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## United States Department of Education

### White House Summit on Inner-City Children and Faith-Based Schools

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#### Panel IV

DEPUTY SECRETARY SIMON: Thank you. Welcome to a very special presentation this afternoon, the final panel of the day. My name is Ray Simon. I'm Deputy Secretary of the United States Department of Education. I had the extreme good fortune to have been educated in my local parish Catholic school from 1st through 12th grade. Although Sister Dominic and her fellow school sisters of Notre Dame had me on the fast track to the priesthood, other forces intervened, resulting in my spending the past 42 years as a public school teacher and administrator.

I believe strongly in public education, but I also believe that our nation and its children are best served by a diversity of schools, including specifically those that are faith-based. Faith-based and other private school graduates occupy many positions of leadership and authority through all levels of government and public service and are well-established in the private sector as well.

These schools have stood for and achieved much of what "No Child Left Behind" envisioned for all of American's schools, high expectations for all children, accountability for results, active participation by parents, safe learning environments, and high graduation and college-going rates.

Even though not required, a large number of private schools participate in some way with "No Child Left Behind" through directed instruction of children or professional development of staff. Many of these institutions provide extra tutoring for students in public schools who have fallen behind in their reading and math and where permitted have opened their doors to children formerly trapped in chronically underperforming schools.

I know Secretary Spellings earlier today reviewed her announcement this week to propose Title I regulations governing a number of important policy issues designed to make "No Child Left Behind" work better for kids and for the schools that serve and want to serve them. I would encourage you to review these proposed regulations and offer whatever support for them you can over the next 60 days' comment period, particularly those involving expanded opportunities for school choice and tutoring.

When growing numbers of faith-based schools close, shutting the doors on opportunities for hundreds of thousands of our children, we individually and collectively as a free society suffer. During this summit we have heard from a number of perspectives on the importance of faith-based schools and about the practical realities surrounding their continued existence. We've also learned of successful community initiatives to maintain their viability.

We are now in the final presentation of the day where four distinguished panelists will consider the role that

governments can legitimately play to help these schools and the students they serve. I will read brief introduction of each and they will speak in that order.

First, Mr. Anthony R. Picarello. Mr. Picarello is general counsel of the United States Congress of Catholic Bishops, which he joined in 2007 after seven years litigating First Amendment cases at the Becket Fund for Religious Liberty, a nonpartisan, interfaith public interest law firm dedicated to protecting the free expression of all religious traditions. Before that he was a litigating associate at Covington and Burling in Washington, D.C. In 2007 he was named to the American Lawyers list of the top 50 litigators under age 45.

He has discussed religious liberty topics in a variety of media and lectured extensively on religion and the law at conferences, seminars, and law schools across the country.

Next will be Mr. Anthony Williams. Mr. Williams is currently chairman of D.C. Children First and chief executive officer of Primum Public Realty Trust. Mayor Williams served two terms as mayor of the District of Columbia, where he supported the enactment and implementation of the D.C. Opportunity Scholarship Program. Before serving as mayor of D.C., he served as the chief financial officer in the District. He served in the Clinton administration as the first CFO for the United States Department of Agriculture and has served in a variety of the other capacities in connection with St. Louis, Boston and at Columbia University.

The third panelist is Dr. Ronald T. Bowes. Dr. Bowes is assistant superintendent for public policy and development in the Diocese of Pittsburgh. In this capacity, his primary responsibility is to raise tax credit funding through the Pennsylvania law called the Education Improvement Tax Credit Program. Over the past six years, Dr. Bowes has raised over \$16 million to provide thousands of grants to needy students to attend Catholic schools. In 1990 he launched a large grass-roots network of parents and other citizens interested in advancing the cause of parental choice in education, the REACH Alliance.

The final speaker will be Dr. Lawrence Weinberg. Dr. Weinberg is author of *Religious Charter Schools: Legalities and Practicalities*, one of his many publications in the field of education policy. He has also written "The Legalities and Practicalities of Catholic Charter Schools," which will appear in the forthcoming book, *Catholic Schools in the Public Interest: Past, Present and Future Trends*. Dr. Weinberg is co-author of an article with Dr. Bruce Cooper of Fordham University, including an editorial about faith-based charter schools which appeared in *Education Week* in 2007. He was formerly a professor at Northwest Missouri State University and has worked as an attorney and consultant to numerous organizations.

It is my privilege now to sit down and turn the program over to our distinguished panelists. (Applause)

MR. PICARELLO: I realize I am coming to you about high siesta time and to talk about that most passion-inspiring of topics, the law. (Laughter)

MR. PICARELLO: I will do my best to keep you awake. My pace might help. I've only got eight minutes.

Current judicial interpretations of federal and state constitutional law have imposed substantial constraints on legislative and executive officials who struggle to respond creatively to the problems facing faith-based urban schools. Those constraints nevertheless leave important latitude for the political branches to act.

At the same time, the jurisprudence behind those constraints is in flux and may shift so that political branches have more latitude to experiment than in times past. At the federal level, which I'll talk about first, the principal constraint is the jurisprudence under the Establishment Clause of the First Amendment to the U.S. Constitution, which reads, and I quote, "Congress shall make no law respecting the establishment of religion."

In 1971, the United States Supreme Court famously, in *Lemon v. Kurtzman*, decided a case involving an Establishment Clause challenge to aid to religious schools in Rhode Island and Pennsylvania. That decision infamously set out a three-part test for analyzing similar claims. That test has since been criticized, tweaked, restructured, occasionally ignored and even mocked, but nonetheless it has endured as the three-part "Lemon test." In brief, that requires that a law must first, have a secular purpose; second, not have the effect of advancing or inhibiting religion; and third, not result in an excessive entanglement between religion and government. So it's purpose effect, entanglement, three parts.

The first part has never been difficult for faith-based schools to satisfy. They satisfied it mainly by having the secular purpose of ensuring that the citizenry is well-educated and to assure that continued financial help of the private schools, both religious and nonreligious alike. So each program satisfies that. It's a lay-up, no problem.

The problem comes in with the second and third elements, effects and entanglement. In recent years, the Supreme Court has analyzed effects in two different ways in its school funding cases, depending upon the type of aid at issue, whether it is, quote, direct or indirect aid. To oversimplify these without getting bogged down in details, indirect aid is the kind of aid that is given out in the form of a voucher, more or less. The aid goes first to students and parents, and then in turn by their private choice, to the school of their choosing, whether public

or private, religious or nonreligious.

If that aid happens to end up at religious school as a result of the parent's private choice, then the Establishment Clause is rarely violated because the aid is directed to that school as a result of a private decision, and therefore it's not attributable to the government. It's not the government's choice; it's the parent's.

Direct aid, by contrast, is the kind of aid that goes directly from the government to the religious institution without the so-called circuit breaker of private choice, without it first passing through the hands of parents and students. And correspondingly, it is subject to stricter limits. In all events, whether the aid is direct or indirect, regardless of what box you're in, the aid has to be religion-neutral. What that means is, in effect, that the aid has to be offered without respect to the religion of the student or religion of the schools, public, private, religious and nonreligious alike. So that's that.

The third element, excessive entanglement -- and again I'm going to oversimplify the subject -- is violated when the involves the government in intrusive monitoring of the internal affairs of religious institution, such as their finances, or government and religious entities work together so closely that the lines between the two of them begin to blur.

So these are the federal limits. And what have political branches done to operate within them successfully? Two examples stand out. One is of course well-known to all of us, the voucher programs like the one in Cleveland which allows parents of children in failing public schools to redirect public funds toward the school of their choice, whether public or private, religious or nonreligious. Remember, religion-neutral is the key there. And the Supreme Court upheld a program like that in 2002 in the case of *Zelman v. Simmons-Harris*, which became more commonly known as just the Cleveland voucher case.

The second main solution has been one of tax credits. And of course we're going to hear about tax credits for scholarships in particular later, but these are individual tax credits that are directed to parents to offset costs of various educational expenses, like tuition, textbooks, transportation, things like that. That too was challenged and went to the Supreme Court in a statute along those lines that was passed through the Minnesota legislature. In 1983 the Supreme Court upheld that in *Mueller against Allen*.

Now, one thing that's very important and worth knowing in this context is that both of these programs had to be tried and challenged before their constitutionality could be firmly established. And even now there are many questions at the limits of the Establishment Clause jurisprudence that new and innovative programs could help to raise and resolve.

In the meantime, there is an additional set of constitutional constraints that exist at the state level. Now on to the state level provisions that vary from state to state. Foremost among these is a group that I expect that you've already heard about this morning from Professor Viteritti and also thankfully from the President himself. Blaine Amendments are state-level constitutional provisions that expressly prohibit aid to quote-unquote sectarian schools.

These amendments take their name from James G. Blaine, a Republican congressman and presidential candidate from the late 19th century who proposed a federal constitutional amendment that would have imposed this ban of sectarian aid to schools -- or aid to sectarian schools. It would have imposed it on all states as a matter of the Fourteenth Amendment, across the country.

As was discussed this morning, this was very, very popular but just barely failed to get the very strong majorities to needed to get a constitutional amendment through. And because it was popular, even though it failed at the federal level, it gathered momentum and ended up implemented in, as was discussed previously about two-thirds of the states, estimates being from 29 to 37, depending on how you count or how you define a Blaine Amendment.

Now, the language of these amendments can vary somewhat, and the gloss that the state supreme courts give to them can vary substantially. On one hand they might end up being interpreted for the state don't add anything at all to what the federal Establishment Clause prohibits.

On the other hand, they can be interpreted to mean a very, very aggressive separation of church and state, which at the margins can be so extreme as to get into different kinds of constitutional trouble. In other words, the separation of church and state can be so extreme that it represents religious discrimination that would violate the Free Exercise Clause, the Free Speech Clause, and even the Equal Protection Clause of the federal Constitution.

So, for example, if a state were to provide an educational benefit to all students but then read the Blaine Administrative so aggressively that it requires some students to be excluded simply on the basis of religion, then the state would at a minimum generate serious issues under the First and Fourteenth Amendments to the constitution.

In circumstances like these, federal constitutional risks are increased by the fact that Blaine Amendments were passed for the purpose of targeting religious minorities for special disfavor, particularly the denominational schools of Catholics and other minority faiths, to exclude them from government funding while allowing those funds to flow freely to public schools which at the time were very religious. They were just nonsectarian religious. These were common schools that taught the common faith. That's why the language of the amendments and the real hallmark would be the use of the term "sectarian" as opposed to "religious" more broadly, because that distinction bore a huge difference at the time.

So when a state applies its Blaine Amendment in the present day, so that it harms the very same religious schools it was designed to harm back when it was passed, there again, that is the time when constitutional risks are at their height. Recognizing this some states with Blaine Amendments and with voucher programs have been presented with the opportunity to strike down the voucher programs based on the Blaine Amendment but have chosen another way to strike them down instead that has, nothing to do with the Blaine Amendment. They sort of shied away from it.

Instead, in Florida, for example they relied on the Uniform System of Public Schools provision in their state constitution. The Colorado Supreme Court struck down the state voucher program based on requiring school funding decisions to occur at the local level. And similar provisions exist in different state constitutions all across the country, so some of it needs to be mapped out to assess where the risks are.

Now, it remains to be seen whether other state supreme courts, if and when they take up these questions, interpret those non-Blaine provisions in the same way. So to sum up briefly, when considering a new legislative action to help shore up faith-based schools, keep in mind three sets of constitutional limits, the federal Establishment Clause, state Blaine Amendments, and state essentially non-Blaine amendments, ones which limit the way public schools are funded and controlled.

And with respect to all these limits, bear in mind that the precise contours are unclear and the jurisprudence is in flux. It will require people with the right combination of courage and prudence to test those limits in court and so to expand the constitutional space where creative laws and programs can flourish. Thank you. (Applause)

HON. MR. WILLIAMS: Good afternoon, everyone, and let me acknowledge the deputy secretary and thank him for moderating this panel, and I particularly acknowledge President Bush and the First Lady for really spearheading this initiative and this summit, and I applaud them for their steadfast support for the faith community and in particular for the role of school choice in promoting and advancing education for all of our youth. I think it's very important.

Also I want to acknowledge three people who brought me here. And who are they -- or three groups. One is the Civil Rights movement. I wouldn't be standing here as mayor if it weren't for the Civil Rights movement. I acknowledge our American government for ensuring an opportunity for all of us as American citizens. And my parents, who adopted me when I was four or five years old. I'm not quite sure when. I couldn't speak. They taught me to speak. I haven't stopped talking since then. (Laughter)

HON. MR. WILLIAMS: But they made an important choice to send me to Holy Names School in Los Angeles. And if it weren't for the choices they made and the support for me, I wouldn't be standing here as mayor today. I remember the Secretary was talking about his principal. We had Sister Mary Dionisia, who was the principal for seven years. And all I can say is she ruled before the time of the time out. (Laughter)

HON. MR. WILLIAMS: She didn't understand. She didn't understand about time out. People often introduce me with, "Ladies and gentlemen, we have an exciting program, but first Mayor Williams." (Laughter)

HON. MR. WILLIAMS: Or "Mayor Williams and the distinguished panel." What this means that you're a mayor. And when you're a mayor, you really have important functions in your city. Public works is very, very important. "Pick up the trash, please." Public support and public safety, very, very important. "Keep me safe."

But I think underlying all of that is something very, very important, and that's public education. And underlying public education, and I'm speaking of public education written very large. Underlying that is really something even more important, and that's the notion of the public realm. When you're the mayor of a city, it's really your role to protect and conserve the public realm. And what do I mean by that? I mean all of us come into the public realm.

The public realm is not a physical thing. It's not even a temporal thing. It's just all of our contributions with all of our backgrounds and religious and cultural and individualistic into this public sphere, giving more than we get and leaving things better off than we found them. That's why us baby boomers are so well off today. All of our parents -- they didn't talk about frequent flyer miles or, you know, where they sat in a restaurant or all that. They gave everything they had to make things better for us.

So when you're mayor, it's your job to leave things better for those that follow you. That's the notion of public

realm and sharing and caring. I know that our mayor in Washington, D.C. cares about this and has worked with a great chancellor of our schools in Washington, D.C., Michelle Rhee. She actually assumed responsibility for the schools, recognizing the cardinal importance of schools and recognizing that parents ought to have the best for their children.

And that's why I, a former mayor, work with a number of different programs, Alliance for School Choice. I'm going to be taking on a tone from my fellow Democrats for participating in that. And then there's something called Fight for Children. Our friend, Joe Robert has spearheaded an effort over the years to really provide opportunities for all children in the city, a public-private partnership, very, very important. And lastly something called D.C. Children First, which is really organized and focused on continuing the Opportunity Scholarship Program in the District of Columbia. And we're really committed to continuing. (Applause)

HON. MR. WILLIAMS: We're committed to continuing that program because we believe that it is important to pursue reforms in the public schools, no question about it. They have to be high performing and excel. It's also important to support our charter schools, and yeah, it's important to protect and support our faith-based schools as another way to provide alternatives and opportunities for all of our children, to look at what's best for our children as opposed to what's best for various interest groups or various factions and to recognize the role that faith plays in our community.

Understanding the role of the Opportunity Scholarship Program is important. It's a federally funded scholarship program for low-income families. Scholarships are given directly to families without a lot of intermediaries. The tuition applies to any school, many of which are parochial and faith-based. And very, very importantly, parents, in many cases -- let's face it -- mothers in the most dire circumstances have an opportunity to make a statement about what's best for that child.

And one of the things that's impressed me most as mayor is that mothers in the most dire circumstances will always -- I don't know whether it's intuitive or instinctive or whatever it is -- will know what is best for that child. Now, has there been a lot of resistance? Absolutely from leader of both political parties actually -- leaders in both political parties. I don't want to get in trouble, but many leaders in both political parties, advocates and scholars around the country.

We even had people doing color commentaries in other countries, commenting on, you know, the evils and the problems and the pitfalls of all this.

But what I believe is that, ladies and gentlemen, first and foremost, we're not about solving problems among the adults. We're about solving problems to meet the needs of these kids. I actually believe that these kids shouldn't have to wait around until we actually achieve everything perfectly in our school reform efforts before things are being done for those children. (Applause)

HON. MR. WILLIAMS: People ask me, "Well, how do you get this program now?"

One of the things I say is, "You don't want to do this at home. It's very, very difficult." But I think there are a couple hallmarks of this. One, it was one of the areas where the federal government and the District worked together, the Bush administration, the Secretary at the time, the District working together, local leaders working together, this mayor, Kevin Chavous. The leader on our District council remains a leader in these efforts around the country still. Peggy Cooper Cafritz, the head of our school board working with the leaders up on the Hill.

I could mention a number of them. One of them who played a courageous role was Senator Diane Feinstein from California -- I applaud her for her leadership on this -- got together and got a program tailored on the needs of these children, and very, very important, on the unique needs of the District government. And very, very important, organized a program, \$120 million in new federal funds over four years that did something very, very important, and that is it didn't take money away from the existing public schools, so we avoided this big ideological food fight.

What it really did is basically provided new additional funds, incremental marginal new funds for public schools for public charter schools, and for the choice schools; let's say the parochial schools, the private schools. And it's now provided help for over 2,600 children. It's serving children most in need, average income of \$22,000 per family. Standardizes test scores in the bottom third. The vast majority would not be attending a good school but would be attending a failing school otherwise.

It's beginning to make a difference in test scores, although it takes time for these changes to take place, and I'm sure all of you can appreciate that. And I find it impressive that after just seven months, some scholarship students are already showing gains, particularly in math. Now, you can talk about statistics, but I'll just give you something that's very, very tangible to me and very important to me, and that is talking to actual parents.

I had one parent tell me that "My child has never been so happy about going to school and actually learning."

And one student graduated from eighth grade and accepted the high school of his dreams. He said, "I've been given an opportunity go to a better school with better learning environment, a chance to be challenged and test myself in a way I never was in my old school."

Now, this has been a great program. It's having a real impact, but this program is up for reauthorization. And that's why I'm working with this effort called DC Children First, to see that this program is reauthorized, but even more importantly, to see that we attend to the needs of these children, and even more fundamental than that, to see that we recognize our responsibility and our commitment to the public realm and that shared space that's so important to all of us and very, very important to the future of our children. Thank you all very much. (Applause)

DR. BOWES: I almost missed my cue. Deputy Secretary, distinguished panel, ladies and gentlemen, I'm normally not nervous when I get up to speak. As a matter of fact, I usually revel in it, but last week I walked into my boss, Father Stubna, the Secretary for Education for the diocese. And I said, "Father, I'm going down to White House to speak in this summit on education. Would you like to go?"

And he said, "Ronald, no. There's two things I don't like about your presentation, one is when you deviate from the text, and the other is when you go back to it." I hope you're not as judgmental as my boss.

I'd like to tell you a story. As an attorney out in Pennsylvania, really in a certain sense it's almost as if we stumbled onto this. And I say that because we fought for school choice through vouchers for over a decade, and they were knock-down drag-out battles. I mean I can't tell you. I was out speaking almost every night. And I would go to panels in auditoriums like this at the various local colleges and sometimes in schools, the public schools, Fox Chapel High School and some of the others in the suburbs.

And they'd have panelists, and the panelists would be the ACLU, the head of the Pennsylvania Federation of Teachers, the head of the American Federation of Teachers and then me. (Laughter)

DR. BOWES: So it was always three or four, and actually every once in a while someone in the audience would say, "You know, this doesn't seem very fair. It seems like everything is against the poor guy who's trying to talk about school choice."

However, I always felt when I walked into the room that, you know, we were doing what was right. I always felt that I was able to select schools for my own children. I was a public school teacher, and in 1982 I was named public schoolteacher of the year in Pennsylvania. That's not to gloat -- well maybe gloat a little bit, but what I'm saying is my heart and soul are with all children on both sides. But I selected Catholic schools for my children, and I believe that everyone, that poor parents should be able to develop the souls of their children too, and that's why I joined in this effort for school choice.

In 1990 we formed the REACH Alliance, the Road to Educational Achievement through Choice. You can see here we would go demonstrate on the steps of the capitol building in Harrisburg, constantly trying to get school choice done. And this REACH Alliance finally, with the help of, actually, Governor Tom Ridge was really the driving force behind this. And we really deeply appreciate his commitment over eight years to try and get some form of school choice in Pennsylvania.

But every time we would get to the precipice of passing vouchers -- and I'm talking about 11:30 a.m. in the morning, the head of the Pennsylvania Congress would call me saying, "Ron, we have it, we have the votes." And then at 10 to 12:00 we'd see it slip away as two people would defect in the last moment, and we couldn't get it done. We came that close. Actually, Pennsylvania is still the only state in the United States to have passed in 1991 a full school choice bill through one house of the legislature. In other words every parent in Pennsylvania attending a nonpublic school would have received a voucher.

It was passed through senate, but that voucher would have only been for \$900. And the amazing thing about the program I'm about to tell you is that this thing is serving children so much better, and you can give them any amount of money up to the amount of tuition.

So with Governor Ridge's help and a strong grass-roots coalition -- that's me right there; I'm the big guy with the tie and the sunglasses -- and persistence -- we did kind of time it nicely too. I mean we knew that the teacher's pension was coming up, and it was coming up for a vote, an increase in the teachers' pension. So Governor Ridge was able to leverage this at the same time. And the unions were so distracted and so intent on getting that pension that they figured, "Oh, we'll just that tax credit thing -- we'll handle it later."

Well they made a major mistake because once we got this tax credit program in -- and by the way, I would call this -- and this is kind of an interesting legal terminology to a degree. It's really a pretax. It's not a tax credit. It's a pretax credit. And what's interesting about that is it avoids almost every impediment to school choice that you can think of. And I'll explain that in a little bit as we go on. But so committed leadership on the part of -- at the time, when Ridge was governor, we all sat at a general assembly, and the House and the Senate were both Republican at the time. And the Republicans were more in favor some type of program of school choice, which

seems a little bit ridiculous to me, considering that Democrats are always saying that they're committed the poor. Well, this program, obviously, is something that would serve the poor very well.

In 2001 we sat around the room and we devised the Educational Improvement Tax Cut Program with Governor Ridge and some of his public policy people. At the time we passed the bill, it was only \$20 million, but since 2001 and now it's 2008, the program is up to \$75 million. \$44.7 million goes to the scholarship side. In other words, that \$44.7 million is for the nonpublic schools.

What we did was in that room that I was telling about back in 2001, we said "Hey how can we bring in the public school sector and have them support this?" And so we came up with giving the public school Educational Improvement Opportunity money. And we did one-third of the amount of money that was set aside in the budget, in this case \$22 million, \$22.3 million was for educational improvement. So we built in this program where we could serve both the public sector and the private sector and that now has solidified the program over time. Basically in a nutshell, the way this works is so simple an accountant can fill out one of these Appendix 1 forms in about 10 minutes, and he can send email or fax it to the Department of Community and Economic Development.

And that was another ingenious thing. We actually put this not in the Department of Education, Pennsylvania Department of Education, we put it in the business-related section of government deliberately to keep out ideology, so we wouldn't have to worry about in another four years a change in administration or anything like that.

Basically, what happens is a business, a company can give, from its tax bill -- they can divert it before it ever gets to the government, so the money never gets to the state. They are approved at the Department of Community Economic Development. They then write me a check. They send it down to me. I put it in the Scholastic Opportunity Scholarship Fund for Students, and then we divvy up the money based on eligibility and need, so we are able to serve all these children.

Over the years -- over the five years and now six years of the program, we're up to \$415 million, so that 350 is not 415 million. We have about 3,500 companies, and about 800,000 scholarships have been awarded. These numbers are incredible when you think about it. A family of one, the eligibility requirement is \$60,000 a year if you have one child, and then it's \$10,000 increments. So we not only give aid to the poor, but we also help the middle class, which I think is very important when you're trying to get something done. (Applause)

DR. BOWES: We also have a preschool program and this is fabulous, and I know my time is running out, and I knew this was going to be difficult for me. We have preschool program which has another \$5 million separate from the other program.

And the amazing thing about this is that we have garnered so much money over the years that we have helped -- there's a foundation in Pittsburgh, the Extra Mile Foundation. The director is here. Ambrose Murray is back there from the Extra Mile Foundation. Most of the money is raised through business leaders in Pittsburgh that see the value of a Catholic education. But they are now being helped by this, and they are able to use their tax credit money in addition to their foundation money, and it's a double dip.

And as you can see, a third of 800 students -- we gave about \$599,000 over the last five years to these schools, and it has been a godsend. Look at our diocese. This is one diocese, and we have 27,000 students, and we get about \$15 million. We have over the last six years. And then of course we also -- look at this money that we got for the preschools. In 2005-2006, we had 800 students apply for preschool assistance that were eligible under the state requirements. Every single one of them had free preschool. They didn't pay a penny. (Applause)

DR. BOWES: And it was \$3,500, the preschool tuition, so you imagine how incredible this is, the impact on it.

I guess the bottom line of my presentation is that the corporate tax credit -- and I say corporate tax credit, not individual tax credit, because there's even problems with individual tax credits, although I'm not against them, but I think the corporate tax credit at both the state level -- and if we could do this at the federal level, we could find a way to solve the problem of funding our faith-based schools. And so I ask you to go back to your states and to petition the federal government that we get corporate tax credits in the United States.

It's a win-win for everyone, and especially if we put in this little element of educational improvements for the public school side, it will make everybody happy. So if anybody has any questions about this later, please feel free to call me or write me. And our email number -- pardon me -- our web site is [PASchoolchoice.org](http://PASchoolchoice.org) -- [PASchoolchoice.org](http://PASchoolchoice.org). (Applause)

DR. WEINBERG: Since I'm the last speaker and it's the end of day, I was going to begin with a joke, but Scott actually stole my joke. I was going to begin by saying a priest, a minister, and a rabbi decided to open a charter school. (Laughter)

DR. WEINBERG: Charter schools are public schools that face greater accountability and have greater autonomy than traditional public schools. The school receives a charter to operate from a state-approved entity. It then receives a combination of state, local, and federal funding. Forty states and the District of Columbia have charter school laws which educate over a million students.

The Establishment Clause requirement of separating the church and state applies to charter schools because they are public schools. However, the chartering process offers a faith-based school important opportunities because of the increased flexibility and control enjoyed by charter school operators.

The bottom line distinction -- and I'm going to summarize everything I'm going to say in one sentence. The bottom line distinction is that a faith-based charter school can accommodate its students' and parents' religious beliefs, but it cannot endorse religious beliefs. Because the Establishment Clause draws a line that's far from clear, any list of permissible or nonpermissible activities that faith-based schools might engage in is not going to be perfect. Accordingly, these issues need to be discussed in broad terms.

And it's important to bear in mind that these schools are always examined in their particularities and that everything class every prayer situation, that every class, every prayer situation, every school board is going to be examined in its particulars. And the best example I can give of this is that the Supreme Court has held that a creche in the public sphere in one situation is unconstitutional but in different situation it may be constitutional. So the context and nature of the situation is everything.

Chartering does not permit a faith-based private school to close its doors at the end of the school year and then open as a charter school in the fall. Certain changes have to take place. And next I will address various issues of concern to faith-based educators that want to convert or hope a charter a school.

Staffing. There are changes that are going to be required in staffing. A charter school cannot have a religious criterion for staffing. Unlike faith-based private schools, the nondiscrimination requirements of Title VII apply to charters, since they are public schools. Teacher certification. This really depends on the state. There are states that require charter schools to have all their teachers certified, states that don't require any charter school teachers to be certified, and states that require some percentage of charter school teachers to be certified. Some states permit alternatives to certification for their charter teachers, so it really varies from state to state.

Religious icons. Religious icons are not permitted in a charter school. However, it might be possible in a particular situation for a charter school to rent an existing facility that has religious icons from another entity, so the icons would be there but would not belong to the charter school. (Laughter)

DR. WEINBERG: Prayer. There are going to be changes required. Prayer must wholly voluntary and student-initiated. A charter school may provide students with a room to pray in before or after school. It has to be the student's decision, and teachers and administrators cannot participate.

School ownership and management. That depends on the state and the Blaine Amendment. If the state has a Blaine Amendment, then you have to create a separate secular foundation. If the state does not have a Blaine Amendment, you probably could have a religious foundation owning and operating the school within the other requirements.

Uniforms. Uniforms are permitted. A charter school can have a dress code and a school uniform.

Dietary restrictions, permitted. Charter schools may provide kosher or other religiously required food to their students.

Holiday arrangements. These are permitted. A charter school may close for religious holidays as an accommodation to their students.

Religious admission requirements. These are absolutely prohibited. Charter schools cannot have any religious admission requirements or preferences for students of a particular faith or faith generally.

Curriculum. That depends on the state. And what I mean is in terms of the -- not the religious curriculum, but the overall curriculum, whether a charter school has to follow the state curriculum varies widely from state to state.

Religion courses. There are changes required there too. No religion course may endorse the religion being taught. You can teach morality. You can teach about religion. Or you can teach about culture. However, these courses cannot endorse the religion being taught. However, a course can endorse a culture or language be taught. However, a charter school can rent space to a different entity that operates a religion course. And certainly if a charter school ends at 2:00, another entity can have a religion course that is taught at 2:15.

Board membership. It's open. Clergy may sit on the boards of charter schools, but there can be no requirement that clergy sit on such board.



Religious identification. A charter school cannot identify a faith.

Scheduling. A charter school can arrange its schedule to allow students to attend religious activities after school.

These schools are more than a theory, and next I'm going to talk about some charter schools. However, it's difficult to talk about faith-based charter schools for two reasons. First, some charter schools might be formed because parents had a religious objection to their local public example. For example, they might have an objection to the reading curriculum.

Now these parents may start a school, and that school may be 99 percent the same as their local school. However, that one percent difference, that reading, the fact that that reading material isn't there is going to mean the world to those religious parents that started that school. So I believe that is a faith-based school because these parents started it because of their faith.

The second reason it's difficult to talk about these schools a lot of the founders of these schools do not view their schools as faith-based. They view them as cultural-based or as language-based. However, it's important to understand that faith-based does not necessarily mean it's a religious school, and it also certainly does not mean that it is unconstitutional. Faith-based means that it is in some way simply based on faith. And the following schools are faith-based to various degrees. The Adam Abdulle Academy in Rochester, Minnesota, was founded to meet the needs of Somali immigrants. The Ben Gamla Charter School in Hollywood, Florida, includes a bilingual and bicultural Hebrew curriculum. The Hellenic Classical Charter School in New York includes the study of classical Greek and Latin, and many of those students then attend a Greek Orthodox school afterwards. There are two Hmong schools in Minnesota. I just two days ago learned about the Iftin Charter School in San Diego, California, which serves East Africans, Somalis, Muslim children. And though that school has an academic focus, what's interesting is that the teachers in that school are being taught about Islam so they can better understand the needs of their students. And the Winans Academy of the Performing Arts in Detroit, Michigan, has a school creed that begins, "I am created in the image of a super-intelligent God.

Catholic schools in Washington, D.C.; Rochester, New York; Marysville, California; and Denver, Colorado are considering or are in the process of converting to charter status, as is the Ross County Christian Academy of Chillicothe, Ohio. Religious leaders operate charter schools all across the country.

The critical point for religious leaders considering opening a charter school is whether they will be able to fulfill their desired mission through a school that can accommodate religion but does not endorse religion. And each religious leader is going to have a different answer to this question. And while I'm addressing in broad strokes some of the issues that religious leaders may have, these lessons can be applied in any number of ways at the school level, and some will be constitutional and some will be unconstitutional.

However, the fact that a number of charter schools are in operation already today that are in some way connected to a faith demonstrates that the chartering process offers a promising and realistic opportunity for leaders of faith-based schools who are considering ways of maintaining the viability of their institutions. (Applause)

DEPUTY SECRETARY SIMON: Let's give one final round of applause for our panel. (Applause)

DEPUTY SECRETARY SIMON: They have agreed to forego questions from myself and defer to some very special guests that we have invited to be with us this afternoon to give us an appropriate ending for the day. We have been here, and what we've been about are children, children that deserve every opportunity to be the very best they can be, to get the very best education they can get. So what I say it would be for my grandchildren is that every year they could have a teacher of the year and they could be in a school of the year with a principal of the year in charge.

Until we reach the opportunity for every child in America to have that opportunity, our work is not done. And so what we've done is invited a few students from one of the schools in D.C., Nannie Helen Burroughs School.

And are they?

They are backstage getting their game face on. And I think they want us to exit the stage so they can come out. (Applause)

DEPUTY SECRETARY SIMON: While the stage is being cleared, this is choir from Nannie Helen Burroughs School. Nannie Helen is an elementary Christian school that has existed for 99 years, with 2009 being the one-hundredth year of their operation. The school participates in the D.C. Opportunity Scholarship Program, is located in the northeast section of Washington, D.C. And the music director is Glenda Whitaker, and the principal is Rita Johnson. And Ms. Whitaker and Ms. Johnson are here with these students. And momentarily they will be on stage.

And I thank you again for being with us this entire day. Hopefully you found it as a regarding experience to attend as all the presenters have experienced it in presenting it to you. I've run out of anything to say, obviously.

(Applause, followed by school choir coming onstage and standing ovation)

DEPUTY SECRETARY SIMON: I've given you a glorious introduction. We are just delighted that you have taken the time to visit with us, and you see you have already gotten a standing ovation and you have yet to sing a note. So can you imagine the reception you're going to get when you finish? We are so happy to have you. Thanks again. We look forward to having some very beautiful music from you.

(The school choir sang, and then the conferences adjourned.)