” *Vox*, February 19, 2020, available at <https://www.vox.com/2019/2/19/18231486/west-virginia-teacher-strike-2019>
- 47 Matthew Schwartz, “West Virginia Education Bill Dies As Teachers Strike,” National Public Radio, February 19, 2019, available at <https://www.npr.org/2019/02/19/695856032/w-va-teachers-go-on-strike-over-state-education-bill>
- 48 Jennifer Medina and Dana Goldstein, “Success of Los Angeles Teachers Strike Rocks Charter Schools, and a Rich Supporter,” *The New York Times*, January 28, 2019, available at <https://www.nytimes.com/2019/01/28/us/charter-schools-los-angeles.html>
- 49 Jeanne Allen, “As US teachers ramp up pressure, face reality: L.A. strike was about control, not students,” *USA Today*, January 28, 2019, available at <https://www.usatoday.com/story/opinion/2019/01/28/teachers-strike-charter-schools-union-power-not-students-column/2694201002/>
- 50 Ibid.
- 51 Louis Freedberg and Michael Burke, “Impact of teacher activism in California being felt in multiple but less visible ways, leaders say,” *EdSource*, January 24, 2020, available at <https://edsource.org/2020/impact-of-teacher-activism-in-california-being-felt-in-multiple-but-less-visible-ways-education-leaders-say/622878>
- 52 Ibid.
- 53 Ibid.
- 54 Adriana Cardona-Maguigad, “One Year After A Wave of Charter Strikes, Schools Are Forced To Cut Back,” National Public Radio, March 6, 2020, available at <https://www.npr.org/local/309/2020/03/06/812836710/one-year-after-a-wave-of-chicago-charter-strikes-schools-are-forced-to-cut-back>
- 55 Ibid.
- 56 Ibid.
- 57 Ibid.
- 58 Ibid.
- 59 Theresa Harrington, “After seven-day strike, Oakland teachers approve new contract,” *EdSource*, March 3, 2019, available at <https://edsource.org/2019/tentative-agreement-reached-in-oakland-unified-teachers-strike/609342>
- 60 Ibid.
- 61 “The Same Storm, But Different Boats: The Safe and Equitable Conditions for Starting LAUSD in 2020-21,” United Teachers of Los Angeles, July 2020, available at https://www.utla.net/sites/default/files/samestormdiffboats_final.pdf
- 62 Ibid.
- 63 Ibid.
- 64 “We Want Safe and Equitable Schools,” National Day of Resistance, August 3, 2020, available at <https://btu.org/wp-content/uploads/2020/07/August-3-one-pager1.pdf>

- 65 Ibid.
- 66 Thomas Sowell, *Charter Schools and Their Enemies* (New York: Basic Books. 2020), p. 55.
- 67 Ibid, p. 128.
- 68 “National Charter School Law Rankings and Scorecard—2020,” Center for Education Reform, September 2020, available at <https://edreform.com/issues/choice-charter-schools/laws-legislation/>
- 69 “State policies fail to keep up with the need for more and better education opportunities for students,” Center for Education Reform, op. cit.
- 70 Louis Freedberg, “Charter school movement in a ‘battle for survival,’ charter school leader says,” *EdSource*, July 2, 2019, available at <https://edsources.org/2019/charter-school-movement-in-a-battle-for-survival-charter-school-leader-says/614752>
- 71 Ibid.
- 72 Ryan Quinn, “Proposed WV charter school threatens to sue if school isn’t approved,” *Charleston Gazette-Mail*, November 2, 2020, available at https://www.wvgazette.com/news/education/proposed-wv-charter-school-threatens-to-sue-if-school-isnt-approved/article_30248397-a8b4-5b7c-8776-38e5af18aa94.html
- 73 Ryan Quinn, “Law, draft policy indicate: One does not simply deny a charter school,” *Charleston Gazette-Mail*, December 21, 2019, available at https://www.wvgazette.com/news/education/law-draft-policy-indicate-one-does-not-simply-deny-a-charter-school-in-wv/article_93e94359-e652-542a-ba69-d3a104b196f2.html
- 74 See <https://4.files.edl.io/97f6/07/28/20/150551-0e1ba329-5b3e-4707-9dd3-c396156f7528.pdf>
- 75 Ibid.
- 76 See https://c1fc882b-f75a-45ab-bc9f-39b8c6194b28.filesusr.com/ugd/327200_6da691ef-5c8647a3939ff0e824d4ad4d.pdf
- 77 Ibid.
- 78 “New Class Action Lawsuit Fights California’s Effort to Withhold Millions from Growing Public Schools,” *North County Times*, September 24, 2020, available at <https://northcountydailystar.com/new-class-action-lawsuit-fights-californias-effort-to-withhold-millions-from-hundreds-of-growing-public-schools/>
- 79 Thomas Sowell, op. cit., p. ix.
- 80 M. Danish Shakeel and Paul Peterson, op. cit.

About the Author

Lance Izumi

Lance Izumi is Senior Director of the Center for Education at the Pacific Research Institute. He has written and produced books, studies, and films on a wide variety of education topics. Most recently, he is the author of the 2017 book *The Corrupt Classroom: Bias, Indoctrination, Violence, and Social Engineering Show Why America Needs School Choice* and the 2019 book *Choosing Diversity: How Charter Schools Promote Diverse Learning Models and Meet the Diverse Needs of Parents and Children*.

From 2004 to 2015, he served as a member of the Board of Governors of the California Community Colleges, the largest system of higher education in the nation, and served two terms as president of the Board.

From 2015 to 2018, Lance chaired the board of directors of the Foundation for California Community Colleges, the official non-profit that supports the community college system, and remains a member of the board.

Lance served as a commissioner on the California Postsecondary Education Commission and as a member of the United States Civil Rights Commission's California Advisory Committee.

Lance received his juris doctorate from the University of Southern California School of Law, his master of arts in political science from the University of California at Davis, and his bachelor of arts in economics and history from the University of California at Los Angeles.

About Pacific Research Institute

The Pacific Research Institute (PRI) champions freedom, opportunity, and personal responsibility by advancing free-market policy solutions. It provides practical solutions for the policy issues that impact the daily lives of all Americans, and demonstrates why the free market is more effective than the government at providing the important results we all seek: good schools, quality health care, a clean environment, and a robust economy.

Founded in 1979 and based in San Francisco, PRI is a non-profit, non-partisan organization supported by private contributions. Its activities include publications, public events, media commentary, community leadership, legislative testimony, and academic outreach.

Center for Business and Economics

PRI shows how the entrepreneurial spirit—the engine of economic growth and opportunity—is stifled by onerous taxes, regulations, and lawsuits. It advances policy reforms that promote a robust economy, consumer choice, and innovation.

Center for Education

PRI works to restore to all parents the basic right to choose the best educational opportunities for their children. Through research and grassroots outreach, PRI promotes parental choice in education, high academic standards, teacher quality, charter schools, and school-finance reform.

Center for the Environment

PRI reveals the dramatic and long-term trend toward a cleaner, healthier environment. It also examines and promotes the essential ingredients for abundant resources and environmental quality: property rights, markets, local action, and private initiative.

Center for Health Care

PRI demonstrates why a single-payer Canadian model would be detrimental to the health care of all Americans. It proposes market-based reforms that would improve affordability, access, quality, and consumer choice.

Center for California Reform

The Center for California Reform seeks to reinvigorate California's entrepreneurial self-reliant traditions. It champions solutions in education, business, and the environment that work to advance prosperity and opportunity for all the state's residents.

Center for Medical Economics and Innovation

The Center for Medical Economics and Innovation aims to educate policymakers, regulators, health care professionals, the media, and the public on the critical role that new technologies play in improving health and accelerating economic growth.



www.pacificresearch.org

SAN FRANCISCO HEADQUARTERS

Tel 415-989-0833

SACRAMENTO OFFICE

2110 K Street, Suite 28

Sacramento, CA 95816

Tel 916-389-9774

PASADENA OFFICE

680 E. Colorado Blvd., Suite 180

Pasadena, CA 91101

Tel 626-714-7572

Connect with Us



facebook.com/pacificresearchinstitute



[@pacificresearch](https://twitter.com/pacificresearch)



youtube.com/pacificresearch1



www.linkedin.com/company/pacific-research-institute