

**THE ORIGINATION OF MICHIGAN'S CHARTER SCHOOL POLICY:  
AN HISTORICAL ANALYSIS**

By

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## **ABSTRACT**

### **THE ORIGINATION OF MICHIGAN'S CHARTER SCHOOL POLICY: AN HISTORICAL ANALYSIS**

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In 1993, Michigan Governor John Engler called the bluff of a political rival, which resulted in the nearly overnight elimination of Michigan's school funding system and created an opportunity for him to advance his vision for broader educational reform. This study illustrates how Engler functioned as a public policy entrepreneur to take advantage of this window of opportunity in order to advance his vision for a competitive educational marketplace. The idea of using choice and competition to create an educational marketplace had been commonly associated with attempts to privatize public education through vouchers. This posed a seemingly impossible hurdle for Engler, as Michigan's Constitution has a strict prohibition preventing public funds from being used by non-public schools.

Engler was an avid reader and was always searching for new ideas. So when charter schools began to emerge on the educational landscape as a way to withdraw the exclusive control schools districts held over the provision of public education and establish new public schools that could provide choice and competition to the extant system, Engler was intrigued. Applying Schneider, Teske & Mintrom's (1995) theory of public policy entrepreneurs, the study shows how Engler performed the three essential functions that all entrepreneurs undertake to accomplish their goals in order to originate Michigan's charter school policy. Through elite interviews, the study uses the words of Engler and his allies to examine what they intended to accomplish and how they went about accomplishing their intentions and overcoming obstacles. The study also examines how Engler's actions as a policy entrepreneur relate to more

mainstream theories of policy change like incrementalism (Lindblom, 1968), policy streams (Kingdon, 1995), institutionalism (March & Olsen, 1989), punctuated equilibrium (Baumgartner & Jones, 1993), and advocacy coalitions (Sabatier, 1988). The study concludes by asking Engler and his allies to look back and assess if the charter school policy they helped originate over 15 years earlier is accomplishing what they intended and fulfilling their expectations, in light of Cohen (1982) and Elmore's (1980b) notion that political leaders often become frustrated and fail in their attempts to change public education.

## **DEDICATION**

To my wife, Theresa. Without your love, support and faith in me  
I would have never finished this dissertation.  
Thanks for believing in me and putting up with the  
“project that would never end.”

And

To our children, Luke, Ben, Kate, Mark, Laura, Nicole and Natalie.  
Thanks for your patience and for doing “Dad’s chores” so I could work on my dissertation.  
I love you all dearly and look forward to celebrating with you and having more time to play.

And

To my father, Roger J. Goenner, who died on July 7, 2011.  
I wish I could have finished this before you had to leave us.  
Now, from one doctor to another - I love you, Dad!

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Finally, I want to acknowledge all the people working tirelessly to return to parents the authority to choose the schools that best meet the needs of their children. When Alexis de Tocqueville wrote in 1830 about the United States being "exceptional," he, in part, was referring to the uniquely American idea of limiting government through a system of checks and balances in order to protect the liberties of a free people. The idea that parents should be allowed to choose the schools their children attend is not some new experiment, rather it is part of the great experiment called America - and it is worth fighting for.

## TABLE OF CONTENTS

LIST OF TABLES	viii
CHAPTER 1	
THE ORIGINATION OF MICHIGAN’S CHARTER SCHOOL POLICY	1
Purpose	1
Research Questions	4
Conceptual Framework	5
Method	8
Interview Questions	9
Interview Process	12
Document Analysis	13
Significance of the Study	14
Limitations	15
CHAPTER 2	
REVIEW OF LITERATURE	17
Introduction	17
Government Involvement in Education	17
Consolidation of Schools	19
Schools and the Common Good	20
Federal Reform Efforts	23
Free-Market Philosophy	28
The Charter Idea	32
The Charter Debate	34
Origin and Definition of Charter Schools	35
The Spread of Charter School Legislation	37
Charter Claims	39
Accountability	39
Autonomy and Empowerment	41
Efficiency	41
Choice	42
Competition	43
Models of Innovation	43
CHAPTER 3	
CHARTER SCHOOLS COME TO MICHIGAN	45
Introduction	45
John Engler as Policy Entrepreneur	46
An Educational Vision	51
Crises As Opportunities	52
Funding Inequities	53
Kalkaska	54
Frustration Mounts	56

Stabenow Amendment	58
Calling the Bluff	60
A Chance to Change the System	62
New State Role	64
More Rhetoric than Reality: Frustration with “The System”	66
Withdrawing Exclusive Franchise	70
Challenging Status Quo	72
Report Cards and Consumer Information	77
Choice and Charters	78
Student Foundation Grant	81
Adoption of Proposal A	83
Passing and Defending Michigan’s Charter Law	86
Testimony of Proponents and Opponents	87
Two Charter Bills	91
Anticipating Lawsuits	93
Funding Injunction and Constitutional Challenge	95
Implementation Issues	104
State Superintendent and Board of Education	105
Authorizing Bodies	111
CMU Takes the Lead	113
Chartering Schools and Appointing Boards	118
The Cap, Bay Mills, and the McPherson Commission	121
CHAPTER 4	
THEORIES, LESSONS & CONCLUDING OBSERVATIONS	128
Lesson 1 – Constantly Prepare Because Crises Create Opportunities	129
Lesson 2 – Know Where You Want to Go	131
Lesson 3 – Assemble a Team of Believers	132
Lesson 4 – Know the Rules and the Political Context	135
Lesson 5 – Anticipate Implementation Problems and Be Creative in Overcoming Obstacles	139
Lesson 6 – Maximize Flexibility and Persist	142
Retrospective: Intentions and Expectations	147
CHAPTER 5	
AFTERWORD	153
APPENDIX A: CONSENT TO PARTICIPATE FORM	161
APPENDIX B: INTERVIEW QUESTIONS	162
APPENDIX C: ALPHABETICAL LIST OF ELITE INTERVIEWEES	163
APPENDIX D: TIMELINE OF KEY EVENTS	164
APPENDIX E: MICHIGAN’S CHARTER SCHOOL LAW	166



## LIST OF TABLES

Table 1. Elite Interviewees

11

## **CHAPTER 1**

### **THE ORIGINATION OF MICHIGAN'S CHARTER SCHOOL POLICY**

#### **Purpose**

The purpose of this study is to describe and explain the origination of Michigan's charter school policy. For the purposes of this study, charter schools will be considered to be a market-based policy innovation designed to promote school choice and competition within public education, rather than a school that students attend. The study applies the concept of public policy entrepreneurs (Schneider, Teske, & Mintrom, 1995) to then Michigan Governor John M. Engler, and describes the actions he took to seize a window of opportunity (Kingdon, 1995) that came his way and which he used to break the status quo and then advance his vision for education reform through additional equilibrium puncturing opportunistic policies (Baumgartner & Jones, 1993).

Part 1 of the study begins by describing Engler's background, as well as his ascension up the political ladder to governor. Drawing on personal accounts, the goal is to help explain the formation of his vision for education, along with descriptions of his political and policy acumen. The study then provides a historical context for the crises that Engler faced due to the public's anger over the cost of property taxes and the education community's frustration over dramatic inequities in school funding. The study explains further how Engler capitalized on a legislative bluff by one of his political adversaries in order to eliminate property taxes as the primary means for funding public education.

Next, the study explores how Engler leveraged the crises created by eliminating the primary means of funding schools and used it as an opportunity to radically change the paradigm

of Michigan's educational system. It describes the new and more active role he envisioned the state playing in education and offers insight as to the frustrations Engler and his allies had with the way Michigan's educational system was functioning at the time. It describes how Engler wanted to use choice and competition to disrupt the status quo and force schools to compete for students and the money that he hoped would follow them via a portable foundation grant.

Part 2 of the study describes and explains the actions that Engler and his allies took to enact Michigan's charter school law. It describes the testimony for and against charter schools during the legislative process and explains why Engler signed two charter school bills within a few weeks of each other. The study then describes the legal battle that transpired over whether or not Michigan's charter school law was constitutional and the tension created by trying to ensure charter schools were free from regulation, but in compliance with Michigan's tightly written Parochiaid Amendment. Next, the study explains the implementation issues that charter schools faced and describes the sense of urgency with which Engler acted in order to ensure charter schools were firmly rooted in Michigan's educational landscape so they could not be easily eliminated after he left office.

The third and final part of the study asks the originators what they view as the key policy and implementation lessons to be learned from Michigan's charter school experience. The study concludes by asking the originators to look back and consider, in retrospect, if the charter school policy they helped originate is accomplishing what Engler intended and fulfilling their expectations.

The study begins in 1993, the year that Engler and his allies called the bluff of a political rival in a dramatic act that resulted in the elimination of Michigan's school funding system and created the conditions that allowed Engler to pursue his quest to fundamentally change the

paradigm by which Michigan's educational system functioned; 1993 was also the year in which Engler delivered a seminal speech to a joint session of the Michigan Legislature in which he outlined his vision for education and the creation of charter schools. The study cites portions of this speech in order to illustrate how Engler used it as a launching pad for introducing charter schools and notes, particularly, his idea of empowering parents and forcing schools to compete for students and resources through the establishment of a portable per student foundation grant. Portions of this speech also offer insight as to the antagonism that Engler fomented with much of the educational community and provides context to the policy and implementation battles that charter schools would later face.

Legislative and legal records, along with other pertinent documents, were examined to provide factual details and timeframes in conjunction with the recollections of the originators of Michigan's charter schools. The study details the passage of Michigan's charter school law and the legal battle over its constitutionality that took nearly three years to resolve. The study also describes and explains the actions that Engler and his allies took in order to advance the implementation of charter schools. It details Engler's battle with the State Board of Education and demonstrates how he leveraged his political influence to persuade the State Board to appoint the person he wanted to serve as the next State Superintendent of Public Instruction. It then explains how Engler used his knowledge of state government to reorganize the Department of Education, diminish the powers of the State Board, and significantly increase the authority of the State Superintendent.

Next, the study explains why Engler believed it was imperative for the charter school law to enable numerous authorizing bodies and how he used his position and authority to influence the governing boards of state universities to take the lead in authorizing charter schools. Central

Michigan University's role in events is then described because it was the first university to authorize a charter school in Michigan. The study also depicts some of the political controversy faced by the originators and provides insight as to the thinking behind their actions and how they went about appointing charter school board members and issuing charter contracts. The study then explains how Engler and his allies unsuccessfully tried to lift the cap on the number of charter schools that could be authorized by state universities and how as an alternative, they legally established Bay Mills Community College as an uncapped, statewide authorizer of charter schools.

The study concludes by asking the originators three questions. First, what they view as the key *policy* lessons to be learned from Michigan's charter school experience? Second, what they view as the key *implementation* lessons to be learned when attempting to translate policy to practice? The third and final question asked the originators to assess, retrospectively, if the charter school policy they helped originate is fulfilling their expectations and accomplishing what Engler intended?

### **Research Questions**

The following exploratory questions were used to guide this study and record the origination of charter schools in Michigan.

1. What were the origins of Michigan's charter school policy?
2. How did the formation of Michigan's charter school law align with the political and policy realities of the times?
3. What political, legal, and regulatory approaches did the originators of Michigan's charter schools policy use to foster its implementation?

4. What were the originators of Michigan's charter school policy trying to accomplish and are their intentions being fulfilled?

The first question was used to gain insight as to the underlying philosophy and motivation for the formation of Michigan's charter schools policy. The second question was used to understand the political and policy context of the times and how this context influenced the construction of Michigan's charter school law and the legal battles that ensued regarding its constitutionality. The third question was used to understand the actions that were taken to advance the implementation and growth of charter schools in Michigan. The last question was used to garner insight as to what the originators thought Engler was trying to accomplish with charter schools; and if, 15 years later, they feel Michigan's charter school policy has accomplished what Engler intended and if it is fulfilling their own expectations.

### **Conceptual Framework**

For the purpose of this study, charter schools were viewed as a market-based policy innovation designed to promote school choice and competition within public education. Charter schools represented a major policy change being pushed by Engler in his quest to fundamentally alter the paradigm by which Michigan's public education system functioned. As a market-based policy innovation, the ideological origins of charter schools can be traced back to certain political philosophies and economic theories that are generally supportive of limited government and free markets. For insight into political philosophies (which served as a backdrop for my interviews with the originators), I relied on the *History of Political Philosophy* by Strauss and Cropsey (1987). For theoretical guidance in economic theory and its application to public

education, the collected works of Milton Friedman (1955–2005) were used, along with *Politics, Markets & America's Schools* by Chubb and Moe (1990).

The study focused heavily on the role Engler played as a public policy entrepreneur and the leadership he took in originating Michigan's charter school policy. Engler was able to take advantage of the movement towards deregulation, entrepreneurship, and free markets advocated by President Ronald Reagan, and often referred to as the "Reagan Revolution." This more conservative view of government was popular at the time and helped boost Engler's candidacy as a conservative, probusiness candidate, who promised to rein in government spending, cut taxes, reform education, and promote market-based solutions. Using the theory proposed by Schneider et al. (1995) in *Public Entrepreneurs: Agents for Change in American Government*, the study examines how Engler functioned as a policy entrepreneur in order to promote his vision for education. The study also attempts to describe and explain how Engler's actions adhere to the three essential functions that Schneider et al. (1995) claimed all entrepreneurs undertake to accomplish their goals.

1. Discover unfulfilled needs and select appropriate prescriptions for how those needs may be met—that is, they must be alert to opportunities;
2. As they seize these opportunities, entrepreneurs bear the reputational, emotional, and frequently, the financial risk involved in pursuing a course of action with uncertain consequences; and
3. Entrepreneurs must assemble and coordinate teams or networks of individuals and organizations that have the talents and/or resources necessary to undertake change. (p. 2)

Moreover, Schneider et al. (1995) posited that

Most social science theories view change occurring in incremental or evolutionary fashion . . . but change can be sudden, producing radical shifts in the status quo. In political systems, radical change is often associated with the emergence of new leaders, the development of new political movements, and the introduction of new policies. (p. 3)

The study relates the theory of public entrepreneurs to the actions taken by Engler and his allies during a 24-hour period in which they eliminated the primary means for funding public education, without having a replacement plan in place. The study then explains how Engler attempted to use the crises that this action produced as an opportunity to fundamentally alter the way Michigan's public education system functioned, in large part through the creation of charter schools and a portable per student foundation grant that would empower parents with choice and force schools to compete for students and resources.

In addition to using the concept of public entrepreneurs to analyze Engler's actions, the study incorporated other more mainstream theories of policy change like incrementalism (Lindblom, 1968), policy streams (Kingdon, 1995), institutionalism (March & Olsen, 1989), punctuated equilibrium (Baumgartner & Jones, 1993), and advocacy coalitions (Sabatier, 1988). The study also used the works of Cohen (1982) and Elmore (1980b) to gain insight as to why political leaders often become frustrated and fail in their attempts to change public education. Frequently, political leaders try to reform public education by using their position to advocate for rewards and sanctions in order to change how schools organize and operate. Even when policymakers are able to get their ideas adopted into policy, they often fail to accomplish what they intended.

Cohen (1982) illustrated this point, saying, "Once upon a time, students of American politics believed that policy turned out as intended. But they have recently concluded that intentions are an inconsistent guide to results" (p. 1). Knowing that policies rarely turn out as expected makes the final part of this study particularly intriguing. The study concludes by asking the originators, more than 15 years later, if the charter school policy they helped initiate is fulfilling their expectations and accomplishing what Engler intended.

## **Method**

This is a qualitative study using a historical research design. The research consisted of (a) archival research and document analysis, and (b) open-ended interviews with key insiders who were intimately involved in the origination of charter schools in Michigan. Data was collected and then analyzed, and the principles and procedures derived for oral history were followed.

Elite interviewing played a critical role in this study. Elite interviewing (Dexter, 1970) is a technique whereby the researcher interviews a small population of elite or influential people who possess insights that are privileged and unique. By concentrating on fewer interviewees, the researcher can gain a deeper level of insight and understanding that is normally available only to insiders. For this reason, individuals were identified who played an intimate role in the origin and passage of Michigan's charter school law, the legal battle over its constitutionality, and the regulatory and authorizing issues associated with getting the law implemented.

According to Padgett (1998), sample sizes in qualitative studies can range from one to as many as the researcher needs. By concentrating on the quality rather than the quantity of interviewees, the researcher can acquire an understanding of a particular phenomenon that is only available to insiders and is not commonly known. Using this technique, purposive sampling was used to identify key individuals who were intimately involved in originating Michigan's charter school policy. These insiders included former Governor John Engler and members of his administration; the leader of the State Senate who sponsored the charter school law; the attorneys who helped draft the law and defend its constitutionality; the State Superintendent of Public Instruction; the Board Chair and President of the first university to authorize a charter school; and a representative from the business community that advocated for charter schools and a representative from the education community that opposed charter schools.

It was expected that the insight, information, and explanations shared by these interviewees would form a coherent framework from which the origin and intentions behind Michigan's charter school policy could be systematically documented, described and explained. In order to conduct this research, the following tasks were undertaken:

1. Interview questions were developed and interviewees were identified;
2. An interview protocol was developed using approved open-ended questions;
3. Interviews were scheduled and conducted;
4. Interviews were transcribed and analyzed;
5. Charter school legislation was collected and analyzed;
6. Legal documents and court rulings regarding the constitutionality of Michigan's charter school law were collected and analyzed; and
7. Other key documents pertaining to the origination of charter schools in Michigan were collected and analyzed.

### **Interview Questions**

Prior to scheduling interviews, interview questions were designed and interviewees were identified. The researcher and the committee chair worked together to develop the initial interview questions. Twelve open-ended questions were then used to conduct the interviews (see Appendix A). The researcher and the committee chair worked together to identify the people to be interviewed for this study. Former Michigan Governor John Engler and other key individuals who were determined to have been intimately involved and knowledgeable about the origination of charter schools in Michigan were identified. By limiting the interview process only to insiders who were intimately involved with the origin and passage of Michigan's charter school law, the

legal battle over its constitutionality, and the regulatory and authorizing issues associated with getting the law implemented, it was expected that the information, insight and intentions shared by these interviewees would form a coherent framework from which the origins of Michigan's charter schools could be recorded.

Because Engler was the dominant force in the origination of charter schools in Michigan, it was paramount that he participated in this study. Once he agreed to participate in the study, the following questions were developed in order to better understand what his vision for public education was in 1993 and how he went about trying to turn that vision into reality.

1. What was your vision for public education?
2. Who and what had the greatest influence on the formulation of your vision?
3. Why did you decide to advocate for charter schools?
4. Who did you think would support and oppose your vision?
5. What was your theory of change to turn your vision into reality?
6. Looking back, what are the key policy and implementation lessons to be learned from Michigan's charter schools experience?
7. Is Michigan's charter schools movement accomplishing what you intended and is it fulfilling your expectations?

Table 1 presents a list of the people who were interviewed, along with the position they held and the role they played in fostering Michigan's charter schools movement.

Table 1. Elite Interviewees

Interviewee	Position/role played	Interview date
John Engler	Governor of Michigan (1991–2003).	January 8, 2010
Dick Posthumus	Senate Majority Leader (1991–1998). Sponsor of charter schools bill.	March 28, 2011
Doug Roberts	State Treasurer (1991–1998). Played instrumental role in developing Proposal A, which changed the way Michigan funds public education.	March 28, 2011
Arthur Ellis	Michigan Superintendent of Public Instruction (1995–2001).	December 29, 2009
Mary Kay Shields	Special Advisor to Governor Engler for Charter School Development (1995–1999).	December 22, 2009
Richard McLellan	Managing Partner of Dykema law firm; played key role in political, legislative, legal and regulatory activities.	December 15, 2009
Leonard Wolfe	Attorney with the Dykema law firm; played key role in legislative, legal, regulatory and authorizing activities.	December 15, 2009
W. Sidney Smith	Member of Central Michigan University’s (CMU) Board of Trustees (1991–2000); chaired board when CMU chartered first schools.	December 22, 2009
Louise Plachta	Wife of the late Dr. Leonard Plachta, who served as the President of CMU (1992–2000), when the university first started chartering schools.	December 9, 2009
Margaret Trimmer-Hartley	Spokesperson for the Michigan Education Association from 1996–2006.	September 18, 2010
James Barrett	President, Michigan Chamber of Commerce (1976–2008).	October 5, 2010

## **Interview Process**

Once interviewees were identified, an interview protocol was developed for scheduling and conducting the interviews. Contact was made with each interviewee in order to explain the purpose of the study; discuss the confidentiality of the interview; request the interviewee to participate in the study; and secure permission to record the interview. After each individual agreed to participate, a time and location for the interview was scheduled.

Before conducting each interview, the procedural requirements and the interview protocol were discussed with the interviewee. The researcher then gave a personal introduction and reviewed the purpose of the study. Each interviewee was then asked to sign the IRB-approved Consent to Participate Form (see Appendix B), which also contained information regarding the purpose of the study and authorization to record the interview. Each interviewee was informed that their responses would be confidential and that they would receive a copy of the completed study. No other individuals were present during the interviews between the researcher and the interviewees. During the interviews, all interviewees appeared open and answered all of the questions that were asked.

During the interviews, open-ended questions were asked. Open-ended questions are valuable when seeking opinions from individuals who understand their reasoning behind certain issues. According to Dillman (1978), open-ended questions also enable respondents to vent frustration and state strong opinions. Probing questions were also asked to encourage the interviewees to elaborate on a point, to ascertain if the information was consistent with prior interviews, or to get more detail. Interviews were conducted face-to-face, although two needed to be conducted via telephone due to logistical challenges.

When interviews are used in a qualitative study, it is important to let the voice of the interviewee speak by not overly applying the researcher's own views to the analysis and interpretation. During each interview, probing questions were asked to further clarify and reconcile perceptions provided by the interviewee. A second check employed throughout the interview data collection process was to verify statements for factual discrepancy against the historical and documented record. This was done to increase the credibility of the data and develop an accurate timeline of events and activities.

Each interview was audiotaped and transcribed as a text file in Microsoft Word. This allowed the text to be searched and analyzed. By performing word and pattern searches, the researcher identified six themes. These themes are (a) John Engler, (b) Proposal A and education reform, (c) opposition to school choice and competition, (d) legal and regulatory battles, (e) implementation issues, and (f) lessons learned and retrospective. These themes are described and explained in Chapter 3.

While recording each interview enabled the researcher to document the interview, it is possible that it could have affected the validity of the information collected because the fear of recording what an interviewee says can inhibit their willingness to talk as freely or may cause the interviewee to omit items that could be construed in a negative light.

### **Document Analysis**

Numerous documents were used to conduct this study. Charter school legislation passed by the Michigan Legislature was collected. Legal documents and court rulings related to the constitutionality of Michigan's charter school statute were also collected. Key insider documents and directives from Governor Engler and his Special Advisor for Charter School Development

were also accessed along with magazine articles, newspaper articles, and pamphlets. In addition, archival research was conducted at Central Michigan University, which included an analysis of minutes from meetings of the University's Board of Trustees, a review of charter school policies adopted by the board, contractual documents, and other correspondence related to the authorization and oversight of charter schools.

### **Significance of the Study**

As President Obama and U.S. Secretary of Education Arne Duncan encourage states to remove limits on the number of charter schools that can be authorized and push for more market-based education reforms, Michigan's experience could provide important lessons regarding the complexities associated with moving from a vision for market-based education, to getting that vision translated into policy, and then into practice where a plethora of implementation issues will likely determine whether or not it will accomplish its intended results. As Tyack (1974) wrote in his book, *The One Best System: A History of American Urban Education*, "the way we understand the past profoundly shapes how we make choices today" (p. 4).

Moreover, this study adds to the body of knowledge surrounding public entrepreneurs and policy entrepreneurship. As Mintrom and Norman (2009) wrote, "There is a need for closer study of the motivations and strategies used by policy entrepreneurs. There is also a need for more study of the interactions between policy entrepreneurs and their specific policy contexts" (p. 661).

Through the personal interviews conducted with Engler and other key insiders, this study provides detailed insight regarding the motivations and strategies that Engler and his allies used to advance charter schools and change the way public education functions in Michigan. In

addition, this study provides a foundation for future research. As Mintrom and Norman (2009) wrote, “significant insights can emerge from historical studies . . . that involve a time frame of several decades” (p. 662). This study covers nearly two decades and could serve as the basis for a future study that examines how movements for change, like charter schools, evolve over time. Finally, this study also relates the actions of Engler and his allies to more mainstream theorizations of policy change, which Mintrom and Norman (2009) believed is the type of “breakthrough” (p. 663) work necessary for the concept of policy entrepreneurship to “gain a central place within explanations of policy change” (p. 663).

Finally this study is important because it provides both policymakers and practitioners the opportunity to learn from the past, understand the present, and plan for the future. If the lessons learned from Michigan’s charter schools experience can improve the success of policymakers and practitioners earnestly attempting to improve public education, the lives of countless children may be improved.

### **Limitations**

This study of the origination of charter schools in Michigan was conducted by interviewing former Governor John Engler and other key individuals who were intimately involved in enacting, defending, and implementing Michigan’s charter school policy. Every person who played a key role in this history was not interviewed. By delimiting the sample, it is not possible to generalize these results across all policymakers or representative groups. Nor is it possible to assume that the intentions of all policymakers or representative groups were the same as those interviewed.

Since each interview was audiotaped, one must also consider that interviewees may have been uncomfortable and not fully candid with their answers. Dillman (1978) said this could result in publicly acceptable answers rather than the expression of true feelings. Another concern is the amount of time that has elapsed since Michigan's charter school law was adopted in 1993. It is possible that interviewees may have experienced difficulty fully remembering what transpired.

Finally, when conducting interviews in a qualitative study, the researcher must be cautious about overly applying his or her own views to the analysis and interpretation of data. This issue was of particular concern to this researcher because of the significant involvement he has had over the years with Michigan's charter schools movement.

## **CHAPTER 2**

### **REVIEW OF LITERATURE**

#### **Introduction**

This chapter explores the literature regarding the role of government in education; provides an overview of earlier efforts to reform education through federal policy; describes the origin and definition of charters; explains the philosophy behind market-based education; provides insight regarding the charter idea and its accompanying debate; describes the spread of charter school legislation and its role in the larger national debate over how best to reform and improve public education; and concludes by detailing six major claims being used to promote charters schools.

#### **Government Involvement in Education**

While the idea of government funding education and operating public schools is often taken for granted today, historically schools were typically established and operated privately. The rationale for having government more involved in education can be traced to the philosophy espoused by Horace Mann. Mann is commonly referred to as the father of American public education and served as the first secretary of the Massachusetts State Board of Education when it was established in 1837. For the next 12 years, Mann conducted a campaign for a school system paid for by government and controlled by professional educators. In Michigan, the Northwest Territories Act (1787) dedicated 1/16<sup>th</sup> of each township for the purposes of a public school. But John D. Pierce, who served as Michigan's first State Superintendent of Public Instruction from 1836-1841, determined that these local schools were not getting the support or resources they

needed. Trying to improve the situation, he pushed to have the Northwest Territories Act amended so that the 1/16<sup>th</sup> went to the state rather than the township. Pierce then used this land and the proceeds it generated to create a state system of schools and establish the University of Michigan in Ann Arbor (Pierce, 2011).

Mann and Pierce believed that education was a good public investment and would increase productivity. He believed government had a duty to provide education to every child and that schools should be secular and include children of all religious, social, and ethnic backgrounds. In short, both advocated for what is often referred to as the egalitarian ideal—the idea that universal, free schooling would enable children to overcome poverty and their familial situations.

Despite vast difficulties and vigorous opposition, the main outlines of the extant system were achieved by the middle of the 19th century. Educators such as Pierce and Mann slowly transitioned the United States from a mostly private to a mostly governmental system of schools, which is one of the more significant developments of the 19th century. This transition coincided with a growing view that government ought to play a more significant role in ensuring all children receive a comprehensive education and that schools should help fulfill the American ideal of equal opportunity.

With the U.S. Constitution limiting the powers of the federal government when it comes to schooling, states found themselves in charge of establishing a system of public education. In turn, the states passed large parts of this control on to local communities and local political authorities. While this structure moved away from the market and voluntary exchange approach advocated by Smith (1776/1993) and Mill (1838/1991), it was largely offset by parents being involved with and closely monitoring the people in charge of the local schools.

## Consolidation of Schools

Over time, pressure grew to grant more power to professional educators and consolidate smaller schools into larger ones. After the Great Depression, public sentiment shifted even more towards the virtues of government and centralization, further eroding one room schools governed by lay people. Small and mostly rural school boards were often seen as an obstruction to good school administration, causing some leading educators to push for their elimination and transfer their responsibilities to state certified professional educators. Despite grass-roots opposition by those who saw their small schools being replaced by larger, more comprehensive schools, legislation consolidating schools was eventually enacted by New York's Legislature in 1925 after being heavily lobbied for by state education officials and school district administrators. This new legislation served as a catalyst for the elimination of one room rural schools and marked the beginning of a new era where schools began to get larger and power shifted from the hands of many people serving on local boards to a smaller number of people governing larger entities.

In *Tinkering Toward Utopia*, Tyack and Cuban (1995) illustrated how these consolidation efforts decimated the number of school officials drawn from the general public and shifted control into the hands of public school professionals. This consolidation effort was further aided by the desire of some to incorporate the scientific management practices associated with the industrial age into education so that schools would be more orderly and efficient. Tyack (1974) referred to this as the quest for "the one best system" (p. 7) and described it as follows:

An interlocking directorate of urban elites—largely business and professional men, university presidents and professors, and some "progressive" superintendents—joined forces to centralize the control of schools. They campaigned to select small boards composed of "successful" people, to employ the corporate board of directors as a model for school committees, and to delegate "experts" (the superintendent and his staff) the power to make most decisions concerning the schools. . . . This movement glorified expertise, efficiency, and the disinterested public service of elites. (p. 7)

This movement resulted in a decline in the number of school districts in America from approximately 150,000 in 1929 to less than 15,000 today. In addition, the scientific management practices from the industrial age became ingrained in schools. For example, a vertical system of management, based on boards making policy, and the central office implementing policy through a hierarchical structure of superintendents, assistant superintendents, central office coordinators, principals, assistant principals, department heads, and teachers is commonplace in school organizations. Those at the top make decisions, allocate resources, and generally rely on authority, supervision, and compliance to ensure that they are properly implemented by those at the bottom (Odden & Wohlstetter, 1995).

Friedman (2005) believed that as schools were consolidated and became larger units governed by more distant and impersonal political authorities, the power of parents decreased and the power of professional educators, including teachers, administrators, and union officials grew. Moreover, he argued that this change also shifted what schools were supposed to do. Friedman argued that rather than staying focused on teaching “the three R’s [and] transmitting common values, [schools are] now regarded as a means of promoting social mobility, racial integration, and other objectives only distantly related to their fundamental task” (pp. 51–52).

### **Schools and the Common Good**

While there is general consensus that schools should promote the common good, there are significantly different views about what constitutes the common good and how it is best to be achieved. As America has grown more diverse, the government’s ability to establish what and whose values will be taught has become more politicized. This has resulted in schools being the battleground where many of these social and cultural issues are fought, leaving educators often in a no-win situation.

Some believe that an educational marketplace could provide a viable solution to this situation. For example, Gintis (1995) argued that “markets support diversity by tolerating the disparate preferences of consumers [and that] rather than fighting over what we are to consume in common, markets allow us all to get our own way” (p. 156). On the other hand, opponents of the marketplace believe that individual families will put their private interests ahead of those of the common good, thereby diminishing the broader benefits to society. These differing views reflect a deeper philosophical debate over how best to promote the common good—the aggregation of individual choices through the marketplace or the collective choices made through the political process.

While the benefits of education to the individual are obvious, there is also a common recognition that education is a collective good that accrues to society. Cohn (1979) said the most commonly cited reasons for government involvement in education are (a) the state protection of minors, (b) the externality or benefit to society, (c) the role of education in making democracy work, (d) equality of opportunity, (e) the quest for common values, and (f) the effect of education on economic growth. Savas (1982) said collective goods possess the following characteristics: they are jointly consumed, it is hard to keep people from acquiring them, they are difficult to measure, individuals have little choice in consuming the good, and they generally rely on the political process rather than markets.

Educators often refer to public education as the cornerstone of American democracy. Cusick (2005) wrote that “America’s concerns for equality and democracy have led to the establishment of a comprehensive and universal system of schools” (p. 1). The establishment of this comprehensive and universal system of schools is based on the egalitarian ideal of “education for all” championed by Mann and sees a government-controlled, universal system of

public schools as the best way to promote the common good and ensure all people learn to live together, regardless of their economic class, race, or ethnicity.

Arguing on philosophical grounds, others like Friedman (2005), reject the idea of government serving as the source of the common good based on philosophical grounds. For example, Friedman used a quote by Walter Lippman to argue that entrusting education to the government, rather than to the free market is a result of

The sickness of an over-governed society, the change from the older faith . . . that the exercise of unlimited power by men with limited minds and self regarding prejudices is soon oppressive, reactionary, and corrupt . . . that the very condition of progress was the limitation of power to the capacity and the virtue of rulers, to the newer faith that there are no limits to man's capacity to govern others and that, therefore, no limitations ought to be imposed upon government. (p. 48)

According to Cohen (1982), this newer faith in government can be traced to the Progressive Movement and its view that government, if run by the right people, would do as it was directed and eradicate life's inequities. On the other hand, the older, more skeptical view of government can be traced to the founding of America where government was thought of as a necessary evil that was to be kept small and limited.

According to Levin (1978), even those who are not necessarily proponents of market-based educational reforms are concerned about the mounting body of evidence that shows public education has been unable to reduce poverty or equalize educational opportunity for all. These concerns are not new. For example, Tyack (1974) used a 1939 quote from Newton Edwards to suggest that rather than being "the bulwark of democracy, public schools may in fact become an instrument for creating those very inequalities they were designed to prevent" (pp. 272–273). Kirst and Wirt (1972) were more forceful, stating that "American schooling is structured in a way that undercuts the most basic freedoms of democracy" (p. 235). Coons and Sugarman (1978) also challenged this notion, arguing that a "commitment to equality at the deliberate

expense of the development of individual children seems to us the final corruption of whatever is good in the egalitarian instinct” (p. 191). Similarly, Elmore (1987) argued that public schools do not have inherent authority and when they act as though they do, they violate the basic democratic idea that government derives its authority from the people. He said serious questions must be raised when public schools allow their own interests to dominant the interests of the public they are supposed to serve. Friedman (2005) summarized these various sentiments when he wrote,

The tragedy, and irony, is that a system dedicated to enabling all children to acquire a common language and the values of U.S. citizenship, to giving all children equal educational opportunity, should in practice exacerbate the stratification of society and provide highly unequal educational opportunity. ( p. 54)

### **Federal Reform Efforts**

Education historian Ravitch (2000) said these sentiments are not new and that Americans have argued about public schools for most of the 20th century with each generation supposing “its complaints are unprecedented” (p. 13). Unlike the class barriers of Europe, the egalitarian ideal in America sees public schools as a way to help children overcome their upbringing and take advantage of America’s promise of equal opportunity for all. However, as concerns surfaced about the public schools’ ability to uniformly prepare all children ready to take advantage of America’s promise, calls to reform and improve the performance and productivity of public education intensified.

For example, since 1950 there have been at least seven major efforts to reform and improve education initiated by the federal government alone. One of the first major reform efforts was the 1958 National Defense Education Act, designed to improve math and science

instruction so America would not fall behind the Soviet Union—which had successfully launched the first space satellite, *Sputnik*, the year before.

A second major reform effort happened in 1965, as part of President Lyndon B. Johnson’s “Great Society” legislative agenda. This was the year the Elementary and Secondary Education Act (ESEA) became federal law. ESEA was an effort to use education as a weapon in the “War on Poverty” by addressing the educational inequalities that had been exposed by civil rights activists in their fight to get the Civil Rights Act passed a year earlier. ESEA’s centerpiece was Title 1, which channeled federal funds through the states in an effort to improve education for children from low income families. According to Cohen and Moffitt (2009),

Title 1 established a federal priority in education, to improve the education of children from poor families; it brought federal aid—nearly one billion dollars—to public schools; and it set major changes in the politics of education under way. (p. 2)

Whereas the U.S. Constitution had left education to the states and the states had for the most part delegated the responsibility to the locals, ESEA marked a turning point whereby schools received federal funds for education and an ever larger state and federal influence in their operations.

In 1975, two major reform efforts took effect. First, there was Title IX of the Education Amendments Act which required access to programs, including sports, not be denied on the basis of gender, thereby giving females many more opportunities, especially in athletics. Second, was the Americans with Disabilities Act which required a free appropriate education be provided to all handicapped children, along with an individualized educational plan written to suit their specific needs.

A fifth major reform effort took place in 1983, though this time it did not come in the form of a federal law. Having pledged to abolish the U.S. Department of Education, which

President Jimmy Carter had just established in 1979, President Ronald Reagan and his National Commission on Excellence in Education (1983) released its report, *A Nation At Risk: The Imperative for Educational Reform*. Extremely critical of the nation's schools, two memorable lines from the report—"the educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people" (p. 1) and "If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war" (p. 1)—stimulated even more calls for education reform at the local, state, and national level.

Partly propelled by these ever growing calls for education reform, President George H. W. Bush embarked on a sixth major reform effort in September 1998, when he convened an educational summit with the nation's 50 governors, which was cochaired by then-Arkansas Governor William Clinton. Together, they developed six national education goals that were first announced by President Bush in his State of the Union Speech in January 1990. Six months later, the National Education Goals Panel was established to monitor progress toward these goals. Later, Governor Clinton became President of the United States and continued the effort to raise standards and drive systemic reform. In 1994, Clinton led an effort that codified these standards into federal law through the enactment of the Goals 2000 Act and the School-to-Work Opportunities Act.

The seventh major reform effort, the No Child Left Behind Act of 2001, represents the largest nationalization of education policy in the history of the United States and needs no mention in its own right. While NCLB continued trying to change the way the educational system operates, it also marked a significant and controversial departure—using charter schools as a means to drive change from outside the educational system using market-based principles

like choice and competition. According to former Secretary of Education Rod Paige (2006), the “theory of action” underlying the Bush administration’s education policy agenda was that “accountability, transparency, and choice are the keys to excellence in American education” (p. 14). Based on this theory of action, charter schools were included for the first time in federal law as part of the larger educational system and used as both a means for driving organizational change by establishing new schools outside the regular educational system and as a threat to traditional public schools that failed to make adequate yearly progress.

Causing the educational system to change through federal policy is a complex endeavor though, in part because it is a system governed largely by local school districts through their elected boards of education. Elmore (1980b) identified the challenges associated with using legislative policy to positively effect change in complex systems and highlights the problems that occur when trying to turn policy goals into administrative action. Elmore (1980b) referred to this as “the implementation problem” and said,

The traditional devices that legislators have relied upon to control policy implementation—more specific legislation, tighter regulations and procedures, centralized authority, and closer monitoring of compliance—probably have an effect opposite of that intended. Rather than increasing control, they increase complexity. And as complexity increases, control itself is threatened. (p. 342)

According to Elmore (1980b), the more policymakers attempt to ensure their policies fulfill their intended goals, the more they tend to use hierarchical controls involving regulation and compliance. However, and perhaps counter intuitively, the success of their policies largely depends on the skill and initiative of the people implementing them. This interdependence of policy and practice means policy goals have the best chance of being accomplished when the people actually implementing the policies are willing to take the initiative and personal responsibility for accomplishing the intended results. For this to happen, practitioners need the

authority to exercise professional judgment and discretion. Elmore (1980b) referred to this as delegated control because it “relies on individual judgment as a substitute for complex administrative procedure” (p. 343).

Similarly, Cohen (1982) explained how the expansion of both policy and organization are reshaping the process and content of education decision making. He wrote,

Decisions are more complex, more fractionated, and more fractious. They take more time. All of these changes exact a price. Complaints mount that it is more difficult to get things done. Americans commonly describe this situation in one word—bureaucracy. (pp. 485–486)

Those critical of the bureaucracy in education often recite figures showing that although education spending has progressively risen over the years, academic achievement has fallen. This notion is referred to in economics as the theory of bureaucratic displacement developed by Dr. Max Gammon. Friedman (2005) cited this theory in order to illustrate why he believes giving public schools more money will not improve their productivity—“in a bureaucratic system . . . increase in expenditure will be matched by a fall in production. . . . Such will act rather like ‘black holes’ in the economic universe, simultaneously sucking in resources, and shrinking in terms of ‘emitted’ production” (p. 52).

However, Cohen (1982) argued that bureaucracy and organization is not the same thing. He said most think of bureaucracy as an administrative issue that can be solved by “reducing regulations, decreasing paperwork, simplifying language, firing staff, and increasing coordination” (p. 486). Unfortunately, this simplistic notion of bureaucracy does not contemplate the impact that special interest groups have on government, or the often competing and conflicting policies that have accumulated over time. Cohen (1982) described this as a collision between “an old and abiding skepticism about government, and an accumulation of educational policies that embody great faith in government” (p. 487).

## Free-Market Philosophy

The collision between those skeptical of government and those who have great faith in government has resulted in what some refer to as the “education war” between those who believe the best way to improve public education is through the power of the free market and those who believe the best way is through more government involvement and funding. The philosophy of those who believe in the free market and the power of competition can be traced to the writings of 18th-century philosopher, Adam Smith. Smith (1776/1993) wrote *The Wealth of Nations* and referred to the power of the market as “the invisible hand” (p. 26) that ensures the activities most beneficial and efficient will naturally be those that are profitable. In a similar fashion, philosopher John Stuart Mill (1838/1991) argued that most things tend to be accomplished better by individuals than by government.

In 1995, Friedman (2005) incorporated this free-market political philosophy in an academic article he wrote called, “On the Role of Government in Education.” In this article, Friedman questioned the justification for the government administration of public schools and proposed the use of vouchers as a way to separate government funding for education from the government operation of schools. Friedman’s (2005) argument is based on the economic theory that society should advance the “freedom of the individual, or more realistically the family” (p. 1), as its ultimate objective “by relying primarily on voluntary exchange among individuals for the organization of economic activity” (p. 1).

Friedman (2005) argued that “a stable and democratic society is impossible without a minimum degree of literacy and knowledge on the part of most citizens and without widespread acceptance of some common set of values” (p. 2). He also argued that education contributes

greatly to these ends. Nevertheless, he ardently distinguished between the government providing public funding for education and the government administering schools.

According to Friedman (2005), the proper function of government in a free, voluntary exchange economy is to “preserve the rules of the game by enforcing contracts, preventing coercion, and keeping markets free” (p. 1). He went on to say that there are only three major grounds when voluntary exchange is unworkable, and therefore government intervention can be justified. The first is “natural monopoly” (Friedman, 2005, p. 1) or similar market imperfections that make competition and voluntary exchange unworkable. The second is the existence of substantial “neighborhood effects” (Friedman, 2005, p. 1), whereby “the action of one individual imposes significant cost on other individuals for which it is not feasible to make him compensate them or yields significant gains to them for which it is not feasible to make them compensate him” (p. 1). The third occurs from an ambiguity in the goal rather than the difficulty of accomplishing it through voluntary exchange, namely, “paternalistic concern for children and other irresponsible individuals” (Friedman, 2005, pp. 1–2).

Friedman (2005) claimed that a “stable and democratic society is impossible without widespread acceptance of some common set of values and without a minimum degree of literacy and knowledge on the part of most citizens” (p. 2). Because the value of a child’s education benefits other members of society, and it is not possible to identify those who benefited or the monetary value of their benefit, a significant “neighborhood effect” exists. Thus, the state can be justified in requiring a minimum level of education and providing the funding necessary to support that education.

However, Friedman (2005) strongly disagreed with the idea of the government operating schools calling it, the “nationalization of the education industry” (p. 4). He believed that the

operation of a private marketplace of schools would be better and more productive than government operated schools because there would be greater incentives to be efficient and the dynamics of choice and competition would force schools to continuously improve.

Friedman's views garnered even more attention after President Jimmy Carter signed the Department of Education Organization Act in 1979, which established the U.S. Department of Education over the objections of mostly Republicans who argued education was not even mentioned in the Constitution of the United States and that this was just more federal interference with local affairs. In addition, court and legislative decisions continued to reduce the autonomy of local school boards, which, according to Katz (1971), had been historically able to operate more autonomously, almost in a private-like manner, molding their schools to reflect the political, educational, and religious values of their community. As the federal and state educational influence and funding grew, schools became more similar in their policies and practices, which resulted in a significant reduction in the freedom and individuality of public schools from one community to another (Husted & Kenny, 2002).

Building upon Friedman's writings, market-based advocates began claiming that the government's financing and operation of public schools was failing to accomplish what it had set out to do and was wasting enormous amounts of tax dollars in the process. They also began to cite reports showing that the government's involvement with schools was contributing significantly to the poor academic and social preparation of too many students, especially minority and poor students, as indicated by the much publicized achievement gap.

As a result, some began calling for market-based reforms and the deregulation of schools, believing only major changes in the way educational systems were governed, managed, and financed would result in real change. Over time, these calls which were mostly articulated by the

business community began to gain traction as more policymakers became frustrated with the lack of change and improvement resulting from their policy efforts.

Political leaders became further frustrated with their inability to reform education through policy as more reports were published showing that America was falling behind in the global economy, and that even though more money was being spent on education, the results were not improving. This caused some political leaders to become more open to the idea of trying market-based strategies as a way to improve public education and compete in the global economy. Politically though, choice and competition in education had been historically associated with private voucher programs. This fact often makes political leaders hesitant to support market-based proposals because they tend to be extremely controversial, and often involve fierce ideological, political, and legal battles over shifting education to the private marketplace and providing public funds to religious and other nonpublic groups that would likely operate schools.

So when charter schools, or what Mintrom and Vergari (1997) called an “educational policy innovation designed to promote school choice in the United States” (p. 43), began to appear as a non-voucher approach for fostering educational choice and competition, policymakers became very interested. From a public policy standpoint, charter schools gave political leaders a viable market-based reform strategy that they could use to advocate for choice and competition *within* public education. Further, with charter schools being public schools, political leaders were able to mitigate the privatization and undermining public education arguments used against them by voucher opponents.

## The Charter Idea

Rather than thinking of charter schools as a type of school, this study uses Mintrom and Vergari's (1997) scholarship and views charter schools as a market-based policy innovation designed to promote school choice and competition within public education. Levin and Belfield (2003) added that charter schools "simulate some of the dynamics of a market by increasing the supply of alternatives to parents and by competing with existing public schools" (p. 188).

Joe Nathan (1996), one of the Minnesotans involved in passing the nation's first charter school law, explained the charter school idea in his book, *Charter Schools: Creating Hope and Opportunity for American Education*, as follows:

The charter school idea is about the creation of more accountable public schools, and the removal of the "exclusive franchise" that local school boards presently have. Charter schools are public, nonsectarian schools that do not have admissions tests, but that operate under a written contract, or *charter*, from a school board or some other organization, such as a state school board. These contracts specify how the school will be held accountable for improved student achievement, in exchange for a waiver of most rules and regulations governing how they operate. Charter schools that improve achievement have their contracts renewed. Charter schools that do not improve student achievement over the contract's period are closed. . . .

The charter idea is not just about the creation of new, more accountable public schools or the conversion of existing public schools. The charter idea also introduces fair, thoughtful competition into public education. (p. xxviii)

Thinking of charter schools as a market-based policy innovation designed to promote school choice and competition within public education is an important distinction because too often the very words *charter schools* confuse people into thinking charter schools are a type of school that educates children. In reality, many of the original advocates thought of charter schools as a legislative strategy for fostering choice and competition within public education in order to fundamentally alter the way public schools operate. Ted Kolderie (1995), another one of the Minnesotans involved in passing the nation's first charter school law and considered to be one of the key thinkers behind the charter schools movement, attempted to explain this point:

Despite what the words seem to imply, “charter schools” is not basically about the schools. For the teachers who found them and the students who enroll in them, true, it is the schools that are important. But for others, from the beginning, “charter schools” has been about system-reform, a way for the state to cause the system to improve. (p. 1)

Kolderie (1995) argued that policymakers became receptive to the policy innovation called charter schools because they had been unsuccessful getting school districts to improve through other means—money, best practices, exhortation, threats, standards-based systemic reform, and so forth. Kolderie (1990) believed these other attempts failed because they were the result of policymakers trying to “improve existing schools within existing arrangements” (p. 6). He went on to describe the existing arrangement as a regulated public utility model.

The existing arrangement has been . . . a checkerboard pattern of districts financed by taxes and appropriations, each with an “exclusive franchise” to offer public education within its boundaries. With customers required by law to use the service and assigned to the organization serving their “district,” such an arrangement effectively guarantees the organizations and the people in them most everything important to their material success: their enrollments, their revenues, their jobs, their incomes—and their existence. (pp. 6–7)

Kolderie (1990) argued this regulated public utility model resulted in states demanding improvements, districts promising to improve, and an endless exchange of money for promises. So when the policy innovation called charter schools presented a way to get leverage on school districts and their allies, many policymakers were naturally attracted. They saw charter schools as viable political policy for removing the exclusive franchise school districts held over the provision of public education. Kolderie (1990) referred to this strategy as *chartering*.

It’s the state action to redefine public education, by making it possible for someone other than the superintendent to start and run a public school . . . making it possible for someone other than the local board to offer public education in the community. (p. 1)

Policymakers were also attracted to the strategy of chartering because they believed the dynamics of choice and competition would force schools to continuously improve in order to effectively compete for students and the dollars that accompany them, or risk going out of

business. Vergari (2007) said charter school policies “challenge the legitimacy of traditional power and funding arrangements in public education” (p. 15), thereby generating significant ideological and political power struggles. Moreover, the market-oriented, yet public nature of charter school policies is even challenging some of the long held views about what constitutes public education and what constitutes private education.

### **The Charter Debate**

Charter school policies have created a fierce debate between those who believe charter schools and the market-based approach they represent are essential for reforming public education and those who believe they will undermine and harm public schools. For example, charter school proponents usually support market-based reforms and cite the power of choice, competition, and accountability to improve student achievement by forcing schools to be more effective and efficient or risk being put out of business. On the other hand, charter school opponents are usually opposed to market-based reforms and express concerns about turning education and the democratic ideal of the common good over to the marketplace, believing private interests will put profits ahead of children.

Molnar (1996) exemplified how some opponents of market-based educational reforms view the stakes:

The struggle is not, at its root, between market-based reforms and the educational status quo. Rather, it is a battle over whether the democratic ideal of the common good can survive the onslaught of the market mentality that threatens to turn every human relationship, inside and outside the classroom, into a commercial transaction.

Charter schools will fail, fraud will be uncovered, and tax dollars will be wasted. But just as certainly, glowing testimony will be paid to the dedication and sacrifice of the selfless teachers and administrators at some “Chartermetoo” school who transformed the lives of their students, and proved the success of charter school reform. Free-market zealots will claim vindication or argue that their revolutionary ideas need more time to work. Supporters of public education will call the experiment a costly failure and marvel at the willingness to spend large sums on unproven alternatives, while cutting resources for the public system that serves most children. With an absence of any uniform

standards, the war of educational anecdotes and misleading statistics will remain “subject to interpretation.” And all the while, the desperation of America’s poorest children and their families will grow. (p. 167)

Conversely, in a column published in the *Wall Street Journal*, Finn (1998) exemplified how some proponents of market-based reforms view government run schools:

The public school system as we know it has proved that it cannot reform itself. It is an ossified government monopoly that functions largely for the benefit of its employees and interest groups rather than for children and taxpayers. American education needs a radical overhaul. For starters, control over education must be shifted into the hands of parents and true reformers—people who will insist on something all together different than murmuring excuses for the catastrophe that surrounds us. (p. A22)

Besides being strident, these opposing opinions reflect different views about the proper balance and relationship between government and the private sector. In many ways the charter schools debate is simply an extension of the debate between those who advocate for more government and those who advocate for less government. Charter school advocates often cite the benefits that will come from the private sector and the introduction of market forces into public education, while opponents often cite the need for the government to protect public education from the marketplace because public schools are the cornerstone of American democracy and fulfill the egalitarian ideal.

### **Origin and Definition of Charter Schools**

By definition, a charter is a document issued by a sovereign, legislature, or other authority, conferring certain rights and privileges. One of the best known charters dates back to 1215, when the Magna Carta was signed to guarantee the English certain freedoms. Early explorers also often signed charters that defined their expeditions. In education today, the term *charter* is associated with a market-based policy innovation that states are using to promote school choice and competition within public education. A school that is chartered is commonly understood to be an independent, autonomous public school licensed by a public authority,

known as an authorizer. The charter itself is the legal contract or agreement between the authorizer and the chartered school. In theory, a chartered school is supposed to be significantly freed from rules and regulations in exchange for raising student achievement.

According to the definition used by the U.S. Department of Education's (2004b) Charter Schools Program, the term *charter school* means a public school that

1. In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph [the paragraph that sets forth the Federal definition]
2. Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction
3. Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency
4. Provides a program of elementary and secondary education, or both
5. Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution
6. Does not charge tuition
7. Complies with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and Part B of the Individuals with Disabilities Education Act
8. Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated
9. Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program [Public Charter School Program]
10. Meets all applicable Federal, State, and local health and safety requirements
11. Operates in accordance with State law
12. Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school. (pp. 6–7)

A chartered school is typically created by teams composed of educators, parents, community and business leaders, and entrepreneurs, according to a performance contract or charter. Interestingly, the origin of the word *charter* being associated with education started with

a man who taught and served as a junior high principal in East Lansing, Michigan. Later, in 1974, as a professor of Educational Administration at the University of Massachusetts, Ray Budde (1988) presented a paper on reorganizing school districts to the Society for General Systems titled *Education by Charter: Restructuring Schools Districts*.

Budde received no response when he asked his colleagues if his proposal made sense. If it was workable? And if they thought a district would be willing to give it a try? The reason he received no response is because none of his colleagues thought there was a problem significant enough with public schooling to require such a restructuring. So he put his paper away and went on to other things.

Then after the release of *A Nation at Risk: The Imperative for Educational Reform* in 1983 by the National Commission on Excellence in Education, and the attention to public schooling that followed, Budde retrieved his paper and got it published by the Northeast Regional Lab. Unbeknownst to Budde, his concept received national attention on March 31, 1988, when Albert Shanker (1988), president of the American Federation of Teachers, gave a speech to the National Press Club advocating the idea of teachers being allowed to set up autonomous schools, saying Budde had the best name of all for these schools—“charter schools.”

### **The Spread of Charter School Legislation**

Illustrating how academic scholarship can influence public policy, a group in Minnesota began trying to take the charter idea and transform it into legislation. After failing in their first two attempts to convince Minnesota’s policymakers to enact charter school legislation, they tried a third time and in 1991, Minnesota became the first state in the nation to adopt a charter school

law. Since then, the charter schools concept has spread rapidly across the nation, with now 41 states and the District of Columbia having enacted charter school laws.

Legislation enabling charter schools varies greatly across the nation because it arises out of each state's political and bureaucratic context. Moreover, a state's charter school law—and the formal and informal regulations that implement it—profoundly affects the charter development process, the charter granting process, and ultimately the ways in which the schools themselves operate and relate to their authorizer. As a school that educates students, charter schools are commonly defined as nonsectarian public schools of choice that operate with freedom from many of the regulations that apply to traditional public schools and are licensed by a public authority, known as an authorizer.

Authorizers are generally public entities that are permitted under a state's charter school law to authorize, oversee, and renew or terminate charter schools. It is through this authorization that an individual charter school is granted the authority to operate and receive public funds according to the terms of a written agreement called the charter. The charter is a legal agreement between the authorizer and the school, and outlines the respective roles, responsibilities, and obligations each is to fulfill. Charter schools are to be independent and autonomous from their authorizer and are usually founded by teams composed of educators, parents, and community and business leaders.

The first presidential support for the growth of charter schools came from President Bill Clinton, who challenged states to adopt charter school laws in his 1995 State of the Union address. Clinton also persuaded Congress to appropriate millions of dollars to provide access to startup funding for charter schools. On October 22, 1998, Clinton signed the Charter School Expansion Act of 1998 to bolster the efforts “to support charter schools, providing parents and

students with better schools, more choice, and higher levels of accountability in public education.” More recently, President Barack Obama embraced charter schools in a speech delivered to the U.S. Hispanic Chamber of Commerce on March 10, 2009, where he said, “The future belongs to the nation that best educates its citizens” (p. 1). Obama went on to discuss how charter schools are an important strategy for promoting “excellence and innovation” (p. 5).

### **Charter Claims**

The market-based philosophy behind the adoption of charter school laws is essentially twofold. First, schools will be better if they are freed from unnecessary rules and regulations, in return for strict accountability. Second, competition for students and the dollars that accompany them, will force all public schools to improve or go out of business.

Wells (1998) grouped the claims being used by charter school proponents into the following six categories: accountability, efficiency, competition, innovation, choice, and autonomy. Each category is briefly explored from the perspective of both charter proponents and charter opponents.

#### **Accountability**

Charter school proponents argue that charter schools will be held strictly accountable for student outcomes or face sanctions up to and including having their charter revoked. Further, proponents argue that this type of performance-based accountability should replace the rule-based accountability that focuses on inputs and processes rather than outputs and results. However, Finn, Bierlein, and Manno (1996) wrote in their first Hudson Institute study on charter schools that they had “yet to see a single state with a thoughtful and well-formed plan for evaluating its charter school program” (p. 8).

Four years after he and his colleagues expressed their concerns about accountability or the lack thereof, Finn (2000) proposed *Accountability Via Transparency*, whereby charter schools would report on student achievement, their organizational viability, and their compliance with law. Finn was worried that charter schools were going to fall into the accountability-via-regulation system that he felt most public schools labored under. So he wanted to provide charter schools an alternative that he hoped could also serve as a model for the traditional system. Under Finn's proposal, a school's achievement would be reported in absolute, value-added, and comparative terms. The absolute terms would assess the school against the standards in its charter. The value-added terms would assess student learning gains from the beginning of the year to the end of the year. And the comparative terms would assess the school's performance against district, state, and national norms.

Bracey (2002) said charter schools have not moved to adopt Finn's proposal. He goes on to argue that the approach outlined by Finn "seems at least as onerously complex as the bureaucracies the charters were invented to escape" (p. 66). Bracey's rationale was that for an oversight agency to competently collect, verify, and report all of the data proposed by Finn, that agency would have to be much larger than current state departments of education because it would be dealing directly with individual schools rather than districts.

The accountability issue is further complicated by the question of who the charter is accountable to. The market theory of charters answers that parents are in charge and that if they are not satisfied with the education their children are receiving, they will "vote with their feet" and leave. On the other hand, charters are also accountable to their chartering agency which, typically by law, must ensure the schools they charter fulfill the goals in their charter and comply with applicable state and federal law.

## **Autonomy and Empowerment**

Charter school proponents claim that by empowering charter schools with autonomy and freeing them from bureaucratic rules and regulations, they will be able to better meet the needs of students and their families. Another claim by charter school advocates is that schools need to be freed from bureaucracy and unnecessary rules and regulations. However, Cohen (1982) contended that “many proposed solutions to what we think of as the bureaucracy problem assume that it is essentially administrative: reducing regulations, decreasing paperwork, simplifying language, firing staff, and increasing coordination” (p. 486).

Cohen (1982) went on to say that initiatives like decreasing paperwork, although commendable, will not reduce the many overlapping and conflicting policies that have accumulated as both government and schools have become more complex. Another way charter schools have tried to gain more autonomy and efficiency is through privatization. The idea that private ownership is beneficial is based on the theory of private property rights, which suggests that the incentives of decision makers to manage in the most effective manner are based on their ability to obtain profits for themselves. Some of the inherent elements of privatization, like efficient organizational structures, autonomous leadership, nonunionized staff, and merit-based compensation, are commonly associated with charter schools.

## **Efficiency**

Charter school proponents claim that by freeing charter schools from burdensome rules and regulations, they will be able to accomplish more with fewer resources. Efficiency is often linked to privatization as well. Many people oppose the idea that the delivery of education should be privatized and that organizations should be able to make a profit running schools. Concerns that private providers of education will be committed to the ideals of fairness, equity, and the

common good are central to this view. For example, in his book, *The War Against America's Public Schools: Privatizing Schools, Commercializing Education*, Bracey (2002) argued that

Some reformers are mere opportunists who look at the \$700 billion that the United States spends in all sectors of education and want some of those dollars. Others truly believe that a market-driven system would lead to a better education for all. Still others would like to teach religion in publicly supported schools without having to worry about the niceties of the First Amendment. And others, especially those starting charter schools, have a "vision" of what education should look like. (p. ix)

On the other hand, charter school proponents argue that just because government has assumed responsibility for educating all children, education does not need to be delivered in government run institutions—just as government food stamps need not be spent in government grocery stores.

## **Choice**

Charter school proponents claim that charter schools will create an educational marketplace that will empower both parents and educators by providing them new options from which they can choose. Opponents argue that a choice-driven educational marketplace will only serve to exacerbate social inequalities and benefit wealthier families who are better informed and able to use the marketplace to their advantage. Levin and Belfield (2003) wrote that equity can be assessed in terms of either inputs or outcomes. Since charter school proponents claim to be focused on results, they typically take the view that equity should be assessed in terms of outcomes like student learning and their preparation for college or other postsecondary pursuits. On the other hand, those who view that equity should be assessed in terms of inputs are concerned that the educational marketplace being created by charter schools will simply serve to exacerbate funding and resource inequities that already exist between schools.

## **Competition**

Charter school proponents claim that infusing competition into the public educational system will force schools to compete for students, thereby making them more responsive to the needs of students and their families. Clark (1968) argued that the primary opposition to an educational marketplace is due to the fact that the current educational system has essentially become a monopoly. He described the current educational system's opposition to market-based reforms as follows:

What is most important in understanding the ability of the educational establishment to resist change is the fact that public school systems are protected public monopolies, with only minimal competition from private and parochial schools.

As long as local school systems can be assured of state aid and increasing federal aid without the accountability, which inevitably comes with aggressive competition, it would be sentimental, wistful thinking to expect any significant increase in the efficiency of our public schools. (pp. 110–111)

Charter school proponents also argue that financing schools according to pupil numbers and holding them accountable for results will create a dynamic where success is rewarded and continued failure leads to exit from the marketplace, thereby causing performance to improve (Glazer, 1993). They further argued that moving to an educational marketplace will benefit American society as a whole. For example, Friedman (2005) argued that a better educated workforce would raise productivity and expand economic growth:

A better-schooled workforce promises higher productivity and more-rapid economic growth. Even more important, improved education could help narrow the income gap between less skilled and more skilled workers and would fend off the prospect of a society being divided between the haves and have-nots, of a society in which an educated elite provides for a permanent class of unemployables. (p. 92)

## **Models of Innovation**

Charter school proponents claim that by providing charter schools with autonomy and freeing them from unnecessary rules and regulations, they will be able to be more innovative,

test new approaches to teaching and learning, and serve as the research and development arm for public education. Market-based advocates like Friedman (2005) also argue that an educational marketplace would attract many new entrants. Some would come from public education, some would come from business, and some would come from other industries. Some would likely be established by nonprofit groups, while others would be established by for-profit groups.

According to Friedman (2005),

There is no way of predicting the ultimate composition of the school industry. That would be determined by competition. The one prediction that can be made is that only those schools that satisfy their customers will survive—just as only those restaurants and bars that satisfy their customers survive. Competition would see to that. (p. 64)

In the next chapter, I will proceed with the story of how Michigan's charter school policy originated. Besides being an interesting story, it illustrates how these underlying ideas can influence the thinking and actions of those in political power and their approach to public policy.

## CHAPTER 3

### CHARTER SCHOOLS COME TO MICHIGAN

#### Introduction

Recall that I interviewed 11 men and women who played key roles in the origination of Michigan's charter schools policy. Thus, in some ways, I could tell 11 different stories here, albeit overlapping ones. Instead, my goal was to make some collective sense of the narrated events, while also accounting for variations in the different versions.

As explained in Chapter 2, charter schools did not originate in Michigan by accident. Rather, the origin of Michigan's charter schools policy can be traced to the economic and political philosophies espoused by Smith (1776/1993) and Mill (1838/1991). The market-based orientation of Michigan's charter school policy can also be directly traced to the more recent writings of Friedman (1962) and Chubb and Moe (1990) and their advocacy for returning to a market-based educational system guided by parental choice and competition.

The idea that free-market principles could be used to fundamentally change and improve public education had been around for years. After decades of attempts to reform America's public schools, market advocates had become sure that the only way to truly improve public education was to unleash the power of choice and competition in order to create an educational marketplace that would force schools to improve or go out of business. This faith in the power of markets to fundamentally change the paradigm by which public education operates is best illustrated by the following quote from Chubb and Moe (1990): "It [school choice] has the capacity all by itself to bring about the kind of transformation that, for years, reformers have been seeking to engineer in myriad other ways" (p. 217).

The idea of using choice and competition to create an educational marketplace was historically associated with attempts to privatize public education through voucher programs. These attempts were extremely controversial and involved fierce ideological, political, and legal battles. In fact, many policymakers had become reticent about even mentioning the “V” word, lest they receive the wrath of educators and others who interpreted the mere mention of vouchers as an attack on the ideals of public education. This sentiment was common in Michigan as well. On November 3, 1970, after a contentious public debate Michigan voters adopted Proposal C, better known as the Parochial Aid Amendment, which constitutionally prohibited any state school aid funds from being provided to nonpublic schools, even indirectly. So when the charter schools idea emerged on the national scene as a way to foster choice and competition within public education rather than through private school vouchers, Michigan’s newly elected Governor, John Engler, was intrigued.

### **John Engler as Policy Entrepreneur**

Born in 1948, John Engler grew up on a cattle farm in Beal City, a rural mid-Michigan community. He attended Michigan State University and graduated with a degree in agricultural economics in 1971. Using a plan he developed as part of a college class, Engler challenged and defeated an established Republican incumbent, winning election to the Michigan House of Representatives at the age of 22. Engler served in the House of Representatives from 1971–1978. He was then elected to the State Senate, where he served in the minority party from 1979–1983.

In 1984, at the age of 35, Engler became the Senate Majority Leader after orchestrating a dramatic recall of two Democratic State Senators who had voted for a plan pushed by then

Democratic Governor James Blanchard to raise state income tax by 38%. Within a month of taking office, Blanchard had followed the advice of his budget advisory panel and proposed a 38% hike in the state income tax as a way to deal with Michigan's budget crisis. With Democrats in control of the governor's office and the entire Legislature, Engler countered with a Republican proposal for a temporary, one-year tax increase to deal with the situation. The Republican proposal was voted down and the Democratic proposal was adopted, despite every Republican Senator, except for one, Senator Harry DeMaso of Battle Creek, voting against it. On January 29, 1983, Governor Blanchard signed the bill into law, explaining that the 38% income tax increase was needed to "rescue the state from bankruptcy" ("Michigan Governor," 1983).

Leading up to the vote, protesters began to emerge, threatening to recall Blanchard and others. After Blanchard signed the bill into law, recall efforts began almost immediately. One target was Senator Phil Mastin (D-Pontiac), who became the first Michigan legislator to be recalled from office ("No Headline," 1983). Eight days later, on November 30, 1983, Senator David Serotkin (D-Mt. Clemens) became the second Michigan legislator to be recalled ("Michigan Voters," 1983). These two recalls shifted the balance of power from a 20 to 18 Democratic majority to a 20 to 18 Republican majority in the State Senate where it has remained ever since. This shift in power, combined with the credit Engler received for orchestrating these recalls, paved the way for him to become the new Majority Leader of the now Republican-controlled State Senate (Whitney, 2002).

Engler used his six years as Senate Majority Leader (1984-1990) to rebuild and reenergize Michigan's Republican Party which had not taken advantage of the groundswell that propelled Ronald Reagan to the presidency in 1980. Reagan championed entrepreneurship, deregulation, and free markets. He also espoused free-market thinking and believed the private

sector was a better and more cost-effective way to provide goods and services than government. In his January 20, 1981 inaugural address, he explained: “Government is not the solution to our problems; government is the problem.” As Reagan’s philosophy gained popularity and began to spread, it became known as the “Reagan Revolution.”

In 1990, Engler and his allies used the momentum created by the Reagan Revolution, and a campaign message of “lower taxes, better schools, safer neighborhoods, and a cleaner environment” (Whitney, 2002, p. 115) for a one percentage point victory over incumbent Democratic Governor James Blanchard. Engler’s election as Michigan’s 46th Governor was a big surprise because he had been down double digits in polls conducted just prior to the election.

Schneider et al. (1995) argue that “policy entrepreneurs” are skilled political actors who overcome resistance to change. While social science theories often view change as occurring incrementally, these authors argued that “change can be sudden, producing radical shifts in the status quo, [and that] in complex human social systems, radical change can be produced by actors within the system” (p. 1). As the previous overview of his rise through the political ranks illustrates, Engler was a skilled political actor who produced radical shifts in the status quo by repeatedly challenging established interests, whether they be Republican or Democrat. Kingdon (1995) referred to this as the ability to take advantage of “windows of opportunity” (p. 20).

Engler developed a reputation for his political acumen, knowledge of the political system and its rules, and a willingness to challenge the status quo. These characteristics played a significant role in Engler’s rise in power and, as will be seen later in this narrative, played a significant role in the origin and evolution of charter schools in Michigan. Jim Barrett, the long-serving president of the Michigan Chamber of Commerce and political veteran, saw Engler’s public policy acumen as unparalleled:

John Engler is the smartest, most knowledgeable Governor . . . in terms of his knowledge of the way government operates, his knowledge of public policy issues, and how to get things done through the political and legislative process. There was nobody . . . as capable of bringing about dramatic change on the public policy front as John Engler.

Sid Smith, an accomplished entrepreneur in the private sector, said he saw Engler's entrepreneurial talent when he first ran for State Representative: "I always said, and still do, that John Engler could have done anything we wanted to do from the standpoint of business, education, or government service. He's very much an entrepreneur."

Attorney Richard McLellan, who was a personal friend and political ally of Engler, said Engler was always trying to find ways to be creative: "Engler was always thinking about what he wanted to accomplish. He was always thinking, 'How can I do something creative?'" He was a serious student of politics: "[He would] sit around on the weekend and read the Constitution."

In Barrett's opinion, Engler was able to leverage his passion for public policy, his legislative experience, and his legal training in order to accomplish many of his goals:

I think he was advantaged by getting his law degree. It created a better understanding of some of the legal issues that were involved in public policy change. He had the breadth of experience with his service in the House, then the Senate, then as Senate Majority Leader, and then for three terms as Governor. He lived politics and public policy. He would call me morning, noon, night, weekends—if I was on vacation, it didn't matter. He was just thinking politics and public policy all the time. [It] was his hobby in addition to his vocation.

McLellan said Engler learned the rules of the legislative process and was able to use this knowledge to his advantage when trying to get his policies passed. McLellan illustrated his point by describing what he tells each new class of policymakers when he serves as an instructor for the Michigan Political Leadership Program about the tools needed to be effective at changing public policy:

I tell them to be effective in changing policy, you have to have power. How do you get power? You have to win elections. You need to have power, then you need to know the rules of the game, and you need to follow the money, because it's always about the

money. John Engler learned that when he was a freshman minority legislator. He learned the rules, if you know the rules, that gives you power, because most legislators don't know the rules.

McLellan also said Engler had an amazing ability to quickly read and understand the key points of legislation:

He could read a bill faster than anybody. You could give him a 40-page bill and he'd be sitting there talking to you -- as you know, bills are hard to read -- and he'd be able to tell you what the real key point was.

Doug Roberts, who was appointed state treasurer by Engler and played an instrumental role in the development of the school finance reform package known as Proposal A, thought Engler was advantaged in his ability to get things done because he knew the rules and processes of government: "He knew more than anybody else, he knew more than I did and I worked very, very hard at it, I believe that I'm a good technical person, and he is better."

Mary Kay Shields, who served as Engler's Special Advisor for Charter School Development, recalled first meeting Engler when she was working for the [Republican] minority leader in the House; the year was 1983 and she had been tearing apart the *A Nation at Risk* report to see how Michigan had fared when a gentleman came

Flying into the office and started arguing point by point with me. I had no idea who he was. . . . But after he left, I turned to my boss and said, "Who the hell was that?" "That's John Engler, the leader of the Senate." He was the first politician I knew who was as learned on an issue as I was.

Shields went on to have numerous other interactions with Engler after that first encounter and was eventually recruited by Engler to play a leadership role in making sure his charter school policy was aggressively implemented. From her perspective, Engler was a hard worker, who was always preparing so that when opportunities presented themselves, he was in a position to take advantage of them:

[Engler] is relentless in understanding all aspects, all facets, and all angles of an issue. That's what Engler does. He works hard, studies the issue, studies people, studies the process, studies the Constitution, and then when an opportunity does open up, it's all that hard work that prepares him to best use that opportunity.

Roberts also remembered Engler as a tireless worker:

He was one of those people . . . who needed less sleep . . . and never wasted his time. He would often wake up early in the morning and read for several hours. And somebody will say, "What difference does that make?" Take anybody on this earth, give them a couple of extra hours, and if they use it productively, they will know more than everybody else. He just knew more. And he worked—I mean, there is no question—he just worked very, very hard.

### **An Educational Vision**

When asked how his vision for education was shaped, Engler indicated that there was no one person or thing that influenced his vision. He said his interest in public policy, along with his time in the legislature and as a candidate for governor, caused him to give education reform significant thought: "I never had a Paul on the way to Damascus conversion; it was just something I believed in and always talked about, and we finally had the chance to do it."

When asked about what they thought shaped Engler's vision for education, McLellan said, "You have to go back to Beal City, where he was from. He believed that a smart kid growing up in Beal City should have the same opportunities for good teachers and good schools" (December 15, 2009).

Others, like Smith, an Engler appointee to the Central Michigan University Board of Trustees, said,

John's vision was a better education for kids. It really had very little to do with politics. It had to do with kids, how they learn, and what the outcomes would be for these children. Are they going to have an adequate public education to go forward and accomplish their dreams? The whole concept was that they were not getting it at public schools. Create competition, and all schools and all children will benefit.

Dick Posthumus, who served as the Majority Leader of the Republican Senate during Engler's first term as Governor and later served as Engler's Lieutenant Governor, developed a relationship with him when they lived in the same dorm while attending college at Michigan State University. Posthumus described their backgrounds and how that influenced their respective visions for education:

We came from similar backgrounds, in that we both came from rural communities, went to relatively small schools. . . . John came from a Catholic background; I came from a Protestant background. I don't know that made us a lot different, but he came from a fairly homogenous Catholic community, Beal City. I came from a relatively homogenous Dutch community, Grand Rapids. . . . We both happened to come up through the vocational agricultural FFA [Future Farmers of America] program . . . I think that similarity gave us sort of an approach to not be afraid to change.

Posthumus went on to explain that both his and Engler's firsthand experience with small, rural community schools contributed to their political views that schools did not have to be big to be effective:

[We both had] a mentality that you didn't have to have these big, monster schools with all this money to be successful. We saw where parents were involved, teachers weren't part of this big, organized union effort, so I think that's where our whole idea of education came from. It was about kids, not about organizations and structures and politics.

This statement that education "was about kids, not about organizations, and structures and politics" provides the framework for understanding the momentous battle between Engler and his allies, with those like the Michigan Education Association (MEA) and other educational groups, whom they viewed as the defenders of the status quo.

### **Crises As Opportunities**

Similar to Reagan, Engler talked about entrepreneurship, deregulation, and private sector solutions as a better means for addressing needs than empowering and growing the size of

government. During his gubernatorial campaign, Engler had promised to reform education and cut taxes. However, after three years in office, he had been unable to deliver on those promises. He knew the electorate was growing angrier by the day over the high and seemingly never ending rise in property tax rates.

Margaret Trimmer-Hartley, who served as an education reporter for the *Detroit Free Press* at the time (and would later go on to become the spokesperson for the Michigan Education Association) said, “Property taxes were driving senior citizens out of their homes; it was out of control and uneven” (September 18, 2010).

Barrett also recalled a tremendous amount of frustration with the property tax system and the negative impact it was having on individuals and businesses:

The situation had reached crisis proportions as far as the economic impact it was having on individuals and businesses, in terms of their property tax increases each year. You had a lot of people who are retirees, who are on fixed incomes, who are being pushed out of their homes because they could no longer afford the assessment increases in the property tax bills that that brought. So you had a crisis situation, which creates a great opportunity for change.

### **Funding Inequities**

Engler was also facing an education community that was irate over funding shortages and the dramatic inequities between rich and poor school districts. These funding inequities were closely tied to the property tax issue because property-rich districts—like Bloomfield Hills or the district with the Cook nuclear plant—were raising \$8,000 to \$10,000 per student with relatively low effort—as measured by the number of required mills—while property poor districts—like Inkster or Vanderbilt—were only raising \$2,500 to \$4,000 per student.

Posthumus explained the situation this way:

Because you had some districts that had high-value homes and businesses and other districts that had low-value homes and no businesses, you had this huge difference between the highest spending school district and the lowest spending school district. If

you happen to have a company like Steelcase in your district, then you're golden. . . . If you were a farm community . . . then you didn't have any extra money. . . . I think the lowest [funded district] was somewhere around \$2,000 and the highest spending district was over \$11,000 per student.

Roberts, a veteran of state government, served as deputy budget director under Governor Milliken, acting budget director under Governor Blanchard, and served as a deputy superintendent for the Michigan Department of Education before being appointed state treasurer by Engler. He worked on six constitutional amendments attempting to reform the way Michigan financed schools dating back to 1972. They all failed. He explained:

For 20 some years, the State of Michigan had a problem. You have 550-some school districts, all varying amounts of money being raised for all varying degrees of reasons. Some they couldn't afford it, some they didn't want to afford it, some had lots of property values, some had lots of income, all sorts of reasons. But a lot of people thought we had a problem, that is, the richer schools were getting richer and the poorer schools were getting poorer, and there didn't seem to be any way to stop it.

### **Kalkaska**

In the spring of 1993, a small, rural, northern Michigan school district called Kalkaska—where the community refused to increase taxes, largely to increase teacher pay—raised the stakes. They placed Michigan in the national headlines by going broke, and closing their schools two months before the school year was supposed to end. This seminal event received nationwide publicity, leading to a *Forbes* article questioning the roles of the National Education Association and its state affiliate, the Michigan Education Association, in the shutdown. The authors of the *Forbes* article, Peter Brimelow and Leslie Spencer, also accused the National Education Association of being more aptly named the “National Extortion Association” (“The National Extortion Association?,” 1993, p. 72). In the article, the authors say they “learned that [Kalkaska] was little more than a union orchestrated stunt” and quoted the longtime lobbyist for

the Michigan Education Association, Al Short, as saying, “We coordinated the whole thing when the [shutdown] decision was made. We rented a dish and set it up there” (p. 72).

Roberts recalled Engler sending him to Kalkaska:

Governor Engler sent me up as head of a group to investigate what we should do. I said to the governor, here’s your problem: if you go in and take over Kalkaska, the voters next to Kalkaska are going to say, “Now let me get this right . . . I vote ‘no’ on property taxes, and they [the state] take over my schools for nothing. I like that system.” It was my personal recommendation . . . that we should do nothing. We should let them close.

Roberts’s analysis of the Kalkaska situation parallels the conclusion reached by the *Forbes* authors. The authors of the *Forbes* article claim Keith Geiger, President of the National Education Association, essentially said that “other Michigan school districts now face shutdowns—if their voters don’t cough up on cue” (p. 74). Coughing up on cue meant that if a school district wanted additional money, the electorate had to vote for extra operational millage. In Kalkaska, the electorate voted down three different proposals that would have raised their property taxes to provide additional funds to the school district. Roberts explained,

They were running out of money, and they went to their public and said, “We need more money for schools.” And the people voted no. So the school board said, “No, you don’t understand. This is not your normal. ‘We’re going to take away sports, we’re going to take away busing and all this stuff.’ We’re really in serious trouble; if you don’t vote for it, we’re going to do something you really won’t like.” And there was a vote, and they [the electorate] voted it down.

Roberts continued:

Finally, the school board says, “Okay, let’s make it real clear that we’ll have one more vote. If they don’t vote for it, we’re going to close down.” That was the third vote, and they [the people] voted no. And they closed.

According to the *Forbes* article,

Kalkaska’s school budget was not out of line with that of other districts in the region. Its main problem, since teachers’ compensation makes up about 65% of all school budgets: a contract calling for 6% annual salary increases three years running. This in a poor rural area (average income: about \$22,000), where teachers (average income: about \$32,000) are already among the top earners. And the school system could easily have made cuts,

for example, in support staff or busing. Or it could have followed established procedures for going into deficit. (p. 74)

Attorney and Engler ally McLellan remembered Kalkaska as an event that the Michigan Education Association and its allies regret: “They were trying to launch a revolution, but they got a different kind of one, which is why you have to be careful launching revolutions.”

According to Engler,

[Kalkaska] was in my old district . . . so it was a district that I actually knew quite a bit about. I think they thought Kalkaska was going to be Waterloo . . . but we actually turned it around on them and said, “No more Kalkaskas.”

### **Frustration Mounts**

Despite the national attention that Kalkaska drew and the fact that many educators viewed the funding discrepancies as intolerable, Engler was still unable to get the legislature to muster the wherewithal to overhaul the state’s 100-year-old system of funding schools primarily through local property taxes. Even a bipartisan ballot provision, which provided for an increase in income taxes in exchange for a reduction of property taxes (the “Star Plan”), was voted down by the electorate 51–49 in June of 1993, despite the fact that Engler, both parties in the House and Senate, and the Michigan Education Association supported it (Whitney, 2002).

Roberts explained why this proposal, which he refers to as the “first Proposal A,” was defeated:

My theory is that there were a number of people in the middle that just didn’t want to change. Clearly, if you were a rich district, you don’t want any change at all, and then you had two wings of the voters in Michigan: those who hated John Engler so much that anything he was for, they were against, and those who hated the MEA, and anything they were for, they were against. And so I think that it was defeated primarily by a combination of people in the middle who didn’t want to change and two wings who might have otherwise supported the MEA or John Engler, but couldn’t stomach the team effort.

According to Al Short, the chief lobbyist for the MEA, this defeat brought Michigan to “its wits’ end about what to do with property taxes [and] set the stage for an extremely frustrated legislature and an extremely frustrated executive branch” (Whitney, 2002, p. 222). Barrett added that there was growing speculation that if the significant funding inequities between property-rich and property-poor school districts was not resolved quickly, the whole thing could have ended up in the court system:

One of the things that was often discussed was, if we don’t do something about the inequity in funding, then we’ll end up with some judge deciding that our whole financing scheme is unconstitutional. So you had a crises situation, which creates a great opportunity for change.

With the 1994 elections looming, Engler needed a way to demonstrate to the public that he was fulfilling the promises he made during the campaign. Roberts recalled that Engler’s popularity was sinking amidst the growing frustrations over property taxes and school funding inequities:

John Engler was not particularly popular at the time. We had already lost two proposals. In the second year of the Engler administration, we had what was called the cut and cap. That went to the people and was defeated. The next year, in ‘93, we had what was then the first Proposal A. That was a proposal that dealt with school finance in which Governor Engler and the MEA agreed, and it lost.

Even though there was almost universal frustration with the existing school finance system, it was very difficult to find a solution that a majority of people would support. Roberts explained that this longstanding problem really had

Two very easy solutions. One solution is, you raise a lot of taxes, and you raise the bottom. We don’t have the votes for that. The other solution is, you take the high-spending school districts, and you cut them down. We don’t have the votes for that. So we stared at each other for 20 years.

Still searching for a solution that could garner support from the general public and assemble enough votes to be adopted by the Legislature, Engler had the Republican-controlled

Senate introduce a bill that would provide a 20% across the board reduction in property taxes. Engler figured that he had enough votes to get the bill through the Senate, but thought it would be very difficult to get it passed in the House, which was split evenly at 55 Democrats and 55 Republicans.

One of the big disputes over the bill was that it did not have any provision for recouping the property tax revenue that would be lost; therefore, schools would suffer. After a series of dead-end talks between various political leaders, the *Detroit Free Press* ran an editorial on July 19, 1993, encouraging Governor Engler and lawmakers to move Michigan forward and correct “what is in many ways a debilitating problem for Michigan, one that creates unconscionable inequities and holds back the state’s chance to rebuild its economy and assure hope for all our children” (“Tax Cut”).

### **Stabenow Amendment**

Almost simultaneously, things began to dramatically change. Later that day, in what many consider to have been an election-year ploy of one-upmanship, state Democratic Senator Debbie Stabenow moved from being opposed to the Republican’s 20% tax cut bill to offering her own amendment that proposed to eliminate all property taxes without any mechanism to replace the lost revenue. For a time, it looked as if Stabenow’s amendment had checkmated the Republicans: if they voted against her amendment, they would be defeating a tax cut even larger than the one they had proposed, making themselves look foolish before a frustrated electorate. On the other hand, if the Republicans approved her amendment, they would run the risk of not having enough votes to pass it in the House, and look weak, unified, and foolish. And even if they could get enough votes to pass the Stabenow amendment, it would surely come back to

haunt them, as they would have to find a way to replace the lost revenue with other taxes that would likely further anger the electorate.

Posthumus, who was serving as the Senate Majority Leader at the time, explained what transpired:

The Democrats felt that they didn't want to cut spending that much, so they kind of played a political game and said, "Ok, you guys are going to cut this by 20%. We're going to cut property taxes by 100%."

Posthumus said the Democrats then proceeded to put an amendment in the bill that eliminated all property taxes used to fund schools: "They thought we would . . . just walk away from it, because we would be afraid to have to deal with it or start over."

Posthumus described what happened next:

[As] we were trying to figure it out, one of our more conservative members of our caucus, Senator Jack Wellborn, said, "Well, I'm going to vote for that." I said, "Jack, what are you talking about? They're trying to play a political game." He said, "Well, think about this. This is a chance for us to start over."

Posthumus recalled that he thought about it for "a little bit" and then said, "I'm going to go talk to the Governor." Roberts was there when Posthumus came to share the news with

Engler:

I'm in the Governor's conference room, and Senator Posthumus comes in and says to the Governor that then state Senator Debbie Stabenow is going to make a proposal to Senate Bill 1. Senate Bill 1 was a property tax cut . . . a 20% property tax cut introduced by the Republicans, with maybe a makeup in revenue. . . . Stabenow was going to take Senate Bill 1 and propose the following: that if a 20% cut in property taxes, maybe with a makeup, is a good idea, then 100% is better.

Knowing that Stabenow was preparing to challenge Engler in the 1994 gubernatorial race, there was a sense that she and the Democrats were proposing this amendment as a political-year bluff in order to embarrass Engler and his fellow Republicans. There was also a belief that

one of Stabenow's largest supporters, the Michigan Education Association, would never support the elimination of property taxes. Roberts explained the political dynamics this way:

I saw this is an absolute set up in gubernatorial politics. From the Democratic point of view, the proposal is really pretty good. One, if the [Republican] Senate doesn't support it, then they're really not serious about property taxes. If by some chance the Senate does support it and the House supports it, wonderful. The Governor will get it and we'll use it against him. This is a perfect set up. Doesn't matter what happens. Either the Senate votes it down, or the Governor is behind it. We [Democrats] win either way.

### **Calling the Bluff**

With the Republicans in a quandary about what to do with the Stabenow amendment, it appeared the Democrats had outmaneuvered them. Roberts continued his story:

Posthumus says to the Governor that Senator Stabenow is going to make a motion to basically eliminate all property taxes for schools. What I remember vividly, is the Governor said, "They won't do it." To Senator Posthumus' great credit, he said, "Governor, that's not what I said. I'm asking you. I'm not going to hang up my other Republican senators unless I know what you're going to do." And there was a pause. I thought it was a long pause. Other people didn't. The Governor said, "I'll sign it." I almost had a heart attack.

After it was decided to call the Democrats bluff, Posthumus, Engler, and Paul Hillegonds, who was serving as the Republican leader of the House (which was split 55 Democrats, 55 Republicans), strategized about how to proceed:

We decided . . . if we're going to call their bluff, let's get a commitment from the House Democrats that they're going to support it, too, so that we don't just play a political game, just passing it so the Democrats get a free vote. So Representative Hillegonds went and talked to the Democrat leadership, got a commitment from them to support it, and so we went back and said, "Alright, were going to do it!"

So Engler, Posthumus, Hillegonds, and their allies went to work on trying to persuade their fellow Republicans that this was a bluff that they should call. Within hours, Engler and his allies shocked everyone by getting the Senate Republicans to join the Democrats in repealing the use of property taxes for school operations on a 33-4 vote.

As the bill moved from the Senate to the House, MEA President Julius Maddox sent an urgent note to every member of the House urging them to reject the legislation. But with events moving so quickly, Maddox and the MEA were unable to stop the momentum and the bill passed the House and headed for the Governor's desk with only 35 Democrats voting against it.

Posthumus said,

We did it real fast because all of a sudden the MEA said, "No way you guys; you can't do that!" But the Democrats were kind of out on the line because they had this Democrat amendment that passed in the Senate and they had committed to it in the House. So they provided enough House votes with Republicans to pass it, and so that was the beginning of what then led to Proposal A.

McLellan also remembered the Stabenow amendment as a way to "embarrass the Republicans." He characterized Engler's counter move to support the amendment, thereby repealing the use of property taxes to fund schools as a "once-in-a-century bold chess move" that eliminated \$6.2 billion, or roughly two thirds of all property taxes levied annually.

Roberts used the analogy of Texas Hold 'Em poker to describe Engler's counter move to the Stabenow amendment.

I would call it Texas Hold 'Em all in, because that wasn't the only move . . . at the moment we were still planning . . . and there was uncertainty as to what was going to happen. I mean, I thought that the checkmate move came later.

For his part, Engler said the window of opportunity Stabenow and the Democrats presented him and the Republicans came about because of their willingness to risk everything and start over: "Well, the window came about because of our willingness to risk everything and abolish the property tax funding for public education." Shields offered another perspective on what transpired. From her vantage point, the window of opportunity was years in the making:

For people to say that we only have Debbie Stabenow to thank for this is very shortsighted. In the heat of debate, she made a misstep, and one thing Engler is very good at is seeing opportunity. He rolled up his sleeves and was intricately involved in the legislative process. When there was an opportunity like that, and most people just

accepted her grandstanding, he said, “Wait a minute, this is an opportunity.” He knew the rules of the Senate, and he ran with it. That’s where he took the combination of knowing the legislation, knowing the politics, how to work the people, how to work the floor. He knew, from many years of studies and debates, exactly where he needed to go with this opportunity.

Because Engler was responsible for encouraging the Legislature to adopt the Stabenow amendment -- thereby abolishing the practice of funding schools with property taxes -- he knew all eyes were on him to come up with a new plan for funding schools...and fast.

### **A Chance to Change the System**

Having just eliminated the revenue base for public schools, the Legislature and the Governor were now faced with the challenge of figuring out how to replace this funding. On September 1, 1993, the *Washington Post* criticized their action in an editorial titled, “Honey, I Blew Up the Kids!” Facing an enormous amount of criticism and wanting to fulfill his campaign promise to lower the property tax burden that the people of Michigan were under, Engler saw this funding crisis not only as an opportunity to lower property taxes, but also as an opportunity to radically change the paradigm of Michigan’s educational system. Engler felt that all the previous attempts to reform school finance had been unsuccessful because it was impossible to get everybody to come to the table with the same degree of interest. Engler explained that there was always “a haves versus have-nots situation. That just made it impossible. For some people to win, all they had to do was preserve the status quo . . . once that changed, it was literally amazing what became possible.”

From Engler’s perspective, the elimination of property taxes finally brought everyone to the education reform table. Now that everyone was at the table and there was a shared sense of

urgency to figure out how best to fund schools going forward, Engler saw a once-in-a-lifetime opportunity to fundamentally change the way public education operates in Michigan:

We knew that we were really only going to get one chance to reform education, and we had campaign promises to keep relative to the property tax burden that people were faced with in Michigan. But at the same time, we were very concerned . . . from a performance standpoint, that there was a lot to be done. We wanted to take advantage of education reform, not just focusing on the financial side, but on the entire scope of education reform.

Engler had long been frustrated with the education establishment's continuous calls for more money. He believed that the educational establishment was not serious about reform and felt that "Republicans were treated unfairly on education issues." Roberts said Engler always emphasized his desire to make education reform part of school finance reform. According to Roberts, Engler viewed the economic and political crises associated with the elimination of property taxes as an

Opportunity to fundamentally change the system. He said over and over that he wanted something that would change itself over time. That is, there was an outside force that was going to force people to do things even if they didn't want to do them, and that's how the system would basically change itself.

Engler's conservative thinking made him a believer in choice and competition for business and he believed education could benefit from the same. He explained:

On the policy side, there were a lot of ideas under consideration, but we were always motivated by the idea that competition was important, and while we had minimal competition with parochial and private schools in the state, we believed that much more could be done with competition in the public system itself, by enhancing competition from the outside.

Roberts said that at the time the only choice in education was between public and private schools. He saw this as a false dichotomy thrown at the public:

We said, "That's a false choice." We can have public schools, and we can have choice within public schools. It doesn't have to be between public and private . . . that is wrong. That is why we need to create a system in which there is a choice among public schools.

Engler also knew that it would be very difficult, if not impossible, to expand educational choice through private and parochial schools because of the strict prohibition in Article VIII, Section 2 of Michigan's Constitution. Recall that this prohibition, the Parochial Amendment, prevents the use of public money or property from being used "to aid or maintain any private, denominational or other nonpublic" school. As a pragmatist, Engler explained the situation this way:

Because Michigan had a strict constitutional prohibition due to an earlier parochial fight, we just didn't believe it was possible to launch a frontal attack . . . so we went at it from the standpoint of changing things that needed to be changed within the context of the law that we have.

### **New State Role**

Mintrom (1997) claimed that in order to advance their visions, policy entrepreneurs "must often reframe issues and construct arguments in order to maximize the chances that they can sell their ideas to others" (p. 44). Engler envisioned a new and more active state role in the education of Michigan's students. He also knew everyone was anxiously awaiting him to unveil his plan for a new system to finance schools, thereby replacing the revenues that had been eliminated with the passage of Senate Bill 1. So Engler called for a special joint session of the Michigan Legislature to be held on October 5, 1993, at which time he would share his vision for education and school finance reform.

Engler entitled his speech, *Our Kids Deserve Better: New Schools for a New Century*, and had his administration publicly distribute an accompanying 58-page report called *Governor John Engler's Plan to Reform Michigan's Schools*. Through his speech and publication, Engler described his vision saying it was designed around "four fundamental principles:" (a) empowering students, (b) empowering families, (c) empowering teachers, and (d) empowering

taxpayers. In his accompanying publication, Engler proposed a new nine-point education agenda that he said the State should be leading:

I propose a new role for the State in our public education system. Our generally disappointing results . . . have been due, in part, to the historical absence of strong state leadership, both with respect to educational goals and the means with which parents, students and educators would attain them. To rectify this long-standing deficiency, I call for the following nine-point education agenda for the State of Michigan:

1. Establish high expectations.
2. Set high, measurable standards.
3. Assess student progress toward those standards.
4. Monitor schools for compliance and success in meeting those standards.
5. Provide our educators with flexibility to encourage practices and innovation.
6. Report to parents and the public generally on education in Michigan.
7. Provide rewards to high-performing schools and, where necessary, apply sanctions to chronically underperforming schools.
8. Assure an adequate and equitable allocation of resources to all schools.
9. Ensure every student access to a safe and secure public school. (Engler Reform Plan, October 5, p. 6)

Engler knew that his vision for a more prominent State role in education would be met by stiff opposition from what he called the defenders of the status quo. Again, demonstrating the characteristics of a policy entrepreneur, Engler knew he had to reframe and redefine the significance of the educational problems facing the State in order to generate a sense of urgency that he could use to propel legislative action. He also was able to leverage his gubernatorial powers to create a statewide stage for unveiling his plan and framing his policy agenda in a way that would garner support and prepare the environment for significant change.

In his characteristically aggressive style, Engler began his 17-page speech saying,

We are here today for one reason: because our kids deserve better! In my time with you, I will outline a far-reaching, comprehensive plan of innovation and reform—a plan that will deliver new schools for a new century. (Engler speech, October 1993, p. 1)

But before outlining his plan, Engler read the following words:

In my special message to the Legislature on Education . . . I outlined the major problems facing Michigan because of the inadequate, inequitable, and antiquated structure we have for operating and financing our schools. I said that collectively these problems add up to

an educational crisis in Michigan, and that if we failed to move toward educational reform intelligently in the very near future, the crisis would become an educational disaster.

Evidence of this mounting crisis is upon us. It is evident in the loss of public confidence in the State Board of Education. It is evident in strike-torn school districts. It is evident in the collective bargaining whipsaw effects that are forcing too many districts into deficit financing. . . . It is evident, above all, in the growing public dissatisfaction with our educational process. We must move now, and we must move with boldness. (Engler speech, October 1993, p. 1)

Engler then shared with his audience that these words were not his, but were actually words delivered from the same podium to a similar joint session of the Legislature in a speech given by Governor Milliken on October 9, 1969. Engler began with the quote to impress upon the Legislature that Michigan's educational crises was not new, that the time for talk had passed, and that it was time for action. Engler continued:

It was 76 days ago that you—the elected representatives of the people of Michigan—took the bold step to eliminate state property taxes as a means of funding public education, and so, set the stage for far-reaching education and school finance reform. (Engler speech, October 1993, p. 2)

### **More Rhetoric than Reality: Frustration with “The System”**

Engler's frustration with the way Michigan's public educational system functioned and his ideas for trying to change “the system” were very straightforward, but also very difficult to accomplish because of the powerful political opposition that stood in his way. Engler said it was clear (from his reading and from conversations with business leaders), that education was becoming the defining difference among the states, and that for communities to be strong, they needed strong schools. Engler also was frustrated with the pace of change in education. He said he viewed *A Nation at Risk* as a “wake-up call” and found it “really stunning that nothing had happened” to fundamentally address the issues that were identified in the report:

Michigan is politically a very tough state. . . . Over the years, there was a lot more rhetoric than reality, in terms of people really supporting the kinds of changes that were

needed. To me, it was remarkable that there was always an equity debate, but you could not count on support if it meant to anybody in the debate that they had to make do with less. So they were really sort of faux supporters; they weren't serious about reform.

Shields echoed this sentiment when she raised the issue of local control and the “fiefdom of the superintendents.” She recalls that when *A Nation At Risk* was released, policy leaders would ask superintendents how Michigan compared and the superintendents would say, “We don't know” or “It's none of your damn business.” She went on:

The superintendents were very serious about that. They had very strong local control, so there was no way we could cause change. Just imagine, parents having their siblings, cousins, or grandparents adopt their kids in order for the kids to get an education. That's why Engler saw it not as just a matter of equalizing the money; he had to equalize opportunity. He knew equalizing the money was not going to solve the problem, so he was asking or looking for solutions to several issues at the same time.

From Engler's perspective, school districts essentially thought of students as their property and he wanted to change that: “The superintendents were far more defensive about and married to the status quo than anybody else we were dealing with. That was as a group, though. Individually, there were some wonderful leaders, but collectively, they were terrible.”

Roberts recalled having many discussions with school district representatives who were “livid” about Engler's approach:

Our philosophy [the Engler Administration] . . . was that the money goes with the child. It's the child's education, not the school district that counts. . . . A number of my friends—former friends—in the educational community really are very much opposed to that. They really don't agree with that concept. There is not a middle ground here. You believe it's your money and we believe it belongs to the child.

Posthumus recalled that Michigan had “dual problems.” The first problem was the high cost of property taxes and the negative impact they were having on homeowners. The second, interconnected with the first, was significant funding disparities between school districts. This problem was directly attributable to the variances in property values between school districts and

the significant differences in the taxing effort required by local voters to fund their schools. He explained:

From my perspective, fundamentally we had created an educational system that, if you were wealthy, you could choose wherever you wanted to go to school. Realtors sold houses based on . . . , “Hey, move to this district. Move to this house because this is the best school district in the Grand Rapids community. . . .” But low income, working-class kids had no option.

Posthumus went on to say that he believed there were two fundamental problems with the way Michigan’s schools were being financed, coupled with the fact that students were assigned to a school based on where they lived. He explained:

One, there were a lot of schools that weren’t succeeding, and so that child was stuck. If you were wealthy enough not to be stuck, you got a good education. If you were poor, you were stuck. The second problem . . . was that it was just fundamentally unfair . . . why should you have the choice of where to go to school if you had money, but if you didn’t, you didn’t have a choice.

Characteristic of policy entrepreneurs, Engler attempted to reframe the policy debate regarding school choice from a theoretical exercise to one that impacted real people. Engler’s political acumen also told him that if he could reframe the issue, he would be able to build support for his ideas and put his opponents on defense. One tactic he used was to make an emotional appeal by highlighting the story of a family whose 8-year-old boy was found to be gifted in math and reading. Engler shared how when this family asked the school to challenge their son, the school got upset with them for making waves, saying they didn’t have extra time and resources. So when the family tried to transfer their son to another school, the local school board refused. Engler then quoted the response of the local school board:

The board needs to use caution in these types of situations, so we don’t start releasing students left and right. What’s to stop 10 more kids from coming to the next meeting and wanting to be released to [other schools]? It could open the floodgates. (Engler speech, October 1993, p. 2)

It is worth noting the similarity between the view articulated above and the sentiments expressed in the *Forbes* story when the president of the NEA, Keith Geiger said, “Quit talking about letting kids escape” (“National Extortion Association?,” 1993, p. 72). Knowing he had framed the issue in a way that made the school board look bad, Engler again played to the emotions of his audience, by quoting the boy’s mother: “I realize the money issue is important to them. But our child and his academics are important to us.” Engler went on to finish the story:

Rory’s mom and dad eventually made their choice—the only choice they had, and the only legal choice open to Michigan parents today. To do the right thing for Rory, they had to sell their home and move to another school district. (Engler speech, October 1993, pp. 2–3)

After sharing this emotional story, Engler then launched a series of attacks against what he called the “public education monopoly.” By reframing the issue as a battle between monopolies and parents, Engler was attempting to gain the moral high-ground against his opponents by positioning himself as the one fighting for parents and their children. In addition, Engler tried to define his opposition by citing different examples of how the monopoly thwarted families wanting to exercise educational choice:

Let’s cut to the chase: Public education is a monopoly, and monopolies don’t work. Why? Because in a monopoly, customers don’t come first. We’ve all heard the stories. About the mom in Detroit who broke the law and was sentenced to probation. Her crime? Sending her daughter to a higher-quality school in the suburbs where she didn’t live. Or how about the Eaton Rapids kindergartner who has to ride a bus two hours a day because his school district won’t release him to attend a school ten minutes down the road. Or the story about a mother who went to court and gave up custody of her son so he could live with relatives in order to attend a higher-quality school. Or the stories about school districts hiring “family police” at taxpayer expense to investigate where families live! (Engler speech, October 1993, p. 6)

## **Withdrawing Exclusive Franchise**

Trying to find a way to address these issues and force school districts to become more open to educational choice, Engler borrowed a concept developed by Ted Kolderie, one of the leading intellectuals promoting charter schools and a key player in helping Minnesota become the first state to adopt a charter school law. Kolderie (1990) had written an article entitled “The States Will Have to Withdraw the Exclusive,” in which he argued that “institutions do not welcome change, especially radical change” (p. 1). He went on to say that institutions “need a reason to change” (p. 1) and that education reform and restructuring do not provide adequate reason. Kolderie (1990) argued that it was essential to understand the “givens of the system” (p. 2), in order to learn why it is so hard to change.

When interviewed for this study, Engler said he had followed Kolderie’s work and was “impressed by what was going on in Minnesota.” Engler was also intrigued with the fact that charter schools seemed to have bipartisan support, saying,

If we trace the charter school movement all the way back to Minneapolis, Ted Kolderie and some of the early founders of charter schools were Democrats. . . . I was very intrigued with what they were doing, and . . . that it was being done in a state that is considered to be a very liberal state, it was being done across party lines. I wondered if that could be achieved in Michigan.

Engler lamented the fact that charter schools did not end up being a bipartisan effort in Michigan, saying, “It [charter schools] was always bipartisan until Michigan and some of the other states that began to run into the very, very strong labor unions.”

However, rather than placing blame solely on the teacher unions for resisting change, Kolderie (1990) concluded something different. He believed that the idea of districting itself was the biggest impediment for change, saying,

The state does not deal with schools; it deals with districts. Legally schools do not exist: districts exist. The district is defined by its boundaries. These create an area in which

there is one and only one organization offering public education, to whose schools the kids who live in that area are assigned. Public education is organized as a pattern of territorial exclusive franchises. That exclusive franchise is the heart of the problem. (p. 2)

Building off of Kolderie's concept, Engler used his speech to the special joint session of the Legislature to argue that Michigan's school districts essentially held exclusive franchises over education and that he intended to withdraw their exclusive franchises through choice and competition: "No longer will there be exclusive franchises over education. No longer will there be a monopoly of mediocrity in the state. No longer will there be a company store holding our families hostage" (Engler speech, October 1993, p. 10).

There is no doubt that this type of language played well with Engler's conservative base, but it also served to alienate and unify those associated with the education establishment.

Trimmer-Hartley, the *Free Press* education reporter, said she "vividly remembers covering the perspective of school districts, teachers unions and the whole education establishment." She said they felt Engler was

Unleashing the forces of the free market. He made a lot of educators feel vulnerable, and feel as though they were going into a more dog-eat-dog environment. But that is the marketplace; that is the competitive free market that drives everything else in this economy, and I guess that's just it in a nutshell. We were going to be subject to the forces of the free market, for all the good and the underbelly as well.

Engler tried to balance his criticism of the educational system with some praise. Yet even his accolades were often accompanied by his concerns that as a system, too many children were failing, which had long term consequences:

I know there are many success stories...there are many good schools. But everyone knows a school that's not very good. Maybe your children don't go there—but someone's children do, and they're Michigan children. And they are children who will enter our economy and in turn have kids of their own. We have to reach them and help them. Otherwise, when these children fail, we all fail. Their failure will haunt us for years—in our jails, in our prisons, in welfare lines, in unemployment lines. (Engler speech, October 1993, p. 4)

## Challenging Status Quo

Engler believed that the elimination of property taxes set the stage for major change; he knew that he was “only going to get one chance to reform education.” He also knew that Michigan was a strong union state and that in addition to the MEA and the Michigan Federation of Teachers, he was going to face significant opposition from school boards, superintendents, and their related associations.

The most formidable opponent was the Michigan Education Association, which at the time had the reputation of being the most powerful political force in the state. It was a time when Al Short, lead lobbyist for the MEA and the person who Roberts said was “the best lobbyist I ever knew . . . he kept his word . . . if you had a deal with him, you had a deal,” openly said to a class of administrators being taught by Dr. Philip Cusick at Michigan State University, “We [the MEA] write the laws and we tell them—the legislators—how to vote” (P. Cusick, personal communication, December 8, 2010).

Posthumus, who was serving as the Senate Majority Leader at the time, was also concerned about the power and influence the MEA was able to wield in the Legislature and over local school districts. Recall that they both came from rural communities, with schools where Posthumus said they learned

Firsthand that education wasn't about money. Both John I came from public school backgrounds. . . . But we were from traditional public school backgrounds where unions weren't the controlling factor. Kids and parents were, and I think that's what we really wanted to return our educational system to—to where kids and parents and teachers came first, not unions and school superintendents and school boards and all these organizations.

Art Ellis, who transitioned from the State Director of Commerce to the State Superintendent of Public Instruction during Engler's time as Governor, said Engler was frustrated with the power and influence the MEA wielded over education in Lansing: “He

wanted to fundamentally change the way public education was run and funded in Michigan. He wanted to break up and spread around the ‘lock’ that the MEA had on policy, plans, finance—everything about education.”

Ellis’ view that the MEA had a “lock” on everything about education was similar to the power that *Forbes* ascribed the National Education Association and its Michigan affiliate, the MEA, as having. The *Forbes* (“National Extortion Agency?,” 1993) article even explained how an MEA subsidiary called the Michigan Education Special Services Association (MESSA) generated about \$370 million in revenues selling teacher health insurance to school districts. MEA lobbyist Al Short explained how MESSA helps the MEA with teachers who may even have differing political views from that of the union’s leadership: “You take members that don’t believe in collective bargaining, they don’t believe in our political ends, but you talk to them about MESSA, they’ll stand in the middle of a highway to defend it. That’s the tie” (p. 82).

*Forbes* went on to explain how the MEA used its power to influence the actions of local school boards. *Forbes* claimed that “Michigan school boards know that any threat to the MESSA relationship is a strike issue for the MEA” (p. 82).

As the National Education Association has gained in monopoly power, the cost of education has increased while its quality has deteriorated. But monopolies are by nature unstable, and this undemocratic labor union may have met its match in the movement for school choice. (p. 72)

As a probusiness magazine, it was no surprise that the *Forbes* article generated a lot of discussion about the need for education reform in the business community. In Michigan, the business community was one of the major alliances that supported Engler’s education reform. Many business leaders thought it was imperative to address education reform in conjunction with the school finance reforms being proposed and used their influence to help Engler build the political and public support necessary to get it accomplished. For example, the Michigan

Manufacturers Association (MMA, 1993) issued a press release with the heading in all capital letters: “BUSINESS WANTS QUALITY REFORM IN MICHIGAN SCHOOLS BEFORE FINANCE ISSUE IS DEALT WITH.” In the release, John Thodis, MMA’s President and CEO, stated that “industry is demanding a better product for their money” and stressed that industry leaders expect the state to deal with education quality before finance options are discussed. Along with representatives from General Motors Corp., Amway, and Acheson Industries, Thodis went on to unveil MMA’s plan for a new market-driven education system saying, “What the state needs is an educational structure that is innovative, that is responsive, and that allows parents and students to demand quality through choice” (MMA, 1993).

Barrett said the business community was driven by the belief that competitive forces would help improve public education:

If you aren’t satisfied with the system, you change the system. Business people generally believe that competitive forces work well in terms of the quality of the product and the service, and all we needed to do was look at higher education and the competitive nature of higher education, and the benefits of that.

Engler articulated many of these feelings in his speech to the joint session of the Legislature, when he said,

We need real change. And real change means not just more politics, but more principle. Not just talking about putting kids first, but doing it. Not just paying for a world-class education, but delivering one. Not just caving in to special interests, but standing up to them! (Engler speech, October 1993, p. 2)

While this rhetoric surely pleased his allies, it also made it clear to education groups like the Michigan Education Association, the Michigan Association of School Boards, and the Michigan Association of School Administrators that he intended to challenge their dominance over public education. Engler viewed these organizations as standing in the way of the changes

he envisioned. Rhetorically he asked, “Why is ‘real change’ so badly needed? Because the system is broken! It needs fixing. And it needs fixing now!” (Engler speech, October 1993, p. 2).

Clearly, Engler was launching an offensive attack against the way Michigan’s public education system functioned and those who he saw as standing in the way of change. According to Barrett, the business community was ready for this fight: they were “sick and tired of them [the MEA and other education groups] saying, ‘Don’t change anything,’ when we know the traditional system isn’t working for all our students. . . . They had been no-change agents for decades.”

The fall 1992 elections also brought a Republican majority to Michigan’s constitutionally established, eight-member State Board of Education. Clark Durant, an Engler ally, attorney, and leader of the private, faith-based Cornerstone Schools in Detroit, became chair of the State Board and, with his Republican colleagues, began using his influence and the powers vested in the State Board “to rescue the educational system from the bureaucrats, return it to the parents, and open up the educational system to choice, charters and markets” (Cusick & Borman, 2002).

Fellow board member and professor of economics at Hillsdale College Gary Wolfram regularly referred to public schools as “government schools” (as cited in Cusick & Borman, 2002, p. 766) or as a government monopoly that needs to be broken up, and sometimes as a “centrally planned economy in a communist state” (p. 6). Wolfram would also read passages at State Board meetings which advocated for the freedom of individuals from the state, like this one from John Stuart Mill’s (1838/1991) essay, *On Liberty*:

If the government were to make up its mind to *require* for every child a good education, it might save itself the trouble of *providing* one. It might leave to parents to obtain the education where and how they pleased, and content itself with helping to pay the school fees of the poorer classes of children, and defraying the entire school expenses of those who have no one else to pay for them. That the whole or any large part of the education of the people should be in State hands, I go as far as anyone in deprecating. An education

established and controlled by the State should exist, if it exists at all, as one among many competing experiments, carried on for the purpose of example and stimulus, to keep the others up to a certain standard of excellence. (p. 130)

Using the philosophy espoused by Mill and other libertarian writers, Durant and Wolfram used their positions on the State Board to push for changes that were viewed as radical by the educational establishment. Leonard Wolfe, who served as a clerk in the legal office of Governor Engler and went to work under the direction of McLellan in the Lansing office of the Dykema law firm, remembered that the big phrase being used at the time was

“Government-assigned schools.” This was at the very start of the Internet, and there were all these new higher education systems. Once kids graduated from high school, they could go wherever they wanted. They could choose. We didn’t have any choice in the K–12 system at all; you basically went to school wherever you lived. So that phrase, “government-assigned schools,” really ran counter to what Engler and the Republicans were trying to create in terms of reforms that would allow some choice.

Wolfe said the funding disparities between school districts and elimination of property taxes as the primary means for funding education created a basis on which Engler

Could go to the legislature and lay out the issue that things had to change. The Governor’s concern was that the kids were not being treated fairly. The funding had been changed to pave the way for systemic changes, so this was a sort of battle cry to get all of that done. The Governor couldn’t get the system to change, but he could establish a competitor for that system. It was similar to what was going on at the time in the telecommunications industry. You had a lot of startup companies competing against the incumbents.

According to Barrett, the business community was very frustrated that some traditional public schools were able to

Continue to operate in spite of their complete failure to educate the overwhelming majority of their students. If you took some of the failing school districts based on dropout rates, student achievement, test scores—there’s no way to justify the continuation of the systems that serve students.

Further, Barrett argued that traditional public education was a “sacred cow” that needed to be addressed because of its

Complete failure to educate . . . students. Where we have dropout rates that are 50% or thereabouts, why would we continue to operate those schools as they've been operated for decades? You know, in business, with that kind of success ratio, you're out of business now, but not so with the sacred cow of traditional public education.

## **Report Cards and Consumer Information**

As governor, Engler had been invited to serve as a member of the National Education Goals Panel, a prestigious national group. Using a passage that sounded like it could have come from the *A Nation at Risk* report, Engler shared the following words from the Panel's recently released report:

At no stage in a learner's life—before formal schooling, during the school years, or as adults—are we doing as well as we should be or as well as we can. The nation has fallen behind its own expectations and behind the progress of our global competitors. (Engler speech, October 1993, p. 3).

He then told the audience that Michigan would be releasing a report the following week regarding the state's progress toward meeting the national education goals:

Frankly, the report is not flattering. Data show that over the past few years:

- Our high school graduation rate has been barely above 70 percent.
- Only one in five 10th-graders has been passing our statewide mathematics test.
- Only two in five have been passing our statewide reading and science tests.
- Last year, there were 15 school districts where more than 75% of the incoming seniors could not pass a 10th grade test and earn a state endorsed diploma.
- And in 253 districts, more than half of the incoming seniors could not pass the 10th grade test and earn a state endorsed diploma.
- Despite investing billions of dollars on K–12 education over the past decade—despite many reform efforts—SAT scores have remained virtually flat. (pp. 3–4)

Barrett and his friends in the business community appreciated Engler publicizing these data. Making these data publicly accessible, they believed, would help cause greater transparency and accountability for districts and schools. He said,

From a business perspective, some of the concerns were that many of our students weren't job-prepared coming out of high school. Many of them weren't prepared for college coming out of high school. One of the things that the Michigan Chamber and the business community advocated was the sharing of student achievement information with the general public. It's interesting, because here we have these tests that were

administered by the state, but if you wanted to find out what the results were for individual school districts and school buildings, it was very difficult to access that information.

Proposing to establish an educational marketplace, Engler also believed it was going to be important to provide parents with

Consumer information about how well each public school measures up. I want every citizen in Michigan to have access to a building by building by building report card to evaluate school performance. If parents are not satisfied with their children's school, and their complaints are not being addressed, then they can vote with their feet because they will have the information—and the right—to do so. (Engler speech, October 1993, p. 11)

### **Choice and Charters**

Engler believed that expanding school choice within the public system itself was essential in order to fundamentally change the way that Michigan's educational system operated. He would often cite the following words from the Northwest Ordinance of 1787, and remind people that these same words begin the education article of Michigan's Constitution. "Religion, morality, and knowledge—being necessary to good government and the happiness of mankind—schools and the means of education shall forever be encouraged" (Constitution of the State of Michigan, 1963, Article VIII, Section I).

In his speech to the special joint session of the Legislature, Engler used his second principle—empowering families—to talk about school choice; charter public schools; school aid dollars following students; an educational bank account for each student that could be used to pay for tutoring, technical training, or college; and a report card evaluating the performance of every school so people have the necessary information to make informed decisions.

Engler argued that the nation was built on the right to choose: "Everyone agrees: Freedom to choose *is* our inalienable right as Americans." Anticipating the argument that some parents would make bad choices for their children, Engler stated in his provocative way that he

would “sooner trust parents who love their children, than bureaucrats who love their paychecks!” (Engler speech, October 1993, p. 7).

Engler relished goading his political opponents by using their own words to make his case. For example, he told the audience that he would like to share with them a passage from a recently published report:

We know from experience that monopolies do not serve customers well. It is an odd fact that we attack monopolies harshly when they’re businesses, but embrace them warmly when they are public institutions. In recent years . . . this attitude has begun to break down. Governments have begun to contract services competitively; school districts have begun to give their customers a choice. . . . This trend will not be reversed. In our democratic form of government, we have long sought to give people a voice. . . . It is time we also gave them a choice. (Engler speech, October 1993, p. 7)

Engler then shared with the audience that the passage he just read was a quote from Al Gore, then Vice President of the United States. He continued, “Al Gore is right. We need more choice!” (Engler speech, October 1993, p. 7).

Anticipating that one of the likely arguments opponents to his plan would make would be the issue of local control, Engler said his vision would actually strengthen local control by empowering parents.

The local school district will no longer have the right to compel your children to attend only those schools in the district. Further, no school district will be required to admit students who live outside its boundaries. Those districts that want to keep things just as they are and remain closed will have that right. But they must understand this: They will have to compete with other schools that decide to be open to choice. (Engler speech, October 1993, p. 7-8).

Because Engler believed many school districts would not willingly open their doors to students who lived outside their boundaries, he understood that he needed to create a competitive environment, whereby districts would voluntarily open their borders in order to compete for students and resources. Pragmatically, Engler thought that a voucher system would create this competition given Michigan’s strict constitutional prohibition against funding private schools.

Moreover, Engler's political acumen led him to believe that the time, money, and energy that would be required to try to amend the Constitution were too daunting. Likewise, he figured that if he took a different approach and tried to persuade the Legislature to pass a bill requiring school districts to serve students that did not live within their boundaries, he would likely not have the votes to pass it and even if he did, it would likely be undermined in practice.

In retrospect, Engler explained, "We just didn't believe it was possible to launch a frontal attack." Engler's love of policy and politics also found him paying particular attention to the charter schools idea that was gaining attention at the time. Minnesota had passed the nation's first charter school law in 1991, followed by California in 1992. In 1993, Colorado, Georgia, Massachusetts, New Mexico and Wisconsin were also pursuing the adoption of charter school laws. Engler liked the idea that charter schools could be started from scratch and that they were to be autonomous from school districts and highly deregulated. He saw the charter idea as a way to create the competitive environment that he wanted for schools while also empowering parents, students, and educators with more choices. Engler especially liked the fact that he could move quickly with charter schools because their public nature made them doable:

Within the context of existing law. I recognize there are many districts in this state that may choose to remain closed to students outside their boundaries. So, to assure an array of public school choices for families—and empower them as never before—we will encourage new and innovative schools to be started. These schools without boundaries are known as "charter public schools." Seven other states have them and they have the potential of revolutionizing the way public education is delivered to our children. (Engler speech, October 1993, p. 8)

Engler then ratcheted up his rhetoric:

With charter schools, you get away from the one-size-fits-all mentality that has imposed a deadening uniformity—and all too often a mediocrity—on so many of our public schools. Ladies and gentlemen: Let's tear down the Berlin Wall of separation that has held kids hostage to one school district. It is time to tear down the wall! Our families want their freedom! And they want it now! (Engler speech, October 1993, p. 8)

Engler then proceeded to describe how charter public schools would operate:

These new and innovative schools could be chartered by any public entity—including existing public schools. Their mission would be spelled out in their charter, and they would admit all children on a space-available basis, without discrimination. They would be freed up from some of the bureaucratic rules and regulations that have choked off innovation in many of our public schools. (Engler speech, October 1993, p. 8)

Engler then proceeded to describe that Lee Iacocca would not be able to teach business, Gen. Colin Powell would not be able to teach history, and Justice Dorothy Comstock Riley would not be able to teach civics under the current regulations governing Michigan’s public schools and teacher certification: “Charter schools would be freed up from such unnecessary restrictions. And fairness demands that we free existing public schools from these restrictions as well” (Engler speech, October 1993, p. 8).

Engler also proposed allowing teachers to start their own charter school or convert the school where they work into a charter school. Again, in his provocative manner, he took a shot largely aimed at the Michigan Education Association, saying, “Just as we give students and parents choice, we should give teachers choice. No public school teacher should be compelled to be in the union to teach in the classroom” (Engler speech, October 1993, p. 12). Although Engler knew he was not going to get support for his ideas from the organizations representing the educational community, the policy entrepreneur in him was always intent on trying to persuade and separate those working in schools from the organizations that purported to represent them at the state capitol. Moreover, the politician in him was constantly trying to build a majority of support for his ideas.

### **Student Foundation Grant**

Engler believed that in order to fundamentally change the dynamics of how Michigan’s educational system operated, he had to shift the power away from “the system” and return it to

parents. He thought he could empower parents by giving them the ability to choose the public school their child would attend and have a state foundation grant follow their child to that school.

I propose that each child be given a minimum foundation grant of \$4,500. That will insure greater fairness and equity in the system. All children in Michigan will be winners—ahead of where they are today. Under my plan there will be no more Robin Hood, no more recapture, and no more lottery monkey business. Empowering families with a portable foundation grant will change the whole dynamic of public education funding in the state. (Engler speech, October 1993, p. 10)

Shields offered insight into Engler’s statement about the power of a portable foundation grant to change the educational system. She recalled learning early on that educational

Policy was set in state aid. When I first came to Lansing, it quickly became clear to me that the schools were unique as far as policy, in that policy was set in state aid. Where the money followed, or where the money is or was or will be is where the change is going to happen and where the power is.

Engler connected his idea of a minimum foundation grant for each child to his fourth principle—empowering taxpayers. He also reasoned that a minimum foundation grant guaranteed by the state would free school districts to “concentrate on teaching our children instead of fighting the next millage battle” (Engler speech, October 1993, p. 10). Roberts explained the importance of this statement regarding millage votes. When he was serving as the Deputy Superintendent of Public Instruction for the Michigan Department of Education, he used to go out and help sell school millages:

The first thing you do is have the election at some convenient time, like June 6. Nobody’s around. Point two: never, ever advertise the election. No, don’t lie about it, of course there’s an election coming, and if the press calls you, tell them. But you do not advertise. You just don’t. You identify your “yes” voters. Your “yes” voters are the PTO, the PTA, the MEA, the school, and groups with organizations that you know are your “yes” voters. And guess what? You go out there, and you crunch the opposition. Now when you look at the actual vote total, 7% of the registered voters voted yes, and 5% of the registered voters voted no, but you crunched ‘em.

Although this approach was very effective in terms of winning millage elections, it bred resentment and ill will toward the education community:

In my opinion, we created an enormous reservoir of . . . bad feelings . . . and the schools and the business community were at odds every three years because they had to have the [millage] renewal. . . . Even people who supported schools said, “Why do they do this?” (Roberts)

### **Adoption of Proposal A**

Engler touted the fact that when he signed Senate Bill 1 on August 19, 1993, he gave Michigan property owners “the largest property tax cut in state history—almost \$7 billion.” In his speech to the joint session of the Legislature, Engler described some of the parameters he had directed State Treasurer Doug Roberts to use when helping him develop a replacement plan for school funding. In addition, Engler made it clear that his replacement plan would place a premium on helping, rather than hurting, economic growth.

When we cut property taxes, we accepted the obligation to find replacement revenue and fund our schools. In early August, I charged State Treasurer Doug Roberts with the task of helping me find the fairest sources of replacement revenue. I laid out several criteria. I told him I wanted our guests from out-of-state to pay their fair share. I told him I wanted businesses to pay their fair share. I told him I wanted the wealthy with second homes to pay their fair share. I said, whatever you come up with, make sure it’s a pro-growth tax agenda—because you can’t move education forward by moving the economy backward. (Engler speech, October 1993, pp. 13–14)

Roberts vividly remembers receiving the call from the Governor asking him to lead the team to develop the plan for replacing the lost revenue:

I said, “Okay Governor, I’d be pleased to do that.” And he said, “I want a Commission.” I said, “How much time do I have?” He said, “You have 60 days.” I said, “Governor, with 60 days you can’t have a Commission . . . but here’s what I can do for you . . . you let me pick the best people in state government right now and get civil service off my back. I’ll work them all the time, and we’ll get it done for you.”

The Governor agreed and Roberts quickly assembled his team and they began working around the clock. Roberts described the school equity funding problem they were trying to solve this way: “We had a problem, that is the richer schools were getting richer and the poorer schools were getting poorer, and there didn’t seem to be any way to stop it.”

Roberts benefited greatly from the prior work done by the Harden/Runkel Commission in 1987. According to Roberts,

The major outline of what I initially gave to the Governor came from the Harden/Runkel Commission. My argument was the following: I am literally redesigning an airplane. You can't do it in 60 days. I already had a model that had been tested, I had a lot of people who knew something about it, and it had something that I stole from one of the people who'd worked on that one—what I call the genius of Proposal A.

To Roberts, the “genius of Proposal A” -- first conceived by Dr. Tom Logemann -- was first articulated in the report generated by the Harden/Runkel Commission:

“Let's freeze everybody in place and use time, the variable time, to create equity. That was it. *That* was the solution. So when we wrote Proposal A, high spending districts got a guarantee . . . that said, ‘You can't get any less than you're getting right now.’”

This allowed the Engler Administration to go out and say to school districts, “You may not get more, but you're not going to get any less.” Roberts recalled that he and his team put an unbelievable amount of work into developing what became Proposal A. He used the analogy of a tree to share the complexity of how one decision would lead to several other issues that would have to be worked through:

Pieces of it are like a tree. So you go up, and once you make a decision on one branch, that leads someplace else. But I don't know that branch yet. So many times, I went to the Governor with two or three branches, all of which had now been thought out . . . only one person—the Governor—makes the decision. And he says, “That's the branch.”

Roberts and his team had to complete their work in time for Engler's speech to the joint session of the Legislature scheduled for October 5, 1993. The report had three key sections:

What we did in this report was have a whole section on school reform . . . a whole section on school finance . . . and a whole section about changing local government, which is often forgotten. . . . Three very important sections—fundamental changes, all three of them. (Roberts)

Using the work of Roberts and his team, Engler's speech unveiled his plan to submit a constitutional amendment to Michigan voters. The amendment would 1) immediately increase

the sales tax by two cents; 2) permanently eliminate local school operating taxes for all but 35 school districts; 3) earmark all existing and new K through 12 revenues to the School Aid Fund, including the lottery; and 4) abolish the State Tax Commission and reform the State Board of Education (Engler speech, 1993, p. 15).

Roberts worried about what would happen if the voters turned down the constitutional amendment that Engler was proposing like they had done with so many previous proposals:

I kept telling the Governor, “Governor, I’ve always tried to serve you well, and every time something failed, I always had a plan B in my pocket. You knew that and I knew that, but Governor, I don’t have a plan B. . . . I’m not trying to fool you . . . I don’t have a plan B. If this fails, I don’t know what we do.”

Roberts then explained how the Democrats ended up giving Engler his Plan B:

They walked into him one day, and they said, “Governor, this thing could fail and we’re all going to be high and dry. We propose the following. In rough terms, we’ll get you the two-thirds vote in order to put this [constitutional amendment] . . . on the ballot . . . but you have to agree to a backup plan which includes a 6% income tax. If you agree to that, we’ll work it out.”

Roberts saw this as a political maneuver designed by Democrats hoping to trap Engler.

The general idea was that the Republicans would take ownership for the constitutional amendment, which involved an increase in the sales tax, while the Democrats would take ownership for the backup plan which involved an increase in the income tax.

So when they left, I asked the Governor, “So why did you agree to the deal?” He looked right at me and said, “If I can’t beat an income tax with a sales tax. . . .” He just thought he could beat ‘em. Plain and simple. (Roberts)

McLellan remembered that the Legislature finished its work on the day of Christmas Eve after 30 straight hours of negotiations:

Thirty hours on Christmas Eve day, they finally got it done. You know as soon as they were done, everybody was on their way home, and John Engler said, “Let’s go get a sandwich.” So we went down to some bar and . . . Engler started working the bar. . . . He said, “Would you rather have an income tax or sales tax?”

McLellan said Engler immediately started campaigning “when every other Democrat, and every other Republican, went home” because he knew he had just

rolled the dice on an income tax versus a sales tax. He [Engler] immediately started campaigning for it. . . . He had to get the yes votes for the sales tax. If you don’t get a sales tax, you’re going to get an income tax voted on by Republicans. He was the most anti-tax governor in a long time, but he voted to raise the income tax.

Engler’s gamble paid off on March 15, 1994, when Michigan voters voted 3 to 1 to support Proposal A. Now that he had a way for state funding to follow the student, Engler was anxious to see if he could foster enough choice and competition to force Michigan’s public educational system to change and improve.

### **Passing and Defending Michigan’s Charter Law**

Engler saw charter schools as a way to create new schools that would offer educational choices to students and their families. He also saw charter schools as a way to create competition for school districts. On the surface, these ideas seemingly appear straightforward. However, the political realities of Michigan’s educational policy context made market-based ideas like this nearly impossible to enact.

Despite these political realities, Engler was determined to advance his vision for a competitive educational environment. According to political scientists, policy entrepreneurs can have a disproportionate influence in the legislative arena – especially when that person is a Governor (Baumgartner & Jones, 1993). Engler showed this to be true by getting a group of House Republicans—Reps. William Bryant Jr. (R-Grosse Pointe Farms), Jessie Dalman (R-Holland), Jack Horton (R-Belmont), Alvin Kukuk (R-Mt. Clemens), Robert Bender (R-Middleville), Willis Bullard Jr. (R-Milford), Walter DeLange (R-Kentwood), Richard Bandstra (R-Grand Rapids), Barbara Dobb (R-Commerce), John Llewellyn (R-Fremont), Susan Grimes

Munsell (R-Howell), Leon Stille (R-Spring Lake), Timothy Walberg (R-Tipton), Dan Gustafson (R-Haslett), and Bill Martin (R-Battle Creek)—to introduce a charter schools bill (HB 5124) on October 12, 1993, only one week after his speech to the joint session of the Legislature.

Two days later, Engler’s college friend and political ally Senator Dick Posthumus (R-Alto), along with Senator John Kelly (D-Detroit), cosponsored Senate Bill 896, which was the Senate’s version of a charter schools bill. While Majority Leaders rarely sponsor bills themselves, Posthumus said he sponsored Senate Bill 896 because he felt strongly about the power it afforded students and families:

My view, from the beginning, was that we needed to change how young people were educated in the state in order to compete in an international economy. I didn’t see it as a Republican/Democrat issue at the time, because the children who needed choice the most were often kids in urban districts that were represented by Democratic legislators.

When asked how the Legislature was able to introduce a bill reflecting his vision for education within a week of his speech, Engler shared that his team had been busily drafting bills all along: “We felt under the gun from a timing standpoint . . . so we didn’t have very much time to be able to dawdle around. We had to get going.” According to Schneider et al. (1995), this type of initiative and forethought is characteristic of policy entrepreneurs. They theorize that “entrepreneurs themselves can be catalysts of change, leading and mobilizing demand, rather than simply following it” (p. 69). Policy entrepreneurs also know how to seize opportunities and have the ability to assemble the resources necessary to undertake change.

### **Testimony of Proponents and Opponents**

Both bills began moving through the legislative process almost simultaneously. According to the minutes of the House and Senate Standing Committees on Education, numerous committee hearings took place with interest groups testifying both for and against the proposed legislation. One of the more prominent proponents of charter schools was a group called

TEACH Michigan, founded in 1989 by a medical doctor named Paul DeWeese. Under his leadership, TEACH Michigan promoted fundamental changes in the way public education functioned. According to documents supplied to the Bentley Historical Library at the University of Michigan, DeWeese believed “parents should be allowed to choose from competing systems of schools with funding for education following the student and not automatically being given to the government-supported school system” (TEACH Michigan, 1989–1996).

In a document titled *Charter Schools for Michigan*, TEACH Michigan (1989–1996) described what they viewed as two essential differences between charter schools and traditional neighborhood public schools.

1. No student is assigned to a charter school. Students must choose the school.
2. The school is freestanding, self-directed, and can fail, that is close, if it does not get enrollment, or becomes inefficient. The school’s income comes from its enrollment, not from some centrally directed allocation. The emphasis in a charter school is on producing, rather than on administering, regulating or governing. The discipline on a charter school is market competition, rather than administered evaluations and sanctions. (pp. 2–3)

Besides being advocates for choice and competition, DeWeese and TEACH Michigan raised the money to engage the legal services of McLellan. According to McLellan,

I was working for Paul DeWeese. He raised the money and paid us. John Engler didn’t pay us. When I was over there drafting the bill, I was working for Paul DeWeese, who by that time had accommodated himself to understanding that school choice could not be a state funding of religious schools. He was really in favor of vouchers. It took him a while to learn, just because it’s where he started out wanting to draft, what was basically a very lengthy charter school bill and put it in the Constitution.

Another key group in support of the charter schools legislation was the conservative leaning Michigan Family Forum, led by its Executive Director Randall Hekman. Hekman was no fan of the public education system. In a written public statement Hekman said “a significant part of the problem is the system itself.” He then asked, “Why, after 30 years of trying earnestly

to turn back a flood of declining performance, do we find ourselves still short on fingers needed to plug the dam?” (Hekman, 1993a, p. 2).

He then answered his own question:

We have a monopoly system of education that receives guaranteed funding and guaranteed customers regardless of how it serves those customers. With no incentive to perform, it hasn't. So like the trustbusters that broke the stranglehold of monopolies earlier in this century, this Legislature must decentralize our government-run public education system. (Hekman, 1993a, p. 2)

Hekman then urged the Education Committee to eliminate the legislative requirements for charter schools to follow the state's model core curriculum and administer the state's testing system known as the Michigan Educational Assessment Program (MEAP).

To require a monolithic “model core-curriculum” to be at the heart of all “regular” and charter public schools really cuts at the heart of our desire to trust parents and teachers at the local level to do what is right for the children there. At minimum, let's let charter schools be free enough of state curricular guidelines to allow for a valid experiment on schools that hopefully will work better than the present bureaucracy. We also recommend making the MEAP test optional. Let's give more freedom to charter schools to use whatever testing the market seems to demand, not the requirements of some arbitrary state regulation. (Hekman, 1993b, pp. 1–2)

A third group that played a significant role in building support for charter schools was the Mackinac Center for Public Policy, a research and educational think tank located in Midland, Michigan. Using words echoing Chubb and Moe (1990), the group published a commentary dated November 8, 1993, entitled *Charter Schools as Catalysts for Change*. In it, the author, Wittman, said, “Engler's proposal for charter public schools may do more by itself to transform the culture of public education in Michigan than all the myriad reforms debated and adopted in recent years” (p. 1).

Wittman (1993) then went on to articulate the market-oriented thinking that envisioned school boards no longer running schools, but rather purchasing educational services from private providers. To make his point, Wittman (1993) cited a quote from the Executive Director of the

Colorado Association of School Boards who had originally opposed his state's charter schools legislation, but then changed his view:

It [the charter school legislation] can be viewed as an opportunity to do something new and creatively different . . . [it] forces the school board to re-examine its role. Rather than serving as provider, the board has an opportunity to become the *purchaser* of education services. . . . This is a role that opens up all kinds of possibilities for school boards. (p. 1)

Opponents also geared up to make their voices heard, testifying against the charter school bills before the House and Senate Education Committees. In testimony dated October 19, 1993, Thomas White, then-director of government relations for the Michigan Association of School Boards, reminded legislators that although Senate Bill 1 eliminated the use of local millages for funding schools, "it did not mandate the re-creation of the education system itself" (p. 1). White (1993) then said,

While the competitive paradigm is proper for business—it is not a perfect fit for education. The competitive paradigm suggests that effective schools should prosper and be financially rewarded while "poor" schools be publicly exposed and financially punished. We don't believe we can or should design a system based on allowing neighborhood schools to atrophy, deteriorate and "go out of business."

Our goal should be to improve all schools. Let us identify, assess and provide resources to those schools rather than set up a wasteful dual system of choice and charters to "out compete" the schools in need. (pp. 5–6)

Perhaps the most vocal and prominent opponent was the Council of Organizations and Others for Education About Parochialism, often referred to as CAP. CAP was composed of 15 membership organizations along with several individual members. Members of CAP ranged from the American Civil Liberties Union to the Michigan PTA. The most active member of CAP, by far, was the Michigan Education Association. In a letter dated November 9, 1993, CAP's President, Trish Elms, urged William Keith and William Bryant, Co-Chairs of the House Standing Committee on Education, to vote against the charter schools bill. Elms' (1993) letter

foreshadowed the legal challenge that CAP, spearheaded by the MEA, would eventually bring against Michigan's charter school law once it was enacted:

Article 8, section 2 of the Constitution is emphatic and explicit. Neither public money nor property can be used to aid any private or nonpublic . . . school—regardless of whether that school is religious or secular. . . . The charter “public” schools proposed in this legislation, in reality, are private schools masquerading under the beguiling disguise of school improvement to qualify for public funding.

## **Two Charter Bills**

Despite the opposing testimony, the Republican-controlled Legislature was able to secure enough votes to pass Engler's charter legislation. In fact, they passed both charter school bills, but only one took effect. House Bill 5124 was signed into law by Engler on December 28, 1993, becoming Public Act 284 of 1993. Then, Senate Bill 896 was passed by the Legislature on December 24, 1993, and signed into law by Engler on January 14, 1994, becoming Public Act 362 of 1993. The Senate Bill contained language that automatically repealed the House Bill, thereby officially establishing the Senate Bill as the new charter law and Michigan as the ninth state to have such a law.

Attorney McLellan said the adoption of the two bills so close together reflects how much was going on in that short period of time: “You could adopt a charter school bill and never have it take effect because you passed the second one.” Wolfe recalled that shortly after the charter school bill initiated in the House passed and became Public Act 284, his boss received a call from Governor Engler's chief legal advisor:

Lucille [Taylor] called Richard [McLellan] and basically said, “These bills on education are passing so fast, and we are now looking at all of them, and I looked at this one. Something does not look right on this bill. Can you guys take a look at it? And have Len take a look at it, because he'll understand some of the stuff we were working on on the funding side.”

After receiving this call from Taylor, McLellan and Wolfe began examining the bill.

Wolfe said,

We did a bunch of work on the bill, and I think our initial conclusion was that the bill was unconstitutional for a lot of reasons. It was just a poorly drafted bill. It was an initial concept based on some of the stuff that had gone on in Minnesota, but they didn't have a Parochial Amendment like we do. We have very stringent restrictions on funding of nonpublic schools. There really wasn't a declaration that this was a public entity, or how to create that public body and give it powers. The state, through the legislature, has the ability to convey those authorities that make something public, and there was no declaration of the "publicness" of this entity. We ended up going back and saying, "This bill's unconstitutional."

According to McLellan, HB 5124 was drafted by Engler's education policy advisor. He said, "Just like I wouldn't want to run a school, a guy with a Ph.D. in education probably shouldn't be drafting constitutional language on structuring schools." McLellan said that after he and Wolfe had conducted their own analysis, they had a meeting with the attorneys from potential university authorizers. "We then had a meeting with the University legal counsels, and they raised legal questions about it. I looked at it and said, 'You know what—they're right. This bill is just unconstitutional.'"

McLellan then went to the Senate Majority Leader Dick Posthumus and told him the bill was "defective" who relayed the information to Engler. When Engler subsequently called him, McLellan told Engler that it was highly unlikely that HB 5125 could withstand a constitutional challenge. Engler said this was "regrettable" and that they "paid a price" for not getting expert legal counsel involved earlier in the process.

McLellan described what transpired next:

Dick Posthumus called me and said, "I talked to the Democrats. Can you take the Democrats charter school bill, and can you fix it to make it work?" And I said, "I'll see what I can do." I took that bill, and it had 13 pages of amendments—amend line so-and-so by adding this and striking that . . . then I e-mailed it to him around ten o'clock at night. The next morning I got a call from Posthumus saying, "Can you come over and explain these to me?" So I went over to his office, and I remember sitting in the Majority

Leader's office . . . until two o'clock the next morning. Basically, we had shuttle diplomacy with the Democrats—Virgil Smith, Lana Pollack, John Kelley, as well as [Republicans] people like Alan Cropsey and others, working on the bill.

McLellan remembered that one of the major sticking points in the negotiations involved the prohibition of charter schools from having any contractual agreement with a church or religious organization. He said,

There was a provision in the Democrats' bill that prohibited any contractual agreement between the church or religious organization and a charter school. Cropsey, of course, didn't like that . . . but I looked at that and I said, "Okay, what can we do to accommodate him, be consistent with the Constitution, and get a bill passed?"

The strategy McLellan uses when trying to draft controversial language involves using the language that his opponent wants and then drafting additional language around it. Thus, he took the Democrats' prohibitive language and simply added a clause at the front end of their sentence that read, "Except as permitted by the Constitution of the United States." McLellan said that clause "basically turned . . . a flat prohibition to a permission of anything that was permitted by the Constitution."

By leaving the language exactly as the Democrats wanted it, but adding this clause to the beginning of the sentence, McLellan said he was able to completely reverse the prohibition:

This was at about one o'clock in the morning, and I remember Senator Cropsey came in, and I said, "Okay Senator. This is what I suggest." He's a lawyer. He read it and he said, "Oh, okay. I get it." We then called in Lana Pollack, atheist, anticharter school person, and showed it to her. And she said, "Well. . . . So there can't be any contract between any church and the school that would be prohibited by the Constitution, like teaching religion?" I said, "Absolutely." She said, "Okay."

### **Anticipating Lawsuits**

Engler, Posthumus, and McLellan were almost certain that the MEA would challenge the constitutionality of any charter school law that was enacted. They took at face value the letter that CAP had submitted to the Legislature during committee hearings and knew that the MEA

was saying that charter schools were not “real” public schools. McLellan said they knew “the MEA would be arguing . . . public school can only mean a district with an elected school board.”

Anticipating this move, McLellan said one of the most important things they did in drafting the bill was developing “language at the front end that deals with what a charter school is, and that it’s part of the public school system.” He explained, “We very carefully analyzed the constitutional requirements in Michigan and drafted all that language to address that issue, so that ultimately, if we were in the Supreme Court, we could convince the Court that it was a public school” (p. 2).

The “language at the front end” is the opening of Michigan’s charter school law. Known as Part 6A of Michigan’s Revised School Code, the first section, 380.501, begins

Sec. 501. (1) A public school academy is a public school under section 2 of article VIII of the state constitution of 1963, is a school district for the purposes of section 11 of article IX of the state constitution of 1963 and for the purposes of section 1225 and section 1351a, and is subject to the leadership and general supervision of the state board over all public education under section 3 of article VIII of the state constitution of 1963. A public school academy is a body corporate and is a governmental agency. The powers granted to a public school academy under this part constitute the performance of essential public purposes and governmental functions of this state.

McLellan went on to emphasize the importance of charter schools being public body corporates and government instrumentalities under the federal Internal Revenue Code. He said,

We determined that in order to meet the test, a government entity needed to exercise some portion of sovereign power. That could be the power of taxation, police power or condemnation. Since a PSA [charter school] did not have taxing power or police power, we decided to add some convoluted language sort of giving PSAs condemnation power with the consent of their authorizer. . . . It reflects the degree to which we addressed these issues in drafting the legislation.

McLellan’s detailed description of the extent to which he went to ensure Engler’s charter school law would prevail if legally challenged by the MEA, highlights the point that Schneider et al (1995) make about policy entrepreneurs surrounding themselves with a network of highly

competent people who share similar values and objectives. Like McLellan, Wolfe said they had to conduct legal research to understand how other public entities in Michigan were formed:

We spent a lot of time looking at other public body corporates, other public entities. That term, “public body corporate,” was important. This was really getting into the case law; how can you do it? How can you structure it? What can you do? What are the pitfalls?

As a young lawyer, Wolfe had not spent much time with the Parochiaid Amendment. In addition, he said there was not much case law to refer to, so they were essentially breaking new ground. He explained:

There wasn't much case law, other than to say the 1972–73 case that basically interpreted what you can and can't do in public schools. So there wasn't a lot out there, but we made enough changes in terms of creating a public entity and a process by which those board members would be appointed. . . . In addition to creating a public entity, you had to create a process that was similar to an existing state law, and also under the Constitution for the appointment of public officials.

The approach McLellan and Wolfe settled on for making charter schools public bodies was through a creative application of the Michigan nonprofit corporation act, Act No. 162 of Public Acts 1982. According to McLellan, this was the first time the Michigan nonprofit act had been used to create a public body:

The critical thing was the Articles of Incorporation language. It needed to say, “This body is a public body corporate.” Nobody had ever considered that a Michigan nonprofit corporation could be a Michigan nonprofit *public* corporation. Everyone had assumed it was the Michigan nonprofit *private* corporation act. Well, it's not, that's why we put it in the Bill.

### **Funding Injunction and Constitutional Challenge**

On August 18, 1994, the Council of Organizations and Others for Education About Parochiaid, along with two members of the State Board of Education, and others, filed suit in the Ingham County Circuit Court challenging the constitutionality of Michigan's charter schools law. With the first school aid payment of the year occurring on October 20, all eyes were on the Department of Education to see if they were going to approve state funding for schools that had

been authorized and issued a charter contract. After considerable deliberation, the Department of Education approved funding for eight charter schools on October 17, 1994. However, the Department denied funding for the Noah Webster Academy—which was essentially a home-school network—because the Department determined that its charter contract did not contain all the provisions required by Michigan’s charter school law.

Now that the Department of Education had decided to fund these eight charter schools, the MEA, acting through CAP, sought and received a preliminary injunction from Ingham County Circuit Court Judge William Collette two days later. This injunction prevented the Department of Treasury from issuing any state school aid payments to charter schools until a decision was made on the law’s constitutionality.

On November 1, 1994, Judge Collette followed up the preliminary injunction blocking the issuance of state school aid funds to charter schools with a ruling that declared Michigan’s charter school law was unconstitutional because charter schools were not under the “immediate, exclusive control of the state . . . were not governed by publicly elected bodies” and therefore were not “public schools” under Article 8, Section 2 of the Constitution of the State of Michigan (1963). In addition, Judge Collette held that Michigan’s charter school law divested the State Board of Education of its constitutional authority to provide “leadership and general supervision” (*Council of Organizations and Others for Education about Parochialism, Inc. v. Governor John Engler [CAP v. Engler]*, 1994, p. 3) over public education as required by Article 8, Section 3 of the Constitution of the State of Michigan (1963).

With this ruling, Michigan no longer had a charter school law. Posthumus recalled that after Judge Collette’s decision was announced:

We said, “We’ve got to fix this.” Actually, McLellan really took the lead on this. We thought about creating a whole new act, and then we said, “We can just take pieces of

this and put a new section in, and that would take over for the bill. . . .” It was the lawyer and Richard McLellan that figured this out.

So Engler and his allies pushed forward with their vision for charter schools. Engler used his influence to push the Legislature to respond to the court ruling by enacting another charter school law that addressed some of the major issues found in Judge Collette’s ruling. Posthumus said that after McLellan figured out how to deal with the legal issues, they

Just had to go back and get the votes. It was close. We didn’t have any problems in the Senate, but we knew it was going to be tough in the House. But we were able to get the votes, and it worked.

On December 13, 1994, Public Act 416 was enacted, which amended PA 362, by amending Part 6A of Michigan’s Revised School Code and adding a new section called Part 6B. This effectively provided Michigan with a new charter schools law to proceed under while the battle over the constitutionality of the original law advanced to the appellate court. The newly adopted law also added a provision that if the original law (Part 6A) was later found to be constitutional, the new law (Part 6B) would automatically be repealed and only the original law would remain. When asked about this “repealer” language, Posthumus said, “It was a brilliant idea that Richard [McLellan] had, so that in either case we were okay.”

In the meantime, Michigan’s Attorney General Frank Kelley, a Democrat often at odds with Engler, filed an appeal with the Court of Appeals on November 28, 1994. On November 29, 1994, three charter schools (Noah Webster, Northlane, and New Branches) that had been denied state school aid funds through Judge Collette’s funding injunction also filed claims of appeal. The following day, Central Michigan University joined the schools it authorized and filed its claim of appeal.

About a year and a half later, on March 29, 1996, the Michigan Court of Appeals -- in a two-to-one decision -- affirmed that the trial court properly held that the charter school law,

Public Act 362 of 1993, was “unconstitutional on its face” and therefore properly “enjoined the funding of academy schools pursuant to that act” (*CAP v. Governor*, 1996, p. 2). The rationale the Court of Appeals provided for its decision follows:

1. A provision in a constitution should be given the interpretation that the great mass of people would give it. In construing the constitutionality of a statute, a court must look to the statute’s requirements rather than the manner in which the statute is administered. The constitutionality of a statute must be tested by considering what may be done under the provisions of the statute without offending any express provision of the constitution.
2. Because 1993 PA 362 is silent concerning the initial method of selecting the members of the boards of directors of academy schools and because there is no provision requiring the public bodies that authorize the charters of academy schools to appoint the directors or supervise the election of those directors, an academy school could be chartered without being subject to any public control and thus be controlled by an essentially private entity. Absent the imposition of a statutory provision requiring public control of the selection of members of boards of directors of academy schools, academy schools . . . cannot be considered to be public schools within the meaning of the Constitution. (*CAP v. Governor*, 1996, pp. 1–2)

However, one of the justices, P. J. O’Connell, vehemently disagreed with the majority opinion issued by justices Marilyn Kelly and D. A. Teeple. In a strongly worded dissent, O’Connell argued that the decision of the trial court should be reversed and that the majority was acting as a “super legislature,” using an incorrect standard of review regarding the “control” issue associated with Article 8, Section 2 of Michigan’s Constitution. In his dissent, O’Connell wrote,

Even assuming that Const 1963, art 8, sec 2 requires that a school be under the immediate control of a public body in order to be considered to be a public school eligible for state funding, the only facts before the trial court showed that the authorizing public body...had exercised and had retained by contract the power to continue to exercise substantial control not only with respect to the selection of members of the board of directors of the academy schools, but also with respect to a wide range of activities relating to the administration of the educational programs at those schools. The majority mistakenly seeks to test the constitutionality . . . on the basis of some possible theoretical set of circumstances that might occur rather than on the basis of the facts actually before the trial court. (*CAP v. Governor*, 1996, p. 2)

Now that the charter school law had been ruled unconstitutional by both the circuit court and the appellate court, the question was whether Engler and his allies should appeal to the Michigan Supreme Court or throw in the towel. Barrett said he and the Michigan Chamber of Commerce wanted to send a message to the MEA and the traditional school people that it was time for change in education and that the business community was not going to be intimidated:

We demonstrated . . . that we were very dissatisfied . . . that we were going to stand up to them, and we were not going to be pushed back by the overwhelming expense of this legal action and by their presence in traditional public education settings throughout the state.

Trimmer-Hartley, spokesperson for the Michigan Education Association, recalled that the MEA was adamant about defeating charter schools: “The MEA was categorically opposed to charter schools. Period. End of discussion. They would fight them at all levels, and there really was no openness to discussing it.”

McLellan and Wolfe claimed they were not distraught after losing two court rulings. McClellan said one reason he was not concerned after the circuit court ruling was because it involved a worst case scenario set of facts.

We had a terrible case—a homeschool, religious-based thing. That school [Noah Webster] was unconstitutional. That was the worst possible case to bring up, and I still think those people were very ill advised. . . . They didn’t really understand what they were doing.

In McClellan’s opinion, the Noah Webster Academy should have lost, but that should not have caused the judge to rule the entire act unconstitutional:

In some respects . . . he [Judge Collette] overturned it on the most extreme position. Then . . . O’Connell . . . wrote the Court of Appeals decision, which was right up the middle. It was exactly what we wanted, he understood it, and that was a great opinion.

In contrast, Barrett said he was gravely concerned after losing the two court cases:

I was very concerned about . . . going out and asking for another round of money and whether we were going to have much chance for success. And I was asked the question, “Well you’ve lost the first two rounds. How do you expect to win this one?”

Barrett explained that both McClellan and Engler assured him that they thought there was a good opportunity for success at the Supreme Court level. Nevertheless, Barrett was still concerned; while they had a direct stake in the outcome, neither McLellan nor Engler were putting up the money.

I was very cautious, because both of these guys had a direct stake. In the case of Engler, this was a . . . public policy change that he wanted. In the case of McLellan, his law firm was benefiting from the time and effort and the payments they got from the business community. . . . So there was a lot of trepidation, because my neck was on the line, so to speak, and my credibility, because I was going out and raising the money.

Barrett explained that he then went to McLellan and gave him his assurance that the business community would see this through financially if his firm would accept a cap on expenditures for the last round with the Supreme Court. Barrett said that after they came to an agreement, he went to the business community and said,

“Here’s the cap. There will be no more expenditures. Both the governor and our legal counsel think our opportunities are good based on the track record to date.” I told people . . . “I’m not overly optimistic, but I’ve been assured as best as you can determine what the Supreme Court will do . . . that there’s a pretty good opportunity.”

For Wolfe, the technical changes the Legislature made to the law in response to Judge Collette’s initial ruling helped:

One of the things that was critical in the Supreme Court case . . . was . . . we got help from the Legislature, who went back in 1994, after the circuit court opinion . . . and made technical changes. . . . We tried to make sure that we addressed by specific wording in certain parts of the bill, the role of the State Board—the fact that these schools *were* subject to the State Board’s constitutional authority.

McLellan said Engler and Posthumus relied on him and the Dykema law firm to help them prevail:

When you go to the Supreme Court, you don't just look at the cases, because there was never anything like this before. But we were able to research, with great detail, that public schools did not just mean a district school under an elected school board.

McLellan continued: "The MEA fought us tooth-and-nail. That's their job, to protect the status quo. They were doing everything they could, and their lawyers were coming up with the best arguments they could."

Wolfe offered additional insight, explaining that the MEA lawyers asked the

Wrong question all the time. Their lawyers are masterful at . . . driving the discussion off to answering the wrong question. So the challenge we always had was saying, "That's the wrong question. You didn't ask the right question." And we kept asking and answering the right question, even though it wasn't their question.

Although the constitutional challenge to Michigan's charter school law is often referred to as "the charter schools case," McLellan and Wolfe contended that it really was a case about legislative powers. McLellan said the MEA, through the Council of Education Against Parochialism, was really arguing that Michigan's charter schools were unconstitutional because the board members who governed them were appointed rather than publicly elected. This, they argued, meant that charter schools were not public schools, violating Michigan's Parochialism Amendment which prohibits public money flowing directly or indirectly to a nonpublic school.

They [Michigan Supreme Court] knew that this [charter schools] was a significant departure. . . . They said, "But that's the Constitution." It doesn't say, "There shall be a system of free public schools under elected school boards." They said the Legislature could do it, so it became a legislative powers case. (McLellan)

Finally, on July 30, 1997, almost three years after Judge Collette struck down Michigan's original charter schools law, the Michigan Supreme Court issued a six-to-one ruling finding in favor of Engler:

We hold that 1993 PA 362 does not violate article 8, section 2 or article 8, section 3 of the Michigan Constitution of 1963. We remand this case to the trial court for it to vacate its injunction and order the Department of Treasury to make payments to the public

school academies that were operating under 1993 PA 362. (*CAP v. Governor*, 1997, p. 22)

In reaching its determination, the Supreme Court said that although the Legislature must provide for free and appropriate education for all students, it has broad authority to establish different types of schools.

The 1963 Michigan Constitution does not define the term “public schools.” However, it does state that the Legislature has the responsibility for maintain[ing] and support[ing] a system of free public education. . . . The Legislature has had the task of defining the form and institutional structure through which public education is delivered in Michigan since the time Michigan became a state. (*CAP v. Governor*, 1997, p. 11)

For McLellan, winning in the Supreme Court was

Quite satisfying. At the end of the day, the Court agreed with us. . . . Public schools did not just mean a district school under an elected school board. You had schools for the deaf, schools for the blind, university schools, etc.

McLellan’s point is that under Michigan law there already are different types of public schools. For example, Detroit Public Schools held the distinction of being the only first-class Michigan school district, meaning it had more than 100,000 students. In addition, the Legislature has created general powers school districts, schools for the deaf, schools for the blind, intermediate school districts, charter public schools, strict discipline academies, urban high school academies, and more.

Regarding the question of whether charter schools had to be “under the ultimate and immediate, or exclusive, control of the state” to be public, the Court said,

Our constitution does not mandate exclusive control, it requires that “[t]he legislature shall maintain and support a system of free public elementary and secondary schools . . .” There is no requirement . . . that the state must have exclusive control of the school system. (*CAP v. Governor*, 1997, p. 12)

The Court also said Michigan’s charter schools were “under the ultimate and immediate control of the state and its agents.” The Courts rationale follows:

First, a charter may be revoked any time the authorizing body has a reasonable belief that grounds for revocation exist. . . . Second, because authorizing bodies are public institutions, the state exercises control over public school academies through the application-approval process. Third, the state controls the money. Finally, the Legislature intended the other sections of the School Code to apply to the public school academies. (*CAP v. Governor*, 1997, pp. 12–13)

Regarding the argument that charter schools are run by private boards of directors, the Court referenced a previous Supreme Court ruling, which said,

The authority granted by the Constitution to the Legislature to establish a common or primary school system carried with it the authority to prescribe what officers should be chosen to conduct the affairs of the school districts, to define their powers and duties, and their term of office, *and how and by whom they should be chosen*. (*CAP v. Governor*, 1997, p. 14)

Using this precedent, the Court reasoned that, in Michigan, the governor is a publicly elected position, and via the Constitution he or she appoints the board members for the state public universities and those board members serve as public officials. Thus, they have the authority under the charter school law to establish the method of selection and appointment process for charter school board members.

In response to the complaint that the charter school law was unconstitutional because it violated Article 8, Section 3 of the Michigan Constitution by divesting the State Board of Education of its duty to exercise general leadership and supervision over public education, the Court said,

Because the Legislature declared that public school academies are public schools, subsection 501 (1), they are necessarily subject to the leadership and general supervision of the State Board of Education to the same extent as are all other public schools. Further, subsection 503(5) provides that a “public school academy shall comply with all applicable law,” a requirement that incorporates the constitutional provision in issue. (*CAP v. Governor*, 1997, p. 20)

Even though Engler and his allies were pleased with the outcome, Engler said the constitutional battle was

Regrettable. We understood that we were in a highly litigious environment, so we knew this was going to be a struggle every step of the way. . . . We often had trouble in the lower court level where it was simply a political decision being made.

In his official dissent, Supreme Court Justice Boyle captured the underlying tension that charter schools continue to raise in the arena of public education:

This case is about the inevitable tension that exists between the intent to create schools that are free from the burden of regulation in order to allow experiments in improved learning, and the constitutional imperative that public funds not be used for private purposes. The issue . . . therefore, is how much public control is necessary to comply with the constitutional directive. (*CAP v. Governor*, 1997, p. 2)

This “tension” helps explain why Michigan’s charter schools are not substantially deregulated the way charter schools are discussed in theory. Engler said it is important to understand that he and his team could not accomplish all the deregulation they desired. “In the early days, it was more about staying alive. [Some things] weren’t really doable back then.” He continued: “The regulation is in the hands of some of the most ardent foes, so it’s not like they want to go quietly into the night. . . . The struggle doesn’t end, just because of the kind of fight we’re in.”

### **Implementation Issues**

With the question of how Michigan was going to fund its public schools settled and his charter school law in place, the next dilemma Engler faced was who would implement his vision of “schools without boundaries.” Engler felt that it was imperative to “stick with it. When you work that hard, you cannot risk it all by relaxing when it’s time to implement it.”

One implementation challenge Engler and his allies faced was the bureaucracy of state government. Engler explained:

There were people in the government who were not at all helpful, and . . . there were also people in government who were adamantly opposed. So we were really living in hostile

territory—or at least we had to go through hostile territory in getting to where we wanted to go.

### **State Superintendent and Board of Education**

Some of the “hostile territory” that Engler believed he had to navigate involved the State Board of Education and their influence over the Department of Education. Engler lamented the fact that Michigan’s Constitution limits the governor’s ability to drive educational change because the State Board is publicly elected and they, rather than the governor, appoint the State Superintendent of Public Instruction:

Michigan also has some unique circumstances. We have a State Board of Education where the Governor appoints neither the board nor the superintendent—that’s very unusual. To me, it’s actually a handicap to reform in Michigan, because you can’t do the kinds of things that other states can do as fast as they can get them done.

Engler viewed the State Board and the Department of Education as major impediments to getting charter schools aggressively implemented. Moreover, he believed that they would use their regulatory authority to sabotage the implementation. Engler’s friend and ally, Smith, thought that Engler tried to work through the Department of Education and found it to be “more of an obstacle than a primary place to create better education for kids.” Shields, Engler’s lead person for getting charter schools implemented, confirmed that the Department was not supportive of charter schools the way she or Engler thought they should be: “I had a lot of battles with the Department of Education because of the fiefdom/serfdom going on.”

Engler’s sense of urgency caused him to become very frustrated with what he viewed as a lack of support, focus, and urgency at the Michigan Department of Education: “We had dearly hoped that we would see people, as they began to accept charter schools, be willing to allow the reforms to work a little more easily.”

The person responsible for administering the Department of Education at the time was State Superintendent of Public Instruction Robert Schiller. Schiller and Engler did not share similar views regarding the need for education reform and charter schools. Even though he had a strong charter law in place, Engler was concerned that Schiller would use the regulatory power he possessed to stifle the development of charter schools. Engler knew that many unforeseen implementation issues would likely come down to “agency interpretation,” and he did not want to leave that to chance:

We tried not to get ourselves into a position where everything was dependent on an agency interpretation. We knew that we had a system that didn't work well, but this was also a sort of hand-to-hand combat, because again, the powers that be in public education just didn't want to let go of the levers.

So Engler decided that it was time to move Schiller out. Ellis, who was serving as the Director of Commerce for Engler at the time, said that one day after a cabinet meeting the Governor pulled him aside and said, “Art, I want you to take over education. I know we've talked about this before and it was never going to happen, but I really want you to do it.”

Ellis explained that after he agreed to “take over education,” Engler worked with Clark Durant, who was serving as the President of the State Board of Education at the time, to orchestrate Schiller's resignation as State Superintendent and get Ellis appointed as his replacement. Ellis said Schiller

Resigned at a meeting with the State Board and I just happened to be in the meeting when it happened. Most of the people in the room knew what was happening, not everyone of course. So he resigned, and before anybody knew it, the President of the State Board, Clark Durant, moved that I become Interim Superintendent. Instantly, everyone around the [Engler] administration said, “Welcome aboard. Now we can move forward on charter schools.”

Engler's aggressive action to remove what he perceived as a major obstacle blocking the implementation of his policy agenda further illustrates the point Schneider et al (1995) make

about the ability of policy entrepreneurs to “propel change . . . in the institutionally defined local governments of the United States” (p. 1) and their willingness to bear the risks associated with such action. In addition to Schiller being an obstacle, Ellis said that there was never really any support from the State Board “to push the implementation issues forward. I was there all by myself. Besides Mike Williamson . . . I can’t think of another person that had a job in the Department of Education that cared about them [charters].”

One of the immediate “agency interpretations” that State Superintendent Ellis faced pertained to the State’s responsibility for approving the facilities being contemplated for use by charter schools. “The ability to get facilities was just treacherously difficult. Even if the buildings were closing, they [the traditional education community] were not going to let them fall into the wrong hands.”

As State Superintendent, Ellis said he felt pressure to “fix the facilities thing.” He explained that Engler’s team felt “facilities were the thing that was holding everything else up, that there were teachers out there wanting to be a part of charter schools, but facilities were stopping them.” Shields reported that, when it came to dealing with the facilities problem, she literally had people out in the streets looking for buildings:

We actually had people in the streets with cameras looking at buildings that might have been old school buildings, or really anything that might be used. Then we had to discern who owned the buildings and figure out how to fund them.

When asked if he anticipated charter schools having problems getting facilities, Engler said he did, but that politically there was not much he could do about it: “We anticipated a problem, but we frankly had to be prepared to live with that problem because we couldn’t get there on the capital side.” Wolfe linked the problems back to the politics of Proposal A:

One of the big, lacking elements of Proposal A was that there was no funding for the infrastructure of the school buildings. . . . It was the one thing that got left on the table, on the cutting floor, when everything went through.

When asked about Proposal A and the issue of facilities, Roberts echoed both Wolfe and Engler: “We dealt with operational finance reform. We knew we left capital on the table.” Roberts says this is the reason why facilities were and continue to be such a significant impediment for charter schools: “Charters have no way of collecting money for capital. [They]...were under the gun right from the beginning. It was like, we don’t have a solution to that right now. Maybe later we’ll find one.”

Posthumus recalled coming at it from a different perspective. He believed schools could be operated “much more efficiently than they were being run.” Based on that belief, he thought charter schools “could find a way with these operational dollars, using creative finance, using entrepreneurial ideas, to actually pay for buildings out of them.”

As State Superintendent, Ellis had “sole and exclusive” authority over the use of public school buildings. Because charter schools were new and politically controversial, in addition to having been ruled unconstitutional in court, the ability to secure and finance buildings that could meet the current requirements of the school fire code was problematic. Engler said his administration tried to work with the fire marshal’s office to help get buildings approved. However, they did not appreciate the fact that there were districts who would “rather blow up these buildings” than allow them to be used by charter schools. He also found it ironic that these school buildings could be used one year by a traditional public school, but not the next year by a charter school. “There was this irony of buildings being used by a public school this year, then closing, and then people telling us, ‘Oh, you can’t use that for a charter school.’”

To deal with this challenge and enable charter schools to get established, Ellis developed a “continuous use” policy that allowed the State Superintendent to approve charter schools to legally operate in buildings that had been “continuously used” as a school. This “agency interpretation” allowed charter schools to open their doors without having to make cost-prohibitive renovations in order to bring older school buildings up to the current standards of the fire code. Ellis told a story about visiting what he calls a “marginal” facility near Tiger Stadium that a group wanted to use as a charter school for troubled youth:

We went down to have a look at the building . . . this is what we did with all of the marginal facilities. We said that the details of the fire code . . . didn’t apply. For example, the building . . . permanently failed [the fire code] because this concrete block building . . . couldn’t get the proper distance from all the classrooms to fire doors. In the regulations, it says something like 50 feet, and the building had 45 feet . . . we would talk and say to each other, “Do you think 45 feet is close enough? I didn’t get a chance to measure, but it looks okay to me.” That’s how the “continuous use” philosophy came out.

According to Michigan’s charter schools law, each new charter contract issued by an authorizing body is required to be filed with the Department of Education within 10 days of being approved. Upon receipt, the Department reviews the charter contract to ensure its compliance. The State Superintendent then issues a school code number and makes the school eligible to receive state funding. Ellis put someone in that role both to streamline the process and to ensure that the charters met the legal requirements of the law:

She processed them without second-guessing them. She was good about making sure that they filled them out right and answered all the questions. The application would get put on my desk, I signed it; it didn’t go to the State Board. That’s basically the way . . . we accepted, processed and approved the facilities, the people, the boards, and so on.

For Ellis, it was difficult to advance Engler’s agenda because the MEA had “a lock” on all the policy-oriented decisions that were made by the Department. Trimmer-Hartley, who served as the spokesperson for the MEA at the time, said people were “panicked” inside the MEA. “I remember utter fear. I mean, they thought that this was the pivotal moment when public

education would either crumble around them or they would save it. They were telling extreme stories of what would happen” (Trimmer-Hartley).

Ironically, Trimmer-Hartley said that if the MEA would have embraced charter schools and led the change, they could have

Trumped the charter schools movement. Instead of leading the change, managing and owning a piece of it, they ran the other way. They fundamentally think power and protect what we have—hang on, hang on. That was the mindset—“We’re going to lose if we don’t hunker down . . . and fight like hell.”

Ellis said that while he worked well with individual members of the State Board, that collectively they were a major impediment to getting anything done. Referring to one member, Ellis said, “She’d take every rule we wanted to change and run it by the MEA, and they’d say, ‘Hell no, we’re not doing that.’ She’d come in and object to it at the Board and procedurally just kill it.”

In order to bypass the State Board and break what he refers to as the MEA’s “policy lock,” Ellis said Engler prepared an executive order that effectively reorganized the Department of Education and reallocated much of the power held by the State Board, placing it under his authority as State Superintendent. He said that one day after a particularly frustrating meeting he went back to his office and told the “executive office” that if they wanted to release the order that he was ready. “So they pulled out the executive order, and without much notice to the Board . . . there was a very far-sweeping executive order” (Ellis).

According to McLellan, using an executive order to reorganize state government this way was practically unheard of prior to Engler’s administration: “Nobody had ever used [the governor’s organizational powers] until Engler took over and a lot of that stuff is pretty historic.”

Engler said the executive order allowed his team to stay on offense and was in part possible because of their knowledge of the intricacies of the Michigan Constitution and state government:

We had such an advantage over people because we knew state government. The opposition didn't appreciate where we were coming from; they would look at us like we were being clever, but . . . it was just that we knew what needed to be done . . . we did a good job of staying on offense . . . and . . . keeping our opponents at bay.

Ellis said that after the executive order was issued, the first reaction of the State Board was to say,

“You can't do that!” But yes, we could. And then the reaction was, “Ok, we'll sue.” They wanted the Attorney General to be the one to sue, but they couldn't get the votes . . . so they went out and got the MEA attorney . . . thinking this was a slam dunk.

Ellis continued, “They just didn't understand that they were dealing with the Constitution. And bam, the opinion came down that the executive order was legal.”

Ellis said that after the executive order was ruled to be legal, the State Board no longer wielded the same power and as State Superintendent he could now publicly say that he “would not take orders from the State Board. That's what the executive order did, except that you had to be willing to do that.”

### **Authorizing Bodies**

Michigan's charter school law allows four different entities to authorize charter schools to operate: (a) school districts, (b) intermediate school districts, (c) community colleges, and (d) state public universities. However, each authorizing body could only issue charters to operate within its geographic borders. That meant only one group, state public universities, had the authority to issue charters anywhere in the state.

When Engler was asked about why universities were included as potential authorizing bodies, he said he anticipated the traditional education community would not be willing to issue

charters. Wolfe said that, collectively, the four different types of authorizing bodies represented over 600 potential authorizers, but that Engler thought it was unlikely that he would get more than a handful that would actually issue a charter. According to Engler,

There was no way that we could just put this in the hands of the traditional school districts. The superintendents were far more defensive about and married to the status quo than anybody else we were dealing with. . . . I could appoint people to the boards [of the universities] that I knew would be willing to charter schools.

Wolfe said it did not take long for Engler to become frustrated at the slow pace at which he saw charter schools being developed. So in response, Wolfe said,

Engler had a big conference down in Ypsilanti where he kicked it off and invited all these people that were thinking about starting a charter school, to build momentum. There were probably a couple hundred people there. And what it did was create a stir.

Shields said Engler hired her to serve as his Special Advisor for Charter School Development because he had “various parts that were moving, but not together.” In order to convince her to take the job, she said Engler talked to her about “kids” and the “big picture.” According to Shields, Engler said to her,

“I know you’ve been working hard on school reform and finance reform . . . and I know it can be frustrating to change the whole landscape, but I have an opportunity for you that I think will get us going on the big picture. If it doesn’t, we at least know we would have islands of success here and there.”

Shields added, “He knew how to get me, because he said, ‘This can help us save kids.’”

Shields said Engler basically handed her the “bully pulpit” of his position and said,

“Use it!” My job was to come in and figure out a way for the parts to work together and in the same direction, and to build an infrastructure that would allow these very controversial new concepts to not only survive but thrive.

Shields said Engler knew

Equalizing the money was not going to solve the problem. So the thought that was going through Engler’s head was probably, “Okay, if we can’t get it through parochial aid, how can we get it through a mechanism that would still be within the constraints of the Constitution and allow us to get these permeable borders for education, not just money?”

Shields said her first task was to

Identify the problems [and] identify what needed to be done. So that was the first thing, to come up with a plan. Then we had to identify who was being helpful and who wasn't being helpful. Wasn't just organizationally figuring out what we need, but also figuring out which people were and were not working.

Shields said one of her initial goals was to create strong and sustainable authorizing bodies: "The day-to-day was to create authorizers that would not just be there temporarily to appease the Governor. We needed strong authorizers."

Wolfe recalled that from a liability standpoint, particularly at the community college and university level, nobody

Wanted to get into the business of K-12. It's no coincidence that the only university authorizers that are chartering . . . were those that had . . . boards appointed by the Governor. So the Governor knew a lot of these appointees, he knew what was going on in education; he could leverage their higher education issues against getting them to charter.

### **CMU Takes the Lead**

One of the first people Engler talked to about chartering schools was Smith, a 1991 Engler appointee to the Central Michigan University Board of Trustees. Smith is a successful entrepreneur, Central Michigan University alumnus, and a lifetime Mount Pleasant resident. He said he and Engler talked about Central Michigan University (CMU) taking the lead on chartering schools.

I offered Central as the school that would take on the first charters. I hadn't talked to the Board yet, but I said to John, "We have been a school that has graduated teachers for over a hundred years. We need to take this on, simply because it is another means of educating our kids." (Smith)

Smith continued, "I think the Governor felt that CMU was best positioned to take on this role because of its history with education."

However, McLellan offered another perspective, saying Engler had an “extraordinary influence” over universities: “It’s not like he had to pressure them. Sid Smith . . . was like me. The Governor called, you saluted. ‘I’ll take care of it, John.’”

Louise Plachta, wife of the late CMU President Leonard Plachta, said her husband weighed the move carefully but never doubted his decision to put Central Michigan University in a leading role:

Governor Engler . . . had requested one of the universities to step up, and Leonard was the only one who decided to do so. The other 14 universities were not in favor of it, and I got the impression that they were circling him and hoping that charter public schools wouldn’t go through.

Smith said he saw chartering as a natural extension of CMU’s history, going back to its 1892 founding as a normal college for the preparation of teachers:

I saw this as an extension of Central’s past . . . and being around my dad [who worked for CMU] and being around Central all my life, I, quite frankly, would have been humiliated if some other school had taken this on instead of us.

Smith said that after he talked to his colleagues on the CMU Board, they were “very energetic” about taking the lead with charters. “So our mission became the kids. . . . We had to make sure that these schools would position children to have an opportunity to a great education and a chance to meet their dreams” (Smith).

At their public meeting on July 21, 1994, CMU’s Board of Trustees met and took action stating their intent to charter schools, they adopted charter school policies, and they authorized President Leonard Plachta to start contract negotiations with five schools that had applied to become public school academies. The five schools were: Casa Maria Academy in Detroit, Michigan Early Childhood Center in Lansing, New Branches School in Grand Rapids, Northlane Math and Science Academy in Freeland, and the Saginaw Chippewa Academy in Mt. Pleasant

(CMU, 1994). In the University's press release, Jerry Meisner, CMU's Special Assistant to the President for Charter Schools, said,

It makes sense for universities especially CMU, to charter schools. Not only does it empower teachers to take control of curriculum, but it is also totally compatible with the recent focus on the need for universities to respond to the needs of the broader community. (CMU, 1994)

As Wolfe recalled, it was about that time his firm received a call from CMU asking for assistance as they proceeded to charter their first schools:

We got a call from Eileen Jennings, who was the general counsel at CMU, and she asked for our help, because CMU was looking to charter three schools. We didn't have any contracts at first; we had a form of an application which we filed, and that was the first time anyone put one together. We basically put . . . a contract . . . and those three schools together in about two weeks.

Smith said the University Board embraced the idea that if the charter schools did not "live up to their contracts," they could be revoked. He said Bob Young, who was one of his colleagues on the CMU Board at the time and now serves as the Chief Justice of the Michigan Supreme Court, would always say, "I want these contracts iron-clad, and I want us in there measuring." Smith said the CMU Board believed they needed to authorize a critical mass of schools so they would have enough resources to do a quality job:

In order to do a good job, we needed as many schools as we could get, but we also needed to create an administrative system for the oversight. . . . The main idea was figuring out how to measure performance. It couldn't just be the tests . . . we were very concerned with the kids' opportunities and how they'd be taught, how we could measure their growth and opportunities, how many of them would get into college, etc.

At their meeting on August 18, 1994, the CMU Board of Trustees became the first university in the state or the nation to charter a school when it authorized three schools: Casa Maria Academy in Detroit, New Branches School in Grand Rapids, and Northlane Math and Science Academy in Freeland. Paradoxically, this was the very same day the Council of Organizations and Others for Education About Parochiaid along with two members of the State

Board of Education and others filed suit in the Ingham County Circuit Court challenging the constitutionality of Michigan's charter schools law.

Despite the controversy surrounding charter schools, CMU continued to move forward receiving criticism both internally and externally. For example, writing on behalf of the Executive Board of the CMU Faculty Association, an affiliate of the Michigan Education Association, William R. Cron, sent a letter dated December 20, 1993, to CMU President Leonard Plachta, expressing the Association's disapproval with the university's actions to support charter schools. One of the key objections expressed by Cron was that the University was moving forward "without first consulting or seeking input from the faculty of the School of Education, Health, and Human Services" and that this unilateral action damages the College's "reputation on both procedural and pedagogical grounds."

McLellan explained how this type of criticism was viewed at the time by Engler and his allies. He said that although he is "sure the Dean of Education was aghast," the reality is that the University recognized that they had a broader public role in the state and that they were not

Merely the platform for these tenured faculty members to teach courses. They were given a task by the Legislature and the Governor, and it didn't have anything to do with what the faculty thought. It had to do with what the board of control thought—public officials who took the oath of office.

CMU's decision to support charter schools also riled many of its graduates who were teaching in various public schools across the state. A number of them notified the University that they would no longer donate to their alma mater because of its advocacy for charter schools.

We saw a decrease in giving from our teacher alums the first couple years. We got some pretty bad publicity in some parts of the state. Their arguments were that we were taking away money from traditional public schools and that we would end up with the best and the brightest students. (Smith)

One now-infamous controversy was created by the Superintendent of Lake Orion School District, Robert Bass, located in southeast Michigan. During the 1995–1996 school year, Bass sent a letter to CMU’s President, Leonard Plachta, outlining his disgust with CMU’s chartering activity and notifying the university that his district would no longer accept student teachers from CMU, hire CMU graduates, or recommend Lake Orion graduates go to CMU.

Smith recalled that Plachta was out of town when Bass’ letter was received by the University. Not wanting to let the situation get out of hand, Smith stepped in:

I called a “war room” together to strategize a response. We had over 200 CMU alumni attend the Lake Orion Board of Education meeting. They were wearing maroon and gold and making it clear that their children should be able to live, work, play, and go to school wherever they choose and that Superintendent Bass’ letter was completely out of order and he deserved to be reprimanded.

Smith’s strategy worked, as Bass recanted and apologized for the letter. When asked if these controversies caused the University Board to question its actions, Smith proudly claimed that he and the CMU Board were

Proponents of change, and change never comes easy. We weren’t going to give up the ship, because we felt that we had the right mission. It was clear, it was specific, and we felt we were doing much more in the State of Michigan for kids and accountability than any other organization was.

After the Bass letter, Engler worked with his allies in the Legislature to pass a law that would penalize any school district that tried to discriminate against an authorizer of charter schools by reducing their funding from the state. This was done to not only protect CMU, but to also provide support and encouragement to other universities that were considering becoming an authorizer of charter schools.

Engler believed this type of legislation was necessary because of the hostility being fermented by the MEA and other opponents of his vision for choice and competition. Opponents figured they had enough influence over local and intermediate school districts, and community

colleges, so that the potential for significant chartering activity would only come from university boards appointed by Engler. Engler said he never counted on any charters being issued by the three university boards that had elected board members (Michigan, Michigan State, and Wayne State) because with elected boards it was just

Going to be too hard. The leadership of CMU was essential, and that was not without controversy, because the teachers' union and the Michigan Education Association were not enthusiastic about any competition. But the Board of Trustees was strong, and the University administration was strong.

### **Chartering Schools and Appointing Boards**

McLellan explained that even though most people call the agreement that authorizes a charter school to operate a "charter," the fact of the matter is that the word *charter* cannot be found anywhere in Michigan's school code. Michigan's law actually uses the name "public school academies" rather than "charter schools." He explained how the word *contract* ended up being used in the statute rather than the word *charter*:

The governor called them charter schools. The MEA, for some reason, wanted to call them "contract" instead of "charter," but knowing legislators, I said, "Okay, let's define contract as a charter." I . . . pulled out my little dictionary and looked up the term *charter*. And a charter is a grant of authority from the government. So we were able to define *contract* as a charter.

McLellan's recollection of his legal and political strategy is easily identifiable when examining Michigan's charter school law. In the first section of the law, the term *contract* is defined as follows:

"Contract" means the executive act taken by an authorizing body that evidences the authorization of a public school academy and that establishes, subject to the constitutional powers of the state board and applicable law, the written instrument executed by an authorizing body conferring certain rights, franchises, privileges, and obligations on a public school academy, as provided by this part, and confirming the status of a public school academy as a public school in this state. (Michigan Compiled Law [MCL] 380.501 [2][d])

While Michigan’s charter school law does not require an authorizing body to issue a contract to “any person or entity,” any charter contract that is issued is required to be awarded based on a competitive basis.

An authorizing body is not required to issue a contract to any person or entity. Public school academy contracts shall be issued on a competitive basis taking into consideration the resources available for the proposed public school academy, the population to be served by the proposed public school academy, and the educational goals to be achieved by the proposed public school academy. (MCL 380.503 [1])

However, if an authorizer voluntarily chooses to issue a contract to a charter school, Michigan’s law requires the contract to include the following elements:

- A resolution establishing the board of directors of the school;
- Terms and conditions of the school’s contract;
- Articles of incorporation;
- Bylaws;
- Fiscal agent agreement;
- Oversight agreement;
- Description of staff responsibilities;
- Physical plant description;
- Governance structure;
- Educational goals and programs;
- Curriculum;
- Methods of pupil assessment;
- Public enrollment notice;
- Admissions policy and criteria;
- Attendance policy;
- School day schedule and school calendar; and
- Age or grade range of pupils. (MCL 380.503 [5])

In addition to requiring specific items that an authorizing body must include when issuing a contract to a charter school, Michigan’s law requires a charter school to be incorporated as a Michigan nonprofit corporation and governed by a public board of directors, akin to the school board of a local school district.

A public school academy shall be organized and administered under the direction of a board of directors in accordance with this part and with bylaws adopted by the board of

directors. A public school academy corporation shall be organized under the nonprofit corporation act . . . of the Michigan Compiled Laws. (MCL 380.502 [1])

Wolfe recalled that this provision caused considerable concern for potential university authorizers. According to Wolfe, one of the primary concerns involved questions regarding the legal liability an authorizer would have for chartering schools. He said this was compounded by the fact that the law required authorizers to appoint the school's board of directors, yet the schools were supposed to be independent from their authorizer.

From a liability standpoint . . . nobody wanted to get into the business of K–12. The initial discussion took a long time to think through. The board appointments were a significant issue. They were supposed to be independent, not only independent from other schools, but also independent from their authorizer. (Wolfe)

In addition to the provision above requiring a charter school to be governed by a public board of directors, another provision in Michigan's charter school law specifically requires charter school authorizers to establish a method for selecting the members to serve on the governing board of the charter schools they authorize. "An authorizing body shall adopt a resolution establishing the method of selection, length of term, and number of members of the board of directors of each public school academy subject to its jurisdiction" (MCL 380.503 [4]).

Wolfe said initially there was not much understanding of how authorizers were going to appoint board members. He said they ended up using the model that the Governor's office uses for gubernatorial appointments. "We used the model that the Governor's office uses for appointments. We started with . . . a questionnaire . . . we used a lot of the basic things. That's a process that's had to develop over time" (Wolfe).

McLellan recalled assigning Wolfe to draft the documents for the initial charter contract. He said he told Wolfe that what he drafted would end up being the model that everyone else would use:

I told Len, “Whatever you draft will be what everybody will do,” and that was just based on my experience that if somebody does a good job, everybody will copy them. And so I think from the start he tried to be very thoughtful.

### **The Cap, Bay Mills, and the McPherson Commission**

One of the longest running battles over Michigan’s charter schools has been the cap on the number of schools that could be chartered by state public universities. Michigan’s original charter school law did not place any limits on the total number of charters that could be issued by authorizers. However, in 1996, the legislature imposed a limit, often referred to as the cap, on the number of charters that could be issued by the governing boards of state public universities. According to the legislation, the combined total number of schools that could be chartered by universities could not exceed 85 through 1996, 100 through 1997, 125 through 1998, and 150 thereafter.

At the time the cap was put in place, Engler’s influence over the governing boards of the universities was becoming apparent. Central Michigan University had already chartered over 30 schools and it appeared that Grand Valley State University, along with Saginaw Valley State University were going to get more involved as well. It was then that Wolfe realized that he was involved with something more than creating a few schools: “We were creating an industry, and none of us saw that. No one knew with the initial bill the magnitude of an educational management company industry. I don’t even think the Governor could see that.”

Barrett saw the rise of the management companies was important because they demonstrated that there were alternative models that could serve the needs of kids. “We have several models now that demonstrate that a management company, a for-profit endeavor, can come in and provide equal or better educational opportunities at a lower price and still make a profit.”

According to Roberts, the rapid growth of charter schools contracting with private management companies was not lost on Al Short, the MEA's chief lobbyist. Roberts said Short was "tenacious" and "could see into the future." Roberts gave credit to Short for orchestrating the insertion of the cap into the charter schools law. He said Short thought the Democrats were going to lose the upcoming election, so he went to the MEA leadership and said,

We're going to lose. Democrats are going to lose control. Let's go to some Republicans and say they can vote on anything they want that we don't like except for two things: we want them not to vote for new charter schools, and we don't want them to support defined contribution. He went out and got eight or nine Republicans, and that stopped us.

Barrett said it was not just the MEA that helped slow down the growth of charter schools:

I saw the calls that were being made on the floor of the House and the Senate, many of which I was told at the time were from school superintendents who had a concerted lobbying effort to try and defeat charter schools . . . the superintendents and the local school boards were very active in the opposition to any change.

From McLellan's perspective, Engler was successfully taking away the

Stability of the assigned school system [and creating a] whole new model. John Engler was taking away . . . their monopolies, and anybody that has a monopoly doesn't want to give it up. And then every union of a monopoly company, whether it's the telephone company, the gas company, those are the strongest unions because they are unionized monopoly companies.

Trimmer-Hartley acknowledged that school superintendents, board members, and other education groups often worked together to defeat charter schools. However, for her, it was the MEA, by far, that had the biggest sway. "You've got to remember that the MEA had the money . . . none of these other groups could ever do anything without the MEA, because they didn't have any money. They didn't have the *kind* of money . . . the MEA had" (Trimmer-Hartley).

Roberts concurred with Trimmer-Hartley's assessment: "The MEA had the votes. The school boards and superintendents did not. . . . The MEA can always produce money and people in the field. And that's what makes them such a potent lobbying force."

During the 1999–2000 school year, the universities reached the 150-school cap on the number of charters they could authorize. Despite numerous attempts, Engler and his allies were unable to secure enough votes in the Legislature to remove or even increase the cap. Particularly frustrating to Engler was the fact that even with the Republicans controlling the House and the Senate, he could not muster enough votes to raise the cap. Al Short and the MEA’s strategy was working as planned. The “deal” they had made with a handful of House Republicans had given them the ability to effectively block any expansion of charter schools.

McLellan said it became apparent that Engler and his allies were “stuck with a cap.” McLellan knew, though, that the cap only applied to authorizers that were state public universities. There was no cap for local or intermediate school districts, or community colleges for that matter; however, none of these entities could charter a school outside of their boundaries. As it happened, one of McLellan’s other clients happened to be the Bay Mills Indian Community located in the eastern end of the upper peninsula in a town called Brimley.

McLellan happened to be friends with Dennis Muchmore, who headed the multi-client lobbying firm that represented Bay Mills. The tribe also had a community college, so whenever a bill came up that included community colleges, they would add the phrase,

“A community college means a tribally controlled community college.” They would do it just to be safe, because they always wanted to be able to get some state money for a community college someday, even though they were not a community college as contemplated by the Community College Act that . . . has elected boards. (McLellan)

McLellan said there was an impediment to Bay Mills chartering schools: “I felt that they were still an Indian tribe . . . part of an Indian community, which is not part of the State of Michigan.”

McClellan said the only way he could figure out how to make Bay Mills an eligible authorizer of charter schools under the law was if they were a state agency:

One day, there was a bill going through amending the school code, not part 6A, but it used the phrase, “community colleges.” I said, “We could use that section if we amended it in a certain way, to perhaps open up Bay Mills Community College to charter.”

McLellan said he used this opportunity to insert language allowing a tribally-controlled community college to do anything it wanted under existing community college law if it adhered to two obligations: “You must sign a certification that it will comply with all state laws, and the Board . . . of the community college must take the state oath of office, to make them state officers.”

McLellan called Engler ahead of time and said, “‘John, if this would happen, would you mind?’ And he said, ‘No, I probably wouldn’t mind.’” McClellan does not think Engler ever told anybody he was for the language because he knew that if he was for it, it would alert his opponents: “He was for it . . . but he also knew that if he said he was for it, that would draw attention to him.”

Once the legislative language was adopted, McLellan had to get Bay Mills to change the charter of their community college to make it clear that they had state-wide jurisdiction. “So they identified their district . . . to be the State of Michigan. We decided . . . there are Indians all over the state . . . and they serve the Indian community, and they serve non-Indians.”

McLellan said it did not take long for the MEA to figure out that Bay Mills Community College had essentially become a statewide authorizer of charter schools, but not subject to the cap on state public universities:

The MEA tried to block it and then tried to get an attorney general’s opinion . . . and that’s . . . where Len [Wolfe] went over and spent about two hours with the opinion review board under then-Attorney General Jennifer Granholm, and got a favorable ruling.

The attorney general opinion that McLellan refers to is formally known as Opinion No. 7090, issued on September 18, 2001, by then-Attorney General Jennifer Granholm. In her

opinion, Granholm outlines her rationale for determining that Bay Mills Community College could indeed legally charter schools anywhere in the state, except in a school district organized as a school district of the first class.

By 2000 PA231, which added section 1475 to the code, the Legislature declared that a federal tribally controlled community college may provide college-level courses under the code only if:

1. The federal tribally controlled community college board members take the constitutional oath of office as public officers of the state;
2. The members of such board certify to the Michigan Department of Education that they will act as a public educational body or officer of the state subject to the Constitution and laws of the state, and to the exclusive control of the state; and
3. The members of the board shall be subject to removal or suspension by the superintendent of public instruction for violating the provisions of the Code. (Granholm, 2001, pp. 3–4)

Granholm then cited Sections 501 and 502 of Michigan’s charter school law through which she determined “the Legislature had clearly intended to empower a federal tribally controlled community college to authorize a public school Academy . . . provided . . . that the board of such college complies with the requirements imposed by section 1475 of the Code” (p. 4).

According to Engler, McLellan deserves “all the credit in the world” for figuring out how to make Bay Mills an unrestricted, statewide authorizer: “I remember him talking about this possibility of what might be able to be done. It was really incredible when he uncovered that. He thought that through, figured it out, and it made all the difference in the world.”

Once it was clear that Bay Mills had the legal authority to charter an unlimited number of schools anywhere in the state, Engler believed that the opposition was forced to come back to the negotiating table. In order to facilitate the negotiations, Engler worked with legislative leaders to establish a special commission in October 2001, “to conduct a complete and objective review of all aspects of public school academies in Michigan.”

The commission was chaired by Michigan State University President Peter McPherson and included the Superintendent of Public Instruction, Tom Watkins, one member appointed by the Senate Majority Leader, one member appointed by the Senate Minority Leader, one member appointed by the Speaker of the House of Representatives, one member appointed by the House Minority Leader, and two appointed by the Governor. McLellan claimed that the Commission was really an organized way to try and resolve some of the more difficult issues that were going back and forth between the MEA, Engler, and the charter schools movement. “It was kind of understood that if Lu [Battaglieri, President of the MEA] and I [representing the Governor] could cut a deal, we’d probably have a report” (McLellan).

McLellan thought that McPherson was very good at bringing the group together and that he and Lu were able to work together to negotiate a deal and report that both the MEA and Engler could live with. The terms of the deal essentially allowed for a very gradual increase in the cap on university authorizers, and would have placed Bay Mills under the cap as an “institution of higher education with a statewide jurisdiction” in exchange for numerous regulatory restrictions and additional oversight and accountability requirements. McClellan explained why he was willing to agree to additional restrictions and regulatory requirements for charter schools:

I was appointed . . . by the Governor, not by the charter schools people . . . so I was giving my best shot. I’d always felt that charter schools could do more to weed out bad schools, because the charter school law never really contemplated management companies. And so you have this whole industry that’s developing, but it’s all government money. If it’s government money, you’ve got to put up with intrusive government.

While the Commission was conducting its work, the Legislature was also contemplating House Bill 4800, which was a comprehensive charter schools package that would incorporate the bipartisan consensus reached by the members of the Commission. At the time, the thinking was

that if all the parties represented on the Commission could come together and reach an agreement, that unanimity would then transfer to the Legislature in order to garner enough votes to pass the package. In the end though, it was not to be. McLellan said at the final hour Tom Watkins “refused to sign the report,” thereby negating the work that had gone into reaching consensus:

I never could understand it; we had everybody on board, but Tom marches to his own drummer. If you’re the superintendent, and you’ve got the teachers union and the charter school community agreeing on something, you kind of ought to go along with it.

Watkins’ refusal to sign off generated enough controversy to cause a stalemate in the Legislature and House Bill 4800 eventually died. In April 2002, the Commission concluded its work and published a report titled *Charter Schools in Michigan: The report of the Commission on Charter Schools to the Michigan Legislature*. And to this day, the debate regarding the growth of charter schools and whether or not they are properly overseen and publicly held accountable continues.

## CHAPTER 4

### THEORIES, LESSONS & CONCLUDING OBSERVATIONS

While most social scientific theories focus on change occurring incrementally, Schneider et al. (1995) argued that “change can be sudden, producing radical shifts in the status quo” (p. 1). They theorized that radical change can be brought about by public policy entrepreneurs who “perceive opportunities for major change and create the incentives and forces to affect such change” (p. 1). Their theory also claims that “*all* entrepreneurs must perform three functions” (p. 1). They say first and foremost, entrepreneurs must be alert to opportunities. Second, when they seize opportunities, they must bear the risks associated with pursuing a course of action with uncertain consequences. Third, they must assemble and coordinate the people and resources necessary to accomplish their goals.

The sudden, nearly overnight elimination of Michigan’s school funding system, via the elimination of state property taxes described in Chapter 3, supports this theory. It also illustrates how Engler’s ability to perceive opportunity and his willingness to bear the risks associated with such radical action, match the characteristics associated with policy entrepreneurs. This sequence of events also runs counter to Lindblom’s (1968) theory of incrementalism, which argues that policy changes occur slowly, one step at a time. According to Lindblom, incrementalism inhibits dramatic change and often results from proximate policymakers - those with decision making power - dealing with divergent views and political posturing by making compromises in order to avoid risk. In contrast, policy entrepreneurs are less risk averse and often see crises as a way to create opportunities.

## **Lesson 1 – Constantly Prepare Because Crises Create Opportunities**

When Engler's political rival offered an amendment to eliminate the state's school funding system, he perceived that it was a bluff because he could not imagine a scenario in which the MEA would support such a move. He further figured that the proposed amendment was not earnest because no Democrat running for Governor would initiate such a move without first running it past the union. Engler further knew that calling the bluff would result in unknown consequences, but he perceived a game-changing opportunity and decided to bear the associated risks.

Once Senate Bill 1 was passed, it became clear that neither Engler nor the Legislature had a replacement plan in place for funding schools. This led to significant criticism from the educational community and various media. The Washington Post even ran an editorial castigating Engler's leadership, entitled "Honey I Blew Up the Kids!," further illustrating the point that policy entrepreneurs must be willing to "bear the reputational, emotional, and, frequently the financial risk, associated with pursuing a course of action with uncertain consequences" (Schneider et al., 1995, p. 2). Facing tremendous pressure, Engler could have tried to pacify his critics. However, instead, he saw what Kingdon (1995) referred to as a "window of opportunity" (p. 20) for leveraging even more change. Rather than simply coming up with a replacement funding plan for schools, Engler sensed he could use the funding crises as an opportunity to advance his vision for education. As Roberts explained, Engler saw the funding crises as an opportunity to create the conditions that would force the educational system to "change itself over time." Barrett confirms this lesson, saying, "I know that...creates uneasiness with some folks, but the reality is that...an economic crisis...will drive change."

Roberts continued: “Fundamental changes are often done in the middle of chaos.” That is why it is critical to prepare and persist in your endeavor so that when the opportunity for change presents itself, you are ready to take advantage of it: “You cannot force a policy if its time is not ready.”

For Roberts, all of the failed efforts to reform school finance that he worked on preceding the adoption of Proposal A helped prepare him and the public for its ultimate passage:

You cannot stop trying . . . because I am convinced that all the work we put into our first proposal, or our cut and cap, and all the work we put into our first, I call it Proposal A with the MEA, all did contribute to the ultimate success of the program. And my evidence for that is, I was going into a gym, a high school gym, for the third time in three years. My opening line to the audience was, “I recognize a number of you, and I just want to tell you straight out that if you vote no on this one, I’m coming back.” It was like, we’re not going to quit, so you can decide.

Roberts also said that without all the previous work that had been undertaken regarding school finance reform, particularly the report produced by the Harden/Runkle Commission, he would not have been able to “put everything together” for Proposal A in the 60 day time period with which he had to work.

You’ve got to prepare . . . it didn’t just happen. I’m not sure we could’ve passed Proposal A if we wouldn’t have gotten out there, because we did an awful lot of educating the first two times, and now you’re educating again. So all that led up to it. I would argue that even if you can’t pass it, make your shot at it, and then when you do have the opportunity, then go for it. (Roberts)

Roberts said Engler also did something that a lot of political leaders do not do very well: “He sat down and said, ‘How do I get there? What do I do to get to where I want to get at the end of the day?’”

## **Lesson 2 – Know Where You Want to Go**

Policymakers advocating for significant policy change often know what they dislike about the current system, but are uncertain about how to cause the system to significantly improve or are unwilling to bear the associated risks. Policy entrepreneurs, on the other hand, desire to distinguish themselves from their peers by dramatically changing the status quo. According to Mintrom & Norman (2009), most policymakers are “comfortable working within established institutional arrangements; doing their bit to achieve improved outcomes...without upsetting the status quo,” while policy entrepreneurs try to disrupt the status quo using “creativity, energy, and political skill” (p. 650).

As explained in Chapter 3, Engler was clear about what he disliked about Michigan’s educational system. He also had a vision for what would cause the educational system to improve. Engler believed the dynamics created through choice and competition would fundamentally change the way the educational system functions. Realistically though, he did not believe he would be successful in launching a frontal attack against Michigan’s Parochial Amendment, so rather than trying to create competition through private and parochial schools, Engler decided to try to create competition within the public school system itself. This meant pushing school choice through intra- and inter-district choice. Engler was also concerned that school districts might collude to restrict real choice, so he figured he needed to stimulate competition from outside the system. The emergence of charter schools on the policy scene, presented Engler with a politically feasible approach for expanding choice and causing real competition amongst public schools. In short, Engler saw charter schools as a strategy for altering the status quo and forcing Michigan’s educational system to fundamentally change over time.

Others have argued that Engler saw charter schools simply as a way to get the MEA. When Barrett was asked if charter schools really just represented a partisan battle between Engler and the MEA, he responded:

It's true that John Engler didn't like the MEA. The Chamber and I didn't like the MEA. But again, it would be unfair to characterize this as a power battle with the MEA simply to see who could be the winner. The MEA and the traditional no-change education agents stood in the way. We overcame them, but the issue wasn't, "Could we beat the MEA or the traditional education groups?" It was, "What could be done to try and enhance educational opportunities?"

Posthumus also rejected the notion that charter schools were simply a way for Engler to

Get the MEA. I think the only people that would say that would be maybe some MEA folks. The people that knew the governor, the people that knew those of us that were involved, they knew that this was really about kids. . . . What we really wanted was to return our educational system to - to where kids and parents and teachers came first, not unions and school superintendents and school boards and all these organizations.

Posthumus concluded: "You have to have a vision of where you want to end up. If you don't know where you're going, then you'll have no idea where you'll end up...you have to have a vision.

### **Lesson 3 – Assemble a Team of Believers**

Schneider et al. (1995) theorize that public policy entrepreneurs "must assemble and coordinate teams or networks of individuals and organizations that have the talents and/or resources necessary to undertake change" (p. 2). As Chapter 3 describes, Engler spent years cultivating relationships and building a network of people and organizations that possessed similar visions and values. The team Engler assembled shared a common belief that without the dynamics of choice and competition, school districts would have no reason to buck the status quo. However, for choice and competition to work, they believed the state needed to fund students rather than institutions. They reasoned that with the money following the student,

school districts would be forced to change and improve or run the risk of losing funds to competitor schools that parents could choose for their children regardless of where they lived.

Engler also built a strong allegiance with the business community over the course of his political career. They shared similar views about the superiority of the marketplace over government and believed that better education was important to Michigan's future. Engler's ability to use the business community's political muscle to offset the opposition generated by the education community generally, and the MEA specifically, played a key role in helping him get the charter school law passed and funding its legal defense.

Barrett said it is important to understand how difficult it is to enact policies that disrupt the power of Michigan's educational community and that it requires a committed team.

It helps if you've got a Governor that is fully committed, and you've got a majority in both the House and the Senate that are fully committed to change in K–12 education, and there needs to be advocates, particularly within the business community. . . . I'm talking about the Michigan Chamber of Commerce, the Michigan Realtors Association, the Farm Bureau, the Small Business Association, the Manufacturers Association, the National Federation of Independent Business, the Health and Hospital Association. These organizations have to step up.

Sabatier's (1988) theorization of policy change refers to this as building an advocacy coalition. He described advocacy coalitions as

People from a variety of positions (e.g., elected and agency officials, interest group leaders, researchers) who share a particular belief system—that is, a set of basic values, causal assumptions, and problem perceptions—and who show a nontrivial degree of coordinated activity over time. (p. 139)

The team Engler assembled to help him originate charter schools in Michigan match Sabatier's definition of an advocacy coalition. For example, Engler involved elected officials in the form of state legislators; he engaged agency officials in the form of state university board members and presidents; he engaged interest group leaders from the business community; and researchers from the conservative leaning Mackinac Center for Public Policy. As individuals,

these people shared similar values, assumptions, and perceptions regarding the need to foster choice and competition within public education. They also shared a common will and realization that they were going to have to beat the educational community, and more specifically the MEA, in order to change the status quo and accomplish their intentions.

As a group, Engler and his allies repeatedly voiced that their efforts were fundamentally about creating opportunities for kids, especially those who were economically trapped in dysfunctional schools. Moreover, Engler's continued leadership with the implementation of charter schools and the steps he took to hire a charter school advisor who reported directly to him, along with his issuance of the Charter School Directives, helped ensure that his advocacy coalition had a "nontrivial degree of coordination over time."

Shields further explained that realistically it is not humanly possible for a governor to do everything, therefore they delegate certain functions. When it comes to the work of implementation, she said it is imperative for a governor to "empower someone they trust. You need a true believer and someone that can do the toughest work on call. There are good times and good uses for both missionaries and mercenaries."

Perhaps the best illustration of Engler's ability to assemble a team of believers though is the personal commitment demonstrated by Roberts, who was diagnosed with a brain tumor while working on these policy changes.

In the middle of all of this, I'm diagnosed with a brain tumor, and I told the Governor and I told my wife, and I didn't tell anybody else. This was the single most important thing that I was working on. . . . I talked to the doctor, and they said I had a little bit of time before I had to have surgery, and so we waited, and I remember the night that we put this all together . . . it was a 30 hour [legislative] session, it was just before Christmas Eve. But I wasn't going to stop unless I had to.

#### **Lesson 4 – Know the Rules and the Political Context**

Kingdon's (1995) policy streams theory discusses how policy entrepreneurs link problems, ideas, and politics together in order to draw attention to issues and advance policy solutions to solve them. He writes that policy entrepreneurs are characterized by "their willingness to invest their resources—time, energy, reputation, and sometimes money—in the hope of a future return" (p. 122).

Engler invested years developing his deep and intricate knowledge of the legislative process and state government. He was an avid reader and creative thinker - always strategizing and searching for new ideas. He also surrounded himself with creative and talented people in their own right. Having earned a law degree himself, Engler placed a premium on legal talent. He had a penchant for knowing the rules better than anyone else and using them to his advantage. This is consistent with March and Olsen's (1989) work on institutionalism that describes how a deep knowledge of rules and norms can be instrumental in advancing major policy changes and that this knowledge is often held by insiders.

For example, Engler's intricate knowledge of state government, combined with his creativity and willingness to disrupt the status quo, led to his issuance of an Executive Order transferring significant powers from the State Board of Education, which had been his nemesis, to the State Superintendent of Public Instruction, which at the time was occupied by his friend and ally, Ellis. While Engler was frustrated that Michigan's Constitution prevented him from directly appointing State Board members or the State Superintendent, he creatively used his deep legal knowledge of state government to structure the Executive Order in a manner that allowed him to work around the State Board and speed his ability to get things done.

According to Posthumus, knowing the rules is essential for accomplishing major policy change:

You need “people close...to you...who understand the technical aspects of the state of law as it exists and can create the kind of language that you need in order to accomplish the tactics that you intend to accomplish.

Posthumus concurs with the literature that says politicians often have grand visions for policy change, but usually struggle getting their ideas enacted into law, much less getting them to be successfully implemented. Reflecting on the origination of charter schools in Michigan, he said:

We had guys like John Engler, Paul Hillegonds and myself, who I think had a vision and could develop strategies. You had Richard McLellan who knew the state of law, so it all just kind of came together.

Accepting Otto Von Bismarck’s 1867 view that “politics is the art of the possible,” Engler’s willingness to call the bluff of his political rivals would have been more predictable than the possibility of Michigan’s Legislature completely eliminating state property taxes and giving Engler an opportunity to design a new school funding system from scratch. This unpredictable action by the Legislature also provided Engler with the leverage he needed to push his policy ideas to redefine the state’s role in education, fund students rather than school districts, and use charter schools as a way to foster choice and competition within public education.

Cohen (1982) said the political environment in which policymaking occurs provides important context for making sense of what actually gets adopted as policy and implemented in practice. He said when policymaking began to grow late in the 19th century, “government everywhere in the United States was primitive and weak” (p. 476). Moreover, Cohen (1982) said, “Government was thought of as evil, or potentially evil, and private interests were regarded as the chief source of political virtue” (p. 476). Over time, as the size, scope and faith in

government grew, policymakers enacted policies that significantly expanded the responsibilities of schools.

From Engler's vantage point, this expansion in government resulted in an educational system that was more interested in protecting its power and preserving the status quo than educating students. Moreover, Engler saw the teacher unions as one of the primary beneficiaries of the status quo. He also saw the teacher unions as one of his biggest political adversaries. So when the window of opportunity opened for him in the early 1990s, Engler took advantage of it and leveraged the momentum created by the "Reagan Revolution" to foster choice and competition in public education. This context helps explain why Engler saw charter schools as a tool for diminishing the exclusive franchise that he saw school districts holding over the operation of schools and the political control he saw the MEA holding over education policy. He also saw charter schools as an opportunity to get the private sector more involved in education and to establish new schools that would compete with traditional public schools for students and the funding that accompanies them.

As charter school laws have spread across the nation, states have generally approached implementing charter schools in one of two ways. One way has been to take a slow, cautious approach to implementation with a primary focus on quality. The other way has been to take a rapid, aggressive approach to implementation with a primary focus on quantity. This approach is often referred to as "letting a thousand flowers bloom."

In an article published in the *Phi Delta Kappan* entitled "Desert Bloom: Arizona's Free Market in Education," Arizona, Michigan, and the District of Columbia were highlighted as having "expansive charter laws [that] allow for vast numbers of charter schools" (Gresham, Hess, Maranto, & Milliman, 2000, p. 751). Among other things, the article described how

political considerations can drive policymakers who are supportive of charter schools to try and get as “many charter schools up and running quickly [because it] establishes a constituency that allows the charter system to survive” (“Desert Bloom,” 2000, p. 753).

When Engler was posed with how he, as Michigan’s Governor and chief charter advocate, viewed these two approaches, he said he did not believe he had a choice:

I think it depends on your environment. In our case, we would not have been able to sustain a few charters at a time. I think it would have been virtually impossible, just too hard. When I think about that, I just think we would’ve been worn out.

Engler believed that he had to establish a critical mass of charter schools before he left office or that he ran the risk of having all his work undone: “We had a great deal of urgency, recognizing that if we didn’t make it work during our time [in office], there would be great efforts to undo it all just as quickly as possible.”

Shields confirmed the pressure Engler and his allies felt about the urgency and significance of their work: “We had a real sense of urgency within the Governor’s office . . . we were relentless in pushing towards progress. . . . It was about one thing, and that was getting this done for the kids, not about making adults feel comfortable.”

Shields explained that Engler was so insistent that charter schools become firmly rooted in Michigan’s educational landscape before he left office that he convened a meeting of the key players in Michigan’s charter schools movement and issued them directives. She said Engler wanted to ensure that charter schools moved forward rapidly enough so that they could not be easily eliminated by those who followed him. Shields said Engler hosted the meeting on February 8, 1996, and personally outlined the directives and issued individual assignments. “He was a hands-on guy . . . and he was involved every step of the way. Once the directives were put

into place . . . everyone had to play by the same rules, and we needed to see weekly progress reports.”

The directives Engler issued covered 10 topics. The following list identifies each topic and provides a brief description of what needed to be accomplished.

- Finance: long-term financing for buildings, short-term borrowing for startup, and the fine-tuning of school aid act language for general operating funds.
- Authorizers: recruitment of a diversity of authorizers to establish a critical mass of schools.
- Start-Up Services: a system to help people create and open charter schools.
- Business Management Training Program: a franchise like program to help charter schools manage the myriad tasks associated with running a public school, small business, and governmental agency.
- Red Tape: streamlining and reducing the regulations, “red-tape,” and paperwork hindering the growth of charter schools.
- Evaluation/Monitoring: a system to monitor and track the viability of each charter school, both financially and educationally.
- Trade Academies: using the Michigan Jobs Commission to help create industry led charter schools specializing in preparing high school students for careers in high skill, high wage jobs.
- Legislative and Public Relations: a plan to provide advocacy, general education, issue management, and legislative support for charter schools.
- Emergencies: a quick response team to deal with inevitable emergencies and ensure constant communication.
- Information Tracking: a computerized system to track progress, ensure work is getting completed on time, and eliminate duplication of efforts. (Summary of the Governor’s Directives, February 8, 1996)

## **Lesson 5 – Anticipate Implementation Problems and Be Creative in Overcoming Obstacles**

Cohen (1982) and Elmore (1980b) found that policymakers often find themselves frustrated and unsuccessful when trying to change public education. They argue policymakers typically try to change public education through the use of the bully pulpit by advocating for policies that use rewards and sanctions to influence how schools organize and operate. They further argue that even if this approach successfully begets legislation, it often does not accomplish what the policymaker intended.

Elmore (1980b) referred to the difficulty of translating policy into action as “the implementation problem” (p. 342). He says students of policy implementation often argue, “Better policies would result . . . if policymakers would think about whether their decisions could be implemented before they settle on a course of action” (Elmore (1980a), p. 601). On the other hand, Cohen (1982) said, “Intentions are an inconsistent guide to results” (p. 474). Even when policymakers have the best of intentions and think about their decisions before settling on a course of action, they often become frustrated with the complexity of translating their policy ideas into legislation, and legislation into action. Elmore (1980b) says this often causes policymakers to resort to “more specific legislation, tighter regulations and procedures, centralized authority, and closer monitoring of compliance” (p. 342), which generally has “an effect opposite of that intended” (p. 342).

As explained in Chapter 3, Engler and his allies faced numerous obstacles originating Michigan’s charter schools policy. McLellan says his focus when drafting the charter schools legislation was more on anticipating litigation from the MEA than on implementation issues: “I thought more about litigation issues. That’s what I was primarily concerned about, will this prevail in the Supreme Court?” Engler said he put a premium on having excellent legal representation: “We understood that we were in a highly litigious environment, so we knew this was going to be a struggle every step of the way and that we better be prepared for it.”

Interestingly though, as McLellan explained in Chapter 3, the volume of activity facing Engler and his administration after the elimination of the school funding system resulted in Engler’s education policy advisor being delegated the authority to draft the initial charter school legislation. Most would concur with Elmore (1980b) that this type of “delegated control—individual responsibility, initiative, and discretion” (p. 343) is something to be commended. Yet,

this example should also cause policymakers wishing to undertake major policy change to think more deeply about whom they delegate control to and for what. Because Engler's policy advisor borrowed legislative language from some states that had already enacted charter school laws without fully comprehending the implications of Michigan's Parochial Aid Amendment, questions regarding the law's constitutionality immediately surfaced and nearly derailed Engler's strategy before it started.

Once the attorneys were asked to fix the problems with the legislation, the focus shifted to enacting a bill that would withstand a lawsuit from the MEA. Elmore (1980b) referred to this as "foresight" (p. 343), which means "reasoning through implementation problems *before* policy decisions are firmly made" (p. 343). This is an important lesson from several perspectives. First, Engler said they "paid a price" for not getting expert legal advice upfront. Second, as the "number of actors and the number of transactions among actors" grew, the legislation became more complex. In many regards though, this complexity was necessary in order pass a bill that would stand up to a legal challenge. Finally, it demonstrates Elmore's (1980b) point that "implementation rests jointly with legislators and administrators" (p. 344).

Shields was responsible for administering the directives and reporting to Engler on their progress. She explained that even though she had the power of the Governor behind her, ensuring the directives got completed was not an easy task. "Everywhere we went and tried to do things, people attempted to stop us. . . . My main fights were face to face, issue by issue, meeting by meeting."

Shields said she not only had to do battle with the education community, but also with people within the governor's administration:

I was shocked at, even within the Governor's own bureaucracy, how people's personal opinions tried to override and often were successful up until this point. It didn't matter

what the policy was; they believed in what they believed in, they figured governors come and go, and if they hunkered down and slowed the clock, this governor would eventually go away and they could continue doing what they wanted to do.

Shields continued:

I had to look at reality with a discerning eye and tell the Governor things like, “I know this person is a good friend of yours, has worked for you for many years, but they’re not serving us well here.” And that’s sometimes even more difficult than going to war with the enemy.

Shields said she does not think it is really possible to separate the policy issues from the implementation:

I think what you have to do is clearly understand what’s . . . the ultimate goal that you’re trying to achieve? Keep your eye on the goal, because people, issues, and times change. If you get too wrapped up in a policy, that policy might not work even though it sounded like a good idea at the time.

### **Lesson 6 – Maximize Flexibility and Persist**

Baumgartner and Jones (1993) refer to the disruption of the status quo as punctuated equilibrium. They theorize that the policy process has long periods of stability punctuated by moments of sudden, radical change. According to Baumgartner and Jones (1993), one reason for the long periods of stability in policy is due to policy monopolies that deflect calls for change. They also argue that when policy appears blocked at one level, policy entrepreneurs often find alternative means to accomplish their desires. Engler’s use of the Executive Order to diminish the authority of the State Board of Education exemplifies the lengths to which he would go to circumvent obstacles standing in the way of his policy goals.

Engler and his allies felt the MEA had established such an effective policy monopoly that any effort to challenge the status quo was simply displaced. In addition, they felt that the school boards and the superintendents had established their own operational monopoly that similarly

deflected calls for change and therefore needed to be dismantled. Because Engler felt choice and competition were imperative to cause the educational system to change, he knew he had to get the legislative cap limiting the number of charter schools that could be authorized by state public universities removed and avoid having additional regulatory burdens being added.

Wolfe described this as maximizing flexibility and reducing restrictions. He explained that the cap was not included in the original charter schools legislation, but was added in 1995 when it appeared to be an insignificant issue. However, by 1999, the State's public universities had collectively issued nearly all of the 150 charter contracts that they were allowed to authorize under state law. Wolfe said, "For the next ten years and to this day, the cap has been an issue."

He continued:

The fact that we didn't have a cap originally, the fact that we sort of gave up on the cap because it wasn't significant then, was a problem. You have to look at any restrictions, even if they don't apply now. A restriction at some point, is going to apply, so one thing I learned was to keep out the barriers, even if they don't apply now.

After several failed attempts to secure the votes necessary to raise the cap legislatively, Engler's friend and ally, McLellan found a creative way to establish Bay Mills Community College as an uncapped, statewide authorizer of charter schools. Frustrated by his inability to persuade the legislature to remove the cap, Engler did as Baumgartner and Jones (1993) suggested and found another venue for accomplishing his desire to expand choice and competition. Knowing this maneuver with Bay Mills Community College to expand charter schools would draw the attention of the MEA, McLellan structured his work to withstand a legal challenge from the MEA. Ironically, then-Attorney General Jennifer Granholm issued an opinion that Bay Mills was legally qualified to authorize charter schools and that their jurisdiction was the entire State of Michigan. Nevertheless, the MEA brought suit challenging Bay Mills authority, but lost in both the Circuit Court and the Court of Appeals. Today, Bay Mills is the

second largest authorizer of charter schools in the Michigan, having authorized nearly 50 schools that serve around 20,000 students.

Wolfe also explained the challenge he faced trying to rectify the theory that charter schools were free from regulation, when in fact Michigan's law basically required charter schools to comply with essentially the same regulations as traditional public schools.

If you go back through the legislative history, you clearly see that there was an effort to do that [free charters from regulation], in the early drafts of the bill. Limit them to fire safety, criminal background checks for teachers. So the kids are safe, the buildings are safe, they have a curricula that's approved by the state. What else do you need? (Wolfe)

Wolfe went on to explain that as the Bill made its way through the legislative process, there was a debate over how much flexibility these new schools should have that competed with the need to ensure they were publicly accountable:

As it made its way through the process, no one wanted to say that that was enough. So every little thing got added on, and by the time we got done, we had schools that would look a lot like public schools.

Shober, Manna, and Witte (2006) described this dilemma as a competition between how state policymakers incorporate "two key values into charter schools laws: flexibility and accountability" (p. 63). Baumgartner and Jones (1993) suggested it is inevitable that competing values become embedded in public policy because the American political system involves compromise between various interests. As policymakers crafted new charter school laws, they faced a common problem which scholars of public policy and administration refer to as agency theory.

Agency theory is based on the idea that a principal wants to attain certain goals, but does not have the time or capacity to do the work directly. So they engage the services of an agent to pursue the goals on their behalf. Shober et al. (2006) discussed the fact that "smart principals" (p. 565) try to ensure their credibility by holding "their agents accountable for results" (p. 565). The

challenge this creates is that principals must allow agents “enough flexibility to respond to unexpected and novel contingencies on the ground” (Shober et al., 2006, p. 565).

For charter school policies, this has resulted in a tension between the push for choice and deregulation, and the effort to ensure standards and accountability. From Wolfe’s point of view, this tension resulted in an implementation problem: “The hardest part was trying to make the Governor’s belief work with schools, because the Governor believed, as the public believes, that these schools are free from regulation. That was the selling point.”

Wolfe said that although charter schools essentially ended up with the same regulations as traditional public schools, there were things that they were freed from. For example, he said charter schools were freed from the Public Employee Relations Act and teacher tenure. Wolfe said, “These things were significant. You can’t minimize them. . . . It’s part of that give and take.”

Wolfe then explained that he believes one of the key lessons is focusing on the things that provide charter schools with the most flexibility:

You’ve got to keep the stuff that are going to free them up most. That was the ability to contract out, the ability to not be in tenure, and the ability to let the district or some kind of authorizer charter without this threat from the unions that would prohibit that.

When Engler was asked about Michigan’s charter schools not being significantly freed from regulation, he said,

I think it’s one of those things where we just couldn’t get everything done, and it’s a shame, because what we’ve got isn’t nearly enough. You have to understand though, that the regulation is in the hands of some of the most ardent foes, so it’s not like they want to go quietly into the night here. They effectively use the regulations to protect their market share—their franchise.

Shields said what she learned from her role in advising Engler and advancing the implementation of charter schools is to be

Relentless. If you're a governor and you're trying to create something that causes discomfort, you have to be relentlessly focused on not allowing people to drift back into the comfortable. And that requires focus, dedication, and an eye on the ultimate goal.

As for Engler, he said, "This was something I really believed in. We really did want to make these changes, and once made, we wanted them to be effective, we wanted them to work." Understanding Engler's desire to see his policies work directly relates to Mintrom and Norman's (2009) call for closer study of the motivations and strategies used by policy entrepreneurs. Engler's thirst for knowledge and ideas helped him develop a firm grasp of the intellectual issues associated with education and their historical roots. Combined with his personal experience of growing up on a farm and attending a small, rural school, this knowledge influenced Engler's thinking and the policies he advocated for. His political actions reflected a distrust of government solutions for improving public education (Mill, 1838, Freidman, 1962, Chubb and Moe, 1990) and his suspicion that many of the organizations advocating for equality were insincere and were really more concerned about protecting their own power and placing the status quo ahead of the people they were supposed to serve (Coons and Sugarman, 1978, Elmore, 1987).

As described in Chapter 3, Engler studied reports about the shortcomings of public education (*A Nation at Risk*) and was not inclined to expand government and empower bureaucrats to deal with issues that he thought would be better handled by the private sector and individual initiative – like empowering parents to choose the schools their children attend. Moreover, Engler understood Cohen's (1982) point about the collision between "an old and abiding skepticism about government, and an accumulation of educational policies that embody great faith in government" (p. 487), and he came down on the side of skepticism. Engler was also knowledgeable about the ideas being promoted by charter school advocates like Kolderie (1990)

and Nathan (1996) and came to see charter schools as a way he could leverage his faith in choice and competition as a means for dealing with the problems and inequalities he saw in Michigan's educational system. While there is no doubt that Engler was partially motivated by his animosity toward the MEA and the political influence they wielded, I contend that his historical and intellectual knowledge were a major part of his success as a public policy entrepreneur.

### **Restrospective: Intentions and Expectations**

Mintrom and Norman (2009) say "significant insights can emerge from historical studies . . . that involve a time frame of several decades" (p. 662). This study covers nearly two decades and also relates the actions of Engler and his allies to more mainstream theorizations of policy change, which they believe is the type of "breakthrough" (p. 663) work necessary for the concept of policy entrepreneurship to "gain a central place within explanations of policy change" (p. 663). Therefore, this study concludes by asking the originators of Michigan's charter schools policy to look back nearly twenty years later and assess whether or not they think it is accomplishing what Engler intended and fulfilling their expectations.

When Engler was asked if charter schools were fulfilling his expectations, he said, "Absolutely. I think they fundamentally altered the education landscape in Michigan, and I would argue . . . that nationally charter schools are making an important contribution to the education reform debate."

Ellis disagreed, though. He said Michigan's charter schools have not expanded enough to fulfill Engler's vision. "By this time, he [Engler] would have wanted the whole state to be one big charter school district. Too slow, not enough change" (Ellis). Ellis' assessment, although

seemingly contrary to Engler's own words, actually captures the sentiment offered by a number of the originators, including Engler. Ellis described it this way:

I think he's [Engler] very happy that he got as much done as he did in Michigan to get it started, but it's up to other people to keep the ball going. He [Engler] *was* happy with it, but he wouldn't be happy with it today.

When asked if charter schools were fulfilling his vision, Ellis said he never really had a vision for education reform because he didn't come out of the K-12 system: "I didn't have a vision, to be honest with you. I had never taught, I had never been in an education class in my life. I was the incremental pusher . . . not the radical one."

Posthumus, the original sponsor of the legislation that charter schools operate under today, said charter schools have "accomplished a number of things. It's given low income children an alternative if their families wanted it. That, to me, was number one. I was more into that than I was even changing the fundamentals of education."

Posthumus said Michigan's charter schools haven't "reached the destination. I think that we're still on our journey. I don't think, at this point, it's completely, fundamentally changed how we educate children in Michigan. . . . We've still got a lot of things to do there yet."

Nevertheless, Posthumus is pleased that the "public mindset" has begun to shift from the idea of funding buildings to funding children: "I think people now think more in those terms . . . than they did in the past. The closer we get academic decisions to the children themselves, the better off we are."

Posthumus said he never envisioned charter schools becoming the future model for how public schools operate. By giving building principals the authority to make basic academic decisions, and the power to hire and fire, along with developing the policies for their building, he said charters are demonstrating more efficient ways of operating. "The one thing I didn't think

charters would do, I had no concept, would create the model for how public schools could operate in the future. We really have shown we don't need all this expensive overhead"

(Posthumus).

Posthumus said he sees the pace of change in education picking up, despite the work of "powerful special interests" to preserve the "status quo."

I think 18 years from now is going to look very, very different, and I think in part it's because the seed was sown 18 years ago, and now it takes a while to germinate. Now the germination for people wanting accountability and performance in their educational system, just like they do in everyplace else, is here. (Posthumus)

Posthumus's crystal ball says that today's financial crisis will result in more fundamental changes ahead for public education. He believes that charter schools have shown that

We don't need all this expensive overhead. We just can't continue spending money the way we do. Funding pensions and healthcare the way we funded it in the past is not sustainable . . . we'll find new ways to spend less money to get better results.

Likewise, Barrett contended that while the business community is pleased with the progress that has been made to bring about change, there is much more to be done:

All you have to do is look at some of the results that we see in K-12 education, and I'm talking about dropout rates, levels of student achievement, and the comparisons with other industrialized nations . . . there's no way that we should be satisfied with where we're at today, and I would argue that what we need is much broader choice. . . . I assume John Engler would feel the same way.

Roberts also said he thinks charter schools have not "accomplished as much" as what Engler envisioned.

I think he was hoping for more innovation, but are they worth having? I don't think there's any question. I think it has changed what we would call traditional public schools, because they had to. . . . I would argue, that Lansing Public Schools are better because of charter schools and choice, because if they didn't improve, they weren't going to be there. (Roberts)

Roberts said Engler's basic premise was,

“How do we create something which changes now, but that the system changes itself over time?” And so, what we were looking for . . . was an outside force that was going to force people to do things even if they didn't want to do them, and that's how the system would basically change itself. (Roberts)

Roberts said he thinks he and Engler were “simpatico” on the idea that somehow they had to create choice between public schools: “We can have public schools, and we can have choice within public schools. It doesn't have to be between public and private. No! That is wrong.”

When Roberts was asked if he thought charter schools were less about creating new schools and more about serving as the tool to change the system, he said, “Yeah, I think so. . . . I think that [charters] would be the tool to basically say to the system, ‘If you don't change, people are going to leave.’”

McClellan said there is no question that Engler intended the existing public school districts to have to become more competitive and more responsive to parents and students:

If you look at the combination of the public school academies and cross district choice, the biggest impact may be on the rest of the schools. They had to be more responsive to the parents and to the students. . . . I think that they would probably deny that it was competition that drove them to do so. But there is no question, when you see the big signs. . . . “Enroll now! Spots available!” . . . The ability of school districts to compete amongst themselves and with charters has been valuable.

McClellan said that having the state foundation grant follow the student was a “radical departure” that was fundamental to creating a competitive environment. McClellan referred to the state foundation grant following the student as a “public voucher. You have a per-pupil amount that you as a pupil carry to that school district, if you don't like that school district you can carry that public voucher to another district.”

Even though McClellan used the “V” word to describe the state foundation grant, Roberts said he never remembers a specific discussion on vouchers when Engler was contemplating his plans to fundamentally change the educational system.

I don’t ever remember a specific discussion on vouchers. I tend to think that the public was willing to accept charter schools, even schools of choice, and that they were not yet ready or willing or interested in vouchers. Vouchers have a different connotation. (Roberts)

Engler said that because of Michigan’s strict constitutional prohibition against parochiaid, he thought he would have more success generating competition in the public school system itself.

Because Michigan had a strict constitutional prohibition due to an early parochiaid fight, we just didn’t believe it was possible to launch a frontal attack . . . so we went at it from the standpoint of changing things that needed to be changed within the context of the law that we have. (Engler)

Engler said it is a “very sad truth” that the pace of change in education is slow. And although he believes the charter school movement has done “exceedingly well,” he thinks there still has not been enough entrepreneurial activity.

I think where the challenge remains is the fact that we have not seen the level of education entrepreneurial activity I imagined in certain sectors. There’s no question that there are some amazing entrepreneurs who have come forward, but not in the way we had thought. For example you might have your teaching faculties stepping up. They have not done that to any great extent . . . nobody’s figured out a model or gotten an operating company that’s been able to appeal to a teaching staff to have them come en masse to a charter school. (Engler)

When asked how he would advise a future governor attempting to shift a paradigm like he did with education, Engler was pessimistic:

It’s a hard question, what would I advise someone, because it’s almost like I wouldn’t even advise them to try it, because the prospects of succeeding are so dismal. I frankly don’t think that the current term-limited Legislature, with the lack of experience that’s there, could necessarily pull this off. On the other hand, maybe because there is no experience or awareness of what the rules and the law require, maybe they’d just ignore it all and do it anyway.

Roberts said his experiences have also led him to conclude that trying to bring about major change is

Not so easy. There were an awful lot of people, even to this day, that will say, "Proposal A is terrible. We should change Proposal A." Our response - do it! What you're going to find out is, it's not so easy to change . . . I mean, the school community can't get it together amongst themselves exactly what it is they want changed, and that's not going to be enough votes. It takes a lot of work, a lot of effort.

Shields said charter schools are "more than fulfilling" her expectations. She said people had become so accustomed to the barriers associated with changing public education that they forget charter schools were

Part of a larger strategy. The whole idea of the fiefdoms of superintendents and districts is being eliminated. It's almost like the Berlin Wall coming down. It had been there for so long . . . so when we tore it down, nobody could have ever imagined the domino effect. To watch parents get their first taste of freedom was just amazing.

Although Engler lamented the difficulty of trying to change the way Michigan's public education system operates, he said he does not know how anyone could want to return to the way it used to function. "I don't know how anyone could imagine us going back. . . . We've now created the foundation for a tremendous amount of good to occur, and that is very difficult to turn around now" (Engler).

When asked what his crystal ball portends for the future of education, Engler said greater transparency, community control, commoditization, and use of technology:

The future's going to hold a lot more transparency, I think. We should have an environment where we can be more involved in our children's education, and at the same time have a lot more knowledge about how our child's school is in comparison to the neighbor's school. As far as the cost structure goes, I'm hoping that there will be more community control of the schools with more commoditization of the infrastructures. We're certainly going to use more technology . . . it's going to be an exciting time in education.

## CHAPTER 5

### AFTERWORD

As the 1993–1994 school year was beginning 18 years ago, Governor John Engler was trying to design a new way to fund schools and use the school finance crisis that he helped create as a vehicle for enacting broader educational reforms. Engler’s theory of action was straightforward. He wanted to fundamentally change the educational system by establishing an outside force that would cause “the system” to change itself over time and necessitate changes being made even if those in charge tried to refuse.

Engler believed that choice and competition would create the dynamics that would necessitate change. But for the dynamics of choice and competition to work, he believed state funding must follow the student. His thinking was that despite all the rhetoric about students, the real driver in education was money. Thus, Engler figured that if parents were empowered with choice, and schools had to compete for students and the money that accompanied them, districts would learn to compete or run the risk of going out of business. The following quote from Engler (1993) illustrates this thinking:

I recognize there are many districts in this state that may choose to remain closed to students outside their boundaries. So, to assure an array of public school choices for families —and empower them as never before—we will encourage new and innovative schools to be started. These schools without boundaries are known as “charter public schools.” (p. 8)

With the 2011–12 school year underway, preliminary numbers indicate that Michigan now has nearly 250 charter public schools operating. Student enrollment estimates project about 115,000 students now attend a charter public school in Michigan and another 100,000 plus students are exercising inter or intra district choice. Together these numbers mean that 18 years

after Engler's speech to the special joint session of the Legislature, 15% of Michigan's public school students are presumably attending a school of their choice.

While Engler told school districts that they would not be required to serve students who lived outside their boundaries, he also warned them that they would have to compete with those who do.

No school district will be required to admit students who live outside its boundaries. Those districts that want to keep things just as they are and remain closed will have that right. But they must understand this: They will have to compete with other schools that decide to open to choice. (Engler, 1993, pp. 7–8)

When Engler spoke these words in 1993, Michigan's largest school district, Detroit Public Schools, enrolled approximately 160,000 students. This year, the projected enrollment for Detroit Public Schools is about 65,000. While there are a multitude of factors resulting in this dramatic student decline, there is no doubt that choice and competition have played a major role. Perhaps even more interesting is the fact that Michigan's current Governor, Rick Snyder, is proposing a policy that would no longer allow districts to close their borders to choice. Early indications appear passing this type of legislation will be difficult even with Republicans controlling both the House of Representatives and the Senate. Nevertheless, it illustrates the evolution of ideas associated with policy change aimed at withdrawing the districts exclusive geographical franchise and broadening the educational options available to students and their parents.

In theory, a chartered school is supposed to be significantly freed from rules and regulations in exchange for raising student achievement. In fact, the U.S. Department of Education's definition says a charter school is a public school that "is exempt from significant State or local rules that inhibit the flexible operation and management of public schools" (U.S. Department of Education, 2004a, p. 6). In Michigan, charter schools never received the

significant freedom from regulation that was promised. In part, this was a result of Michigan's tightly written Parochial Amendment which required charter schools to be established as governmental entities in order to meet the strict constitutional definition of what constitutes a public school eligible to receive public funding. This is a key point of distinction when trying to compare Michigan's charter school law with the charter school laws in nearly every other state. In most states, charter schools are simply nonprofit corporations that file for 501(c)(3) tax-exempt status from the IRS. This approach would not meet the standards for being deemed a public school under Michigan's constitution. Thus, Michigan's charter schools were legally structured to meet the standards for being a governmental entity. This also necessitated their governing boards to be composed of public officials who took and filed the constitutional oath of office. This resulted in Michigan's charter schools having to adhere to essentially the same rules and regulations that applied to all public schools.

Over time, several significant differences began to emerge between charter schools and the state's other public schools. First, charter schools were prohibited by law from levying taxes. This meant charter schools had to fund their facilities and their operations from the state foundation grant that accompanied each enrolled student. With charter schools being new and the constitutionality of the law in question, it was nearly impossible for charter schools to find any financial institutions willing to lend them money. As a result, many charter schools engaged the services of private companies who were willing to provide startup and facility financing in exchange for an agreement to manage the school.

Second, it became readily apparent that one of the greatest freedoms charter schools enjoyed was the ability to start fresh. Starting fresh meant that charter schools did not have to deal with the policies, procedures, and other arrangements that organizations tend to accrue over

time. For instance, even though the laws regarding student transportation are the same for charter schools as regular schools, most charter schools chose not to provide transportation. From a pragmatic standpoint this made sense because it would be nearly impossible and extremely prohibitive to provide transportation to students who could enroll from anywhere in the state. This also became a frequent criticism levied against charter schools by those who thought it gave them an unfair advantage over traditional schools. The reality is that even though traditional schools are not required to provide transportation, their constituents have come to expect it and it is a very difficult service to eliminate.

Another example, albeit different, is the fact that most charter schools are not unionized. While charter schools fall under the same laws for organizing as traditional public schools, most do not operate with a collective bargaining agreement. Again, some in the education community argue that this is an unfair advantage because it provides charter schools with more flexibility to adapt and change.

Third, in 1996, Michigan's Attorney General, Frank Kelley, ruled charter schools that directly employ their teachers must participate in the Michigan Public School Employees Retirement System (MPSERS) and charter schools that contract with a private entity to provide teachers are prohibited from participating in MPSERS. Again, many in the education community saw this as an unfair financial advantage for charter schools. Although there is no legal distinction between how the MPSERS law applies to charter schools and traditional public schools, the reality is that most charter schools have contracted with a private entity in order to avoid having to participate in MPSERS. This year, the required MPSERS contribution for schools is around 26% of their gross payroll, with future projections being estimated at over 30%. This issue promises to become very prominent as school funding shrinks, policymakers

talk about converting MPERS from a defined benefit to a defined contribution, and legislation allowing traditional schools to contract with private entities for the provision of teachers like charter schools is debated.

While there are a multitude of other issues and examples that could be highlighted regarding the evolution of Michigan's charter school policy, it is this researcher's opinion that the dynamics of choice and competition Engler and his allies unleashed is having its intended impact, but at a pace that is insufficient to fully satisfy their expectations. I believe the following three trends support the claim that choice and competition are accomplishing what Engler intended.

First, it seems inevitable that Michigan's public educational system is going to continue transitioning from an era of assignment to an era of choice—which directly aligns with Engler's four stated principles of “empowering kids, families, teachers, and taxpayers.” Second, Engler's idea of funding students rather than districts is indeed causing schools to compete for students and the resources that follow them—which directly relates to his belief that “empowering families with a portable foundation grant will change the whole dynamic of public education funding in this state.” Third, there is significantly more bipartisan discussion and openness to market-based educational reforms than in recent history—which aligns with Engler's premonition that the policies he was proposing would “begin to change the whole mentality of the [educational] system.”

Notwithstanding the more than 200,000 Michigan students now attending a school of their choice, the dynamics of choice and competition have not completely fulfilled the expectations of Engler and his allies. As Ellis, former State Superintendent of Public Instruction, put it, charter schools have been “too slow” and have not created “enough change” to satisfy

Engler's expectations. Ellis essentially said that by this time, "Engler would have wanted the whole state to be one big charter school district." Engler himself said he thinks charter schools have "fundamentally altered the education landscape in Michigan." Moreover, Engler said he thinks he and his allies "created the foundation for a tremendous amount of good to occur" and that the dynamics they unleashed will be "very difficult to turnaround now."

At this point in time, it appears that Engler's assessment is correct. Expanding choice and competition through charter schools is being advocated by President Obama and his Secretary of Education, Arne Duncan. In fact, they have used the federal Race to the Top initiative to spur states to expand the number of high-quality charter schools and "lift limits that stifle growth" (Michigan State Senate, 2011). In Michigan, a broad legislative package has been introduced in the Senate called the *Parent Empowerment Education Reform Package* that its Republican sponsors say would "lift the arbitrary cap on charter schools and empower parents anywhere in Michigan to pursue the education choices that work best for their children" (Senate Press Release, September 7, 2011).

Nevertheless, the pace of change in education continues to be slow and significant questions remain regarding the impact choice and competition has on student achievement and the quality of schools. How the following questions get answered over time will likely play a formative role in whether or not market-based policies continue to expand and how their impact is eventually judged.

1. Does choice and competition really cause schools to improve? If so, how? And is there reliable evidence that these improvements lead to increased academic achievement as judged by standardized test scores?

2. Does choice and competition cause schools to be more productive? If so, how? And if there is reliable evidence that it does cause schools to be more productive is that reason alone to continue supporting market-based policies?
3. What is the best way to oversee and hold schools accountable in a market-based environment? Is the marketplace of students and parents voting with their feet enough? Or is there a need for governmental oversight? If so, what will this entail and who will be responsible for enforcing the standards that are established?

## **APPENDICES**

## APPENDIX A: CONSENT TO PARTICIPATE FORM

### The Origination of Michigan's Charter School Policy

The purpose of the research study is to describe the history and development of charter schools in Michigan. You participated in this history, and I, Jim Goenner, will ask you a series of questions about this history, key events, your participation, your recollections of others' participation, and your reflections looking back on what has transpired.

Your participation in this interview is entirely voluntary; you may withdraw from the interview at any time, or you may, for your own reasons, refuse to answer any of the questions I ask you. I am asking for permission to record the interviews so that I can review and analyze the information you share with me for my study. I will be the only person to have access to the recording and would be pleased to send you a copy of my dissertation when it is complete.

If you have any questions about this study, you may contact me at The Center for Charter Schools at Central Michigan University. My phone number is (989) 239-2736; e-mail [j.goenner@cmich.edu](mailto:j.goenner@cmich.edu). Or you may contact my academic advisor, Dr. Philip Cusick, 405 Erickson Hall, Michigan State University. His phone is (517) 355-4539; e-mail [pacusick@msu.edu](mailto:pacusick@msu.edu). If you have a concern or possibly a complaint about this study, you may contact Michigan State University's Human Research Protection Program at (517) 355-2180; Fax: (517) 432-4503; e-mail [irb@msu.edu](mailto:irb@msu.edu); regular mail, 212 Olds Hall, MSU, East Lansing, 48824.

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Name

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Signature

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Date

## APPENDIX B: INTERVIEW QUESTIONS

1. How would you describe the vision for education outlined by Governor John Engler in 1993?
2. How did the vision outlined by Governor Engler compare with your own vision?
3. Who and/or what had the greatest influence on the formation of your vision?
4. How did Governor Engler's vision for charter schools get turned into Michigan law?
5. What constitutional, legal, or regulatory issues had the most influence on how Michigan's charter school law was drafted, adopted, and amended?
6. Who were the key players that supported and opposed the development of charter schools in Michigan?
7. Once Michigan's charter school law was passed, what were the most significant implementation issues? How were they addressed?
8. Are Michigan's charter schools fulfilling your expectations? Why or why not?
9. Looking back, what are the key *policy* lessons to be learned from the history and development of charter schools in Michigan?
10. What are the key *implementation* lessons to be learned from the history and development of charter schools in Michigan?
11. If you were conducting this research, is there anyone who you would be sure to interview?
12. Is there anything else that you would like to share with me about the history of charter schools in Michigan?

## APPENDIX C: ALPHABETICAL LIST OF ELITE INTERVIEWEES

Barrett, James	President, Michigan Chamber of Commerce (1976–2008).
Ellis, Arthur	Michigan Superintendent of Public Instruction (1995-2001).
Engler, John	Governor of Michigan (1991–2003).
McLellan, Richard	Managing Partner of the Dykema law firm; played key role in political, legislative, legal and regulatory activities.
Plachta, Louise	Wife of the late Dr. Leonard Plachta, who served as the President of CMU (1992–2000), when the University first started chartering schools.
Posthumus, Dick	Senate Majority Leader (1991-1998). Sponsor of charter school bill.
Roberts, Doug	State Treasurer (1991–1998). Played instrumental role in developing Proposal A, which changed the way Michigan funds public education.
Shields, Mary Kay	Special Advisor to Governor Engler for Charter School Development (1995–1999).
Smith, Sidney	Member of Central Michigan University’s (CMU) Board of Trustees (1991–2000); chaired board when CMU chartered first schools.
Trimmer-Hartley, Margaret	Spokesperson for the Michigan Education Association from 1996–2006.
Wolfe, Leonard	Attorney with the Dykema law firm; played key role in legislative, legal, regulatory and authorizing activities.

## **APPENDIX D: TIMELINE OF KEY EVENTS**

### **School Funding**

- July 20, 1993      Legislature adopts Senate Bill 1, eliminating the use of state property taxes as the means for funding public education.
- August 19, 1993      Governor Engler signs Senate Bill 1 into law, providing the largest property tax cut in Michigan history.
- October 5, 1993      Engler delivers speech to special joint session of the Michigan Legislature detailing his plans for funding schools, reforming education, and establishing charter schools.
- March 15, 1994      Michigan’s electorate adopts Proposal A which establishes a new system for funding public education via a “portable foundation grant.”

### **Adoption of Charter School Law**

- October 5, 1993      Engler delivers speech to special joint session of the Michigan Legislature detailing his plans for funding schools, reforming education, and establishing charter schools.
- October 12, 1993      House Bill 5124 (the first charter school law to be enacted by the Michigan Legislature) is introduced.
- October 14, 1993      Senate Bill 896 (the second charter school law to be enacted by the Michigan Legislature) is introduced.
- December 3, 1993      Michigan Legislature passes House Bill 5124.
- December 24, 1993      Michigan Legislature passes Senate Bill 896.
- December 28, 1993      House Bill 5124 is signed by Governor Engler, becoming Public Act 284 of 1993. Note: Legislature repealed Act 284 before it became effective.
- January 14, 1994      Michigan becomes the 9th state to enact a charter school law when Senate Bill 896 is signed by Governor Engler, becoming Public Act 362.

### **Constitutional Challenge to Michigan’s Charter School Law**

- August 18, 1994      Council of Organizations and Others for Education About Parochialism (CAP) files suit challenging the constitutionality of Michigan’s charter school law in Ingham County Circuit Court.

- October 17, 1994 Michigan Department of Education approves funding for Michigan's first eight charter schools. However, MDE denies funding for the Noah Webster Academy.
- October 19, 1994 Preliminary injunction issued by Ingham County Circuit Court Judge William Collette preventing the Department of Treasury from funding charter schools.
- November 1, 1994 Michigan's charter school law ruled unconstitutional by Ingham County Circuit Court.
- November 28, 1994 Michigan Attorney General, Frank Kelley, files appeal of Circuit Court ruling with the Court of Appeals.
- November 29, 1994 Central Michigan University and three charter schools also file appeals with the Court of Appeals.
- December 13, 1994 Legislature passes new charter school law, Public Act 416 of 1994, in order to address the constitutional issues raised by Circuit Court ruling.
- March 29, 1996 Michigan Court of Appeals issues 2-1 decision upholding Ingham County Circuit Court ruling that Michigan's charter school law is unconstitutional.
- July 30, 1997 Michigan Supreme Court declares charter school law, Public Act 362 of 1993, is constitutional.

**CMU and Charters Schools**

- July 21, 1994 CMU Board of Trustees declares intent to charter schools.
- August 18, 1994 CMU Board of Trustees authorizes three charter schools.
- April 28, 1995 CMU Board of Trustees authorizes 31 charter schools.

## APPENDIX E: MICHIGAN'S CHARTER SCHOOL LAW

### THE REVISED SCHOOL CODE (EXCERPT)

#### Act 451 of 1976

#### **380.501 Public school academy; scope; powers; definitions.**

Sec. 501. (1) A public school academy is a public school under section 2 of article VIII of the state constitution of 1963, is a school district for the purposes of section 11 of article IX of the state constitution of 1963 and for the purposes of section 1225 and section 1351a, and is subject to the leadership and general supervision of the state board over all public education under section 3 of article VIII of the state constitution of 1963. A public school academy is a body corporate and is a governmental agency. The powers granted to a public school academy under this part constitute the performance of essential public purposes and governmental functions of this state.

(2) As used in this part:

(a) "Authorizing body" means any of the following that issues a contract as provided in this part:

(i) The board of a school district that operates grades K to 12.

(ii) An intermediate school board.

(iii) The board of a community college.

(iv) The governing board of a state public university.

(b) "Certificated teacher" means an individual who holds a valid teaching certificate issued by the superintendent of public instruction under section 1531.

(c) "Community college" means a community college organized under the community college act of 1966, 1966 PA 331, MCL 389.1 to 389.195, or a federal tribally controlled community college that is recognized under the tribally controlled community college assistance act of 1978, Public Law 95-471, 92 Stat. 1325, and is determined by the department to meet the requirements for accreditation by a recognized regional accrediting body.

(d) "Contract" means the executive act taken by an authorizing body that evidences the authorization of a public school academy and that establishes, subject to the constitutional powers of the state board and applicable law, the written instrument executed by an authorizing body conferring certain rights, franchises, privileges, and obligations on a public school academy, as provided by this part, and confirming the status of a public school academy as a public school in this state.

(e) "Entity" means a partnership, nonprofit or business corporation, labor organization, or any other association, corporation, trust, or other legal entity.

(f) "State public university" means a state university described in section 4, 5, or 6 of article VIII of the state constitution of 1963.

**History:** Add. 1993, Act 362, Imd. Eff. Jan. 14, 1994 ;-- Am. 1994, Act 416, Eff. Mar. 30, 1995; -- Am. 1995, Act 289, Eff. July 1, 1996 ;-- Am. 2003, Act 179, Imd. Eff. Oct. 3, 2003

**Compiler's Notes:** Former MCL 380.501, which pertained to public school academy, scope, and definitions, was repealed by Act 362 of 1993, Imd. Eff. Jan. 14, 1994. Senate Bill 393 (SB 393) was enrolled on August 13, 2003, and presented to the governor for her approval on September 8, 2003, at 5:00 p.m. On September 18, 2003, the senate requested that the bill be returned to the senate. The governor granted the senate's request on that same date and returned the bill to that body (without objections), where a motion was made to vacate the enrollment and the motion

prevailed. On September 23, 2003, the house of representatives approved a motion to send a letter to the senate agreeing with the senate's request that the governor return SB 393. Neither the Senate Journal nor the House Journal entries reveal any other action taken by the house of representatives regarding the return of SB 393. In order to determine whether SB 393 had become law, as requested, the attorney general examined whether SB 393 was recalled by concurrent action of the house of representatives and the senate within the 14-day period afforded the governor for vetoing a bill under the last sentence of Const 1963, art 4, § 33: "SB 393 was presented to the Governor on September 8, 2003, at 5:00 p.m. The 14-day period afforded for consideration, measured in hours and minutes, therefore expired on September 22, 2003 at 5:00 p.m. While the Senate had acted to recall the bill within that 14-day period (on September 18, 2003), the House did not. Its action concurring in the request to recall SB 393 was not taken until September 23, 2003. In the absence of concurrent action by both houses of the Legislature within the 14-day period, SB 393 was not effectively recalled and 'further legislative action thereon' was not authorized." The attorney general declared that "in the absence of a return of the bill with objections, SB 393 therefore became law by operation of the last sentence of art 4, § 33." OAG, 2003, No. 7139 (October 2, 2003).

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

### **380.501a Public school academy; report to legislative committees on education.**

Sec. 501a. Not later than 1 year after the effective date of this section, and at least annually thereafter, the state board shall submit a comprehensive report, with findings and recommendations, to the house and senate committees on education. The report shall evaluate public school academies generally, including, but not limited to, an evaluation of whether public school academies are fulfilling the purposes specified in section 511(1). The report also shall contain, for each public school academy, a copy of the academy's mission statement, attendance statistics and dropout rate, aggregate assessment test scores, projections of financial stability, and number of and comments on supervisory visits by the authorizing body.

**History:** Add. 1995, Act 289, Eff. July 1, 1996

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

### **380.502 Public school academy; organization; operation; bodies authorized to issue contract; application to obtain contract; contents; oversight; suspension of powers; fees; presumption of legality.**

Sec. 502. (1) A public school academy shall be organized and administered under the direction of a board of directors in accordance with this part and with bylaws adopted by the board of directors. A public school academy corporation shall be organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, except that a public school academy corporation is not required to comply with sections 170 to 177 of 1931 PA 327, MCL 450.170 to 450.177. To the extent disqualified under the state or federal constitution, a public school academy shall not be organized by a church or other religious organization and shall not have

any organizational or contractual affiliation with or constitute a church or other religious organization.

(2) Any of the following may act as an authorizing body to issue a contract to organize and operate 1 or more public school academies under this part:

(a) The board of a school district that operates grades K to 12. However, the board of a school district shall not issue a contract for a public school academy to operate outside the school district's boundaries, and a public school academy authorized by the board of a school district shall not operate outside that school district's boundaries.

(b) An intermediate school board. However, the board of an intermediate school district shall not issue a contract for a public school academy to operate outside the intermediate school district's boundaries, and a public school academy authorized by the board of an intermediate school district shall not operate outside that intermediate school district's boundaries.

(c) The board of a community college. However, except as otherwise provided in this subdivision, the board of a community college shall not issue a contract for a public school academy to operate in a school district organized as a school district of the first class, a public school academy authorized by the board of a community college shall not operate in a school district organized as a school district of the first class, the board of a community college shall not issue a contract for a public school academy to operate outside the boundaries of the community college district, and a public school academy authorized by the board of a community college shall not operate outside the boundaries of the community college district. The board of a community college also may issue a contract for not more than 1 public school academy to operate on the grounds of an active or closed federal military installation located outside the boundaries of the community college district, or may operate a public school academy itself on the grounds of such a federal military installation, if the federal military installation is not located within the boundaries of any community college district and the community college has previously offered courses on the grounds of the federal military installation for at least 10 years.

(d) The governing board of a state public university. However, the combined total number of contracts for public school academies issued by all state public universities shall not exceed 150. Further, the total number of contracts issued by any 1 state public university shall not exceed 50% of the maximum combined total number that may be issued under this subdivision.

(3) To obtain a contract to organize and operate 1 or more public school academies, 1 or more persons or an entity may apply to an authorizing body described in subsection (2). The application shall include at least all of the following:

(a) Identification of the applicant for the contract.

(b) Subject to the resolution adopted by the authorizing body under section 503(4), a list of the proposed members of the board of directors of the public school academy and a description of the qualifications and method for appointment or election of members of the board of directors.

(c) The proposed articles of incorporation, which shall include at least all of the following:

(i) The name of the proposed public school academy.

(ii) The purposes for the public school academy corporation. This language shall provide that the public school academy is incorporated pursuant to this part and that the public school academy corporation is a governmental entity.

(iii) The name of the authorizing body.

(iv) The proposed time when the articles of incorporation will be effective.

(v) Other matters considered expedient to be in the articles of incorporation.

(d) A copy of the proposed bylaws of the public school academy.

- (e) Documentation meeting the application requirements of the authorizing body, including at least all of the following:
- (i) The governance structure of the public school academy.
  - (ii) A copy of the educational goals of the public school academy and the curricula to be offered and methods of pupil assessment to be used by the public school academy. To the extent applicable, the progress of the pupils in the public school academy shall be assessed using at least a Michigan education assessment program (MEAP) test or the Michigan merit examination, as applicable.
  - (iii) The admission policy and criteria to be maintained by the public school academy. The admission policy and criteria shall comply with section 504. This part of the application also shall include a description of how the applicant will provide to the general public adequate notice that a public school academy is being created and adequate information on the admission policy, criteria, and process.
  - (iv) The school calendar and school day schedule.
  - (v) The age or grade range of pupils to be enrolled.
  - (f) Descriptions of staff responsibilities and of the public school academy's governance structure.
  - (g) For an application to the board of a school district, an intermediate school board, or board of a community college, identification of the local and intermediate school districts in which the public school academy will be located.
  - (h) An agreement that the public school academy will comply with the provisions of this part and, subject to the provisions of this part, with all other state law applicable to public bodies and with federal law applicable to public bodies or school districts.
  - (i) For a public school academy authorized by a school district, an assurance that employees of the public school academy will be covered by the collective bargaining agreements that apply to other employees of the school district employed in similar classifications in schools that are not public school academies.
  - (j) A description of and address for the proposed physical plant in which the public school academy will be located.
- (4) An authorizing body shall oversee, or shall contract with an intermediate school district, community college, or state public university to oversee, each public school academy operating under a contract issued by the authorizing body. The oversight shall be sufficient to ensure that the authorizing body can certify that the public school academy is in compliance with statute, rules, and the terms of the contract.
- (5) If the superintendent of public instruction finds that an authorizing body is not engaging in appropriate continuing oversight of 1 or more public school academies operating under a contract issued by the authorizing body, the superintendent of public instruction may suspend the power of the authorizing body to issue new contracts to organize and operate public school academies. A contract issued by the authorizing body during the suspension is void. A contract issued by the authorizing body before the suspension is not affected by the suspension.
- (6) An authorizing body shall not charge a fee, or require reimbursement of expenses, for considering an application for a contract, for issuing a contract, or for providing oversight of a contract for a public school academy in an amount that exceeds a combined total of 3% of the total state school aid received by the public school academy in the school year in which the fees or expenses are charged. An authorizing body may provide other services for a public school academy and charge a fee for those services, but shall not require such an arrangement as a condition to issuing the contract authorizing the public school academy.

(7) A public school academy shall be presumed to be legally organized if it has exercised the franchises and privileges of a public school academy for at least 2 years.

**History:** Add. 1993, Act 362, Imd. Eff. Jan. 14, 1994 ;-- Am. 1994, Act 416, Eff. Mar. 30, 1995; -- Am. 1995, Act 289, Eff. July 1, 1996 ;-- Am. 2009, Act 205, Imd. Eff. Jan. 4, 2010

**Compiler's Notes:** Former MCL 380.502, which pertained to public school academy, organization, and operation, was repealed by Act 362 of 1993, Imd. Eff. Jan. 14, 1994.

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

### **380.502a Conversion of public school academy to school of excellence; resolution of board of directors; conditions.**

Sec. 502a. If a public school academy operating under this part meets the requirements of part 6e, with the approval of its authorizing body, the board of directors of the public school academy may adopt a resolution choosing to convert the public school academy to a school of excellence under part 6e. If a board of directors of a public school academy that meets the requirements of part 6e is issued a contract to operate as a school of excellence under part 6e, all of the following apply:

(a) The public school academy shall cease to operate as a public school academy under this part and shall operate as a school of excellence under part 6e upon the issuance of the contract under part 6e or at another time as determined by the authorizing body.

(b) The public school academy shall be considered to be a school of excellence for all purposes upon the issuance of the contract under part 6e or at another time as determined by the authorizing body, but shall retain its corporate identity.

(c) The conversion of a public school academy to a school of excellence operating under part 6e shall not impair any agreement, mortgage, loan, bond, note or other instrument of indebtedness, or any other agreement entered into by a public school academy while it was operating under this part.

(d) The contract issued to the public school academy under this part shall automatically terminate upon the issuance of a contract under part 6e or at another time as determined by the authorizing body.

(e) If the authorizing body of the public school academy is the governing board of a state university, then all of the following apply to issuance of a new contract for a public school academy under this part after the conversion:

(i) For a period of 12 months after the contract is issued under part 6e, that authorizing body is the only authorizing body that may issue a new contract for a new public school academy to fill the availability under section 502(d) that is created by the conversion of the public school academy to a school of excellence.

(ii) If the board of directors of the public school academy that is issued a contract to fill the availability under section 502(d) that is created by the conversion chooses to enter into an agreement with an educational management organization to manage or operate the public school academy, the board of directors may give preference to an educational management organization that has previously operated a school that met the criteria described in section 552(4).

(iii) At the time the contract is issued, the public school academy shall not be located in a school district that has a graduation rate of over 75.5%, on average, for the most recent 3 school years for which the data are available, as determined by the department.

**History:** Add. 2009, Act 205, Imd. Eff. Jan. 4, 2010

**Compiler's Notes:** In subdivisions (e)(i) and (e)(ii), the citation to "section 502(d)" evidently should read "502(2)(d)".

**Popular Name:** Act 451

**380.503 Public school academy; issuance of contract; petition to place question on ballot; submission; resolution; contents of contract; compliance with applicable laws; governmental immunity; exemption from taxation; acquisition of property.**

Sec. 503. (1) An authorizing body is not required to issue a contract to any person or entity. Public school academy contracts shall be issued on a competitive basis taking into consideration the resources available for the proposed public school academy, the population to be served by the proposed public school academy, the educational goals to be achieved by the proposed public school academy, and the applicant's track record, if any, in operating public school academies or other public schools. However, an authorizing body may give priority to a public school academy that is intended to replace a public school academy that has been closed pursuant to section 507(2), that will operate all of the same grade levels as the public school academy that has been closed, and that will work toward operating all of grades 9 to 12 within 6 years after it begins operations unless a matriculation agreement has been entered into with another public school that provides grades 9 to 12.

(2) If a person or entity applies to the board of a school district for a contract to organize and operate 1 or more public school academies within the boundaries of the school district and the board does not issue the contract, the person or entity may petition the board to place the question of issuing the contract on the ballot to be decided by the school electors of the school district. The petition shall contain all of the information required to be in the contract application under section 502 and shall be signed by a number of school electors of the school district equal to at least 15% of the total number of school electors of that school district. The petition shall be filed with the school district filing official. If the board receives a petition meeting the requirements of this subsection, the board shall have the question of issuing the contract placed on the ballot at its next regular school election held at least 60 days after receiving the petition. If a majority of the school electors of the school district voting on the question vote to issue the contract, the board shall issue the contract.

(3) Within 10 days after issuing a contract for a public school academy, the authorizing body shall submit to the superintendent of public instruction a copy of the contract and of the application under section 502.

(4) An authorizing body shall adopt a resolution establishing the method of selection, length of term, and number of members of the board of directors of each public school academy subject to its jurisdiction.

(5) A contract issued to organize and administer a public school academy shall contain at least all of the following:

(a) The educational goals the public school academy is to achieve and the methods by which it will be held accountable. To the extent applicable, the pupil performance of a public school

academy shall be assessed using at least a Michigan education assessment program (MEAP) test or the Michigan merit examination, as applicable.

(b) A description of the method to be used to monitor the public school academy's compliance with applicable law and its performance in meeting its targeted educational objectives.

(c) A description of the process for amending the contract during the term of the contract.

(d) All of the matters set forth in the application for the contract.

(e) For a public school academy authorized by a school district, an agreement that employees of the public school academy will be covered by the collective bargaining agreements that apply to employees of the school district employed in similar classifications in schools that are not public school academies.

(f) Procedures for revoking the contract and grounds for revoking the contract, including at least the grounds listed in section 507.

(g) A description of and address for the proposed physical plant in which the public school academy will be located. At the time the contract is issued for a public school academy under section 502a, the public school academy shall not be located in a school district that has a graduation rate of over 75.5%, on average, for the most recent 3 school years for which the data are available, as determined by the department.

(h) Requirements and procedures for financial audits. The financial audits shall be conducted at least annually by a certified public accountant in accordance with generally accepted governmental auditing principles.

(i) The term of the contract and a description of the process and standards for renewal of the contract at the end of the term. The standards for renewal shall include student growth as measured by assessments and other objective criteria as a significant factor in the decision of whether or not to renew the contract.

(6) A public school academy shall comply with all applicable law, including all of the following:

(a) The open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(b) The freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(c) 1947 PA 336, MCL 423.201 to 423.217.

(d) 1965 PA 166, MCL 408.551 to 408.558.

(e) Sections 1134, 1135, 1146, 1153, 1263(3), 1267, and 1274.

(7) A public school academy and its incorporators, board members, officers, employees, and volunteers have governmental immunity as provided in section 7 of 1964 PA 170, MCL 691.1407. An authorizing body and its board members, officers, and employees are immune from civil liability, both personally and professionally, for an act or omission in authorizing a public school academy if the authorizing body or the person acted or reasonably believed he or she acted within the authorizing body's or the person's scope of authority.

(8) A public school academy is exempt from all taxation on its earnings and property.

Instruments of conveyance to or from a public school academy are exempt from all taxation including taxes imposed by 1966 PA 134, MCL 207.501 to 207.513. A public school academy may not levy ad valorem property taxes or another tax for any purpose. However, operation of 1 or more public school academies by a school district or intermediate school district does not affect the ability of the school district or intermediate school district to levy ad valorem property taxes or another tax.

(9) A public school academy may acquire by purchase, gift, devise, lease, sublease, installment purchase agreement, land contract, option, or by any other means, hold and own in its own name buildings and other property for school purposes, and interests therein, and other real and

personal property, including, but not limited to, interests in property subject to mortgages, security interests, or other liens, necessary or convenient to fulfill its purposes. For the purposes of condemnation, a public school academy may proceed under the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75, excluding sections 6 to 9 of that act, MCL 213.56 to 213.59, or other applicable statutes, but only with the express, written permission of the authorizing body in each instance of condemnation and only after just compensation has been determined and paid.

**History:** Add. 1993, Act 362, Imd. Eff. Jan. 14, 1994 ;-- Am. 1994, Act 416, Eff. Mar. 30, 1995; -- Am. 1995, Act 289, Eff. July 1, 1996 ;-- Am. 2003, Act 299, Eff. Jan. 1, 2005 ;-- Am. 2009, Act 205, Imd. Eff. Jan. 4, 2010

**Compiler's Notes:** Former MCL 380.503, which pertained to public school academy, charter, criteria, contents, validity, and renewal, was repealed by Act 362 of 1993, Imd. Eff. Jan. 14, 1994.

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

### **380.503a Public school academy; power of school or intermediate school district to levy taxes; use of revenues.**

Sec. 503a. If a school district or intermediate school district applies for and obtains a contract to operate 1 or more public school academies under this part, the power of the school district or intermediate school district to levy taxes for any purpose under this act is not affected by the operation of a public school academy by the school district or intermediate school district. Revenue from taxes levied by a school district or intermediate school district under this act or bonds issued by a school district or intermediate school district under this act may be used to support the operation or facilities of a public school academy operated by the school district or intermediate school district in the same manner as that revenue may be used under this act by the school district or intermediate school district to support school district or intermediate school district operations and facilities. This section does not authorize a school district or intermediate school district to levy taxes or to issue bonds for any purpose that is not otherwise authorized under this act.

**History:** Add. 1995, Act 289, Eff. July 1, 1996

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

### **380.503b Agreement between public school academy and third party; obligation of state or authorizing party; debt.**

Sec. 503b. (1) An agreement, mortgage, loan, or other instrument of indebtedness entered into by a public school academy and a third party does not constitute an obligation, either general, special, or moral, of this state or an authorizing body. The full faith and credit or the taxing power of this state or any agency of this state, or the full faith and credit of an authorizing body, may not be pledged for the payment of any public school academy bond, note, agreement, mortgage, loan, or other instrument of indebtedness.

(2) This part does not impose any liability on this state or on an authorizing body for any debt incurred by a public school academy.

**History:** Add. 2003, Act 179, Imd. Eff. Oct. 3, 2003

**Compiler's Notes:** Senate Bill 393 (SB 393) was enrolled on August 13, 2003, and presented to the governor for her approval on September 8, 2003, at 5:00 p.m. On September 18, 2003, the senate requested that the bill be returned to the senate. The governor granted the senate's request on that same date and returned the bill to that body (without objections), where a motion was made to vacate the enrollment and the motion prevailed. On September 23, 2003, the house of representatives approved a motion to send a letter to the senate agreeing with the senate's request that the governor return SB 393. Neither the Senate Journal nor the House Journal entries reveal any other action taken by the house of representatives regarding the return of SB 393. In order to determine whether SB 393 had become law, as requested, the attorney general examined whether SB 393 was recalled by concurrent action of the house of representatives and the senate within the 14-day period afforded the governor for vetoing a bill under the last sentence of Const 1963, art 4, § 33: "SB 393 was presented to the Governor on September 8, 2003, at 5:00 p.m. The 14-day period afforded for consideration, measured in hours and minutes, therefore expired on September 22, 2003 at 5:00 p.m. While the Senate had acted to recall the bill within that 14-day period (on September 18, 2003), the House did not. Its action concurring in the request to recall SB 393 was not taken until September 23, 2003. In the absence of concurrent action by both houses of the Legislature within the 14-day period, SB 393 was not effectively recalled and 'further legislative action thereon' was not authorized." The attorney general declared that "in the absence of a return of the bill with objections, SB 393 therefore became law by operation of the last sentence of art 4, § 33." OAG, 2003, No. 7139 (October 2, 2003).

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

**380.504 Location; operation at other than single site; discrimination prohibited; enrollment; priority; number of grades and programs offered.**

Sec. 504. (1) A public school academy may be located in all or part of an existing public school building. A public school academy shall not operate at a site other than the single site requested for the configuration of grades that will use the site, as specified in the application required under section 502 and in the contract.

(2) A public school academy shall not charge tuition and shall not discriminate in its pupil admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a student with a disability, or any other basis that would be illegal if used by a school district. However, a public school academy may limit admission to pupils who are within a particular range of age or grade level or on any other basis that would be legal if used by a school district and may give enrollment priority as provided in subsection (4).

(3) Except for a foreign exchange student who is not a United States citizen, a public school academy shall not enroll a pupil who is not a resident of this state. Enrollment in the public school academy may be open to all individuals who reside in this state who meet the admission policy and shall be open to all pupils who reside within the geographic boundaries, if any, of the authorizing body as described in section 502(2)(a) to (c) who meet the admission policy, except that admission to a public school academy authorized by the board of a community college to

operate, or operated by the board of a community college, on the grounds of a federal military installation, as described in section 502(2)(c), shall be open to all pupils who reside in the county in which the federal military installation is located. For a public school academy authorized by a state public university, enrollment shall be open to all pupils who reside in this state who meet the admission policy. Subject to subsection (4), if there are more applications to enroll in the public school academy than there are spaces available, pupils shall be selected to enroll using a random selection process. A public school academy shall allow any pupil who was enrolled in the public school academy in the immediately preceding school year to enroll in the public school academy in the appropriate grade unless the appropriate grade is not offered at that public school academy.

(4) A public school academy may give enrollment priority to 1 or more of the following:

(a) A sibling of a pupil enrolled in the public school academy.

(b) A pupil who transfers to the public school academy from another public school academy pursuant to a matriculation agreement between the public school academies that provides for this enrollment priority, if all of the following requirements are met:

(i) Each public school academy that enters into the matriculation agreement remains a separate and independent public school academy.

(ii) The public school academy that gives the enrollment priority selects at least 5% of its pupils for enrollment using a random selection process.

(iii) The matriculation agreement allows any pupil who was enrolled at any time during elementary school in a public school academy that is party to the matriculation agreement and who was not expelled from the public school academy to enroll in the public school academy giving enrollment priority under the matriculation agreement.

(5) A public school academy may include any grade up to grade 12 or any configuration of those grades, including kindergarten and early childhood education, as specified in its contract. If specified in its contract, a public school academy may also operate an adult basic education program, adult high school completion program, or general education development testing preparation program. The authorizing body may approve amendment of a contract with respect to ages of pupils or grades offered.

**History:** Add. 1993, Act 362, Imd. Eff. Jan. 14, 1994 ;-- Am. 1994, Act 416, Eff. Mar. 30, 1995;-- Am. 2008, Act 1, Imd. Eff. Jan. 11, 2008 ;-- Am. 2009, Act 205, Imd. Eff. Jan. 4, 2010

**Compiler's Notes:** Former MCL 380.504, which pertained to conversion public school academy, was repealed by Act 362 of 1994, Imd. Eff. Jan. 14, 1994.

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

### **380.504a Public school academy; additional powers.**

Sec. 504a. In addition to other powers set forth in this part, a public school academy may take action to carry out the purposes for which it was incorporated under this part, including, but not limited to, all of the following:

(a) To sue and be sued in its name.

(b) Subject to section 503b, to acquire, hold, and own in its own name real and personal property, or interests in real or personal property, for educational purposes by purchase, gift, grant, devise, bequest, lease, sublease, installment purchase agreement, land contract, option, or

condemnation, and subject to mortgages, security interests, or other liens; and to sell or convey the property as the interests of the public school academy require.

(c) To receive, disburse, and pledge funds for lawful purposes.

(d) To enter into binding legal agreements with persons or entities as necessary for the operation, management, financing, and maintenance of the public school academy.

(e) To incur temporary debt in accordance with section 1225.

(f) To solicit and accept any grants or gifts for educational purposes and to establish or permit to be established on its behalf 1 or more nonprofit corporations the purpose of which is to assist the public school academy in the furtherance of its public purposes.

(g) To borrow money and issue bonds in accordance with section 1351a and in accordance with part VI of the revised municipal finance act, 2001 PA 34, MCL 141.2601 to 141.2613, except that the borrowing of money and issuance of bonds by a public school academy is not subject to section 1351a(4) or section 1351(2) to (4). Bonds issued under this section shall be full faith and credit obligations of the public school academy, pledging the general funds or any other money available for such a purpose. Bonds issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** Add. 1994, Act 416, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 289, Eff. July 1, 1996 ;-- Am. 2003, Act 179, Imd. Eff. Oct. 3, 2003

**Compiler's Notes:** Former MCL 380.504a, which pertained to chartered educational clinics, was repealed by Act 362 of 1993, Imd. Eff. Jan. 14, 1994. Senate Bill 393 (SB 393) was enrolled on August 13, 2003, and presented to the governor for her approval on September 8, 2003, at 5:00 p.m. On September 18, 2003, the senate requested that the bill be returned to the senate. The governor granted the senate's request on that same date and returned the bill to that body (without objections), where a motion was made to vacate the enrollment and the motion prevailed. On September 23, 2003, the house of representatives approved a motion to send a letter to the senate agreeing with the senate's request that the governor return SB 393. Neither the Senate Journal nor the House Journal entries reveal any other action taken by the house of representatives regarding the return of SB 393. In order to determine whether SB 393 had become law, as requested, the attorney general examined whether SB 393 was recalled by concurrent action of the house of representatives and the senate within the 14-day period afforded the governor for vetoing a bill under the last sentence of Const 1963, art 4, § 33: "SB 393 was presented to the Governor on September 8, 2003, at 5:00 p.m. The 14-day period afforded for consideration, measured in hours and minutes, therefore expired on September 22, 2003 at 5:00 p.m. While the Senate had acted to recall the bill within that 14-day period (on September 18, 2003), the House did not. Its action concurring in the request to recall SB 393 was not taken until September 23, 2003. In the absence of concurrent action by both houses of the Legislature within the 14-day period, SB 393 was not effectively recalled and 'further legislative action thereon' was not authorized." The attorney general declared that "in the absence of a return of the bill with objections, SB 393 therefore became law by operation of the last sentence of art 4, § 33." OAG, 2003, No. 7139 (October 2, 2003).

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

**380.504b School district subject to court desegregation order.**

Sec. 504b. If a public school academy is operated by a school district that is subject to a court desegregation order, pupil selection at the public school academy is subject to that order.

**History:** Add. 1995, Act 289, Eff. July 1, 1996

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

**380.504c Repealed. 2008, Act 1, Eff. Dec. 31, 2008.**

**Compiler's Notes:** The repealed section pertained to transfer of enrolled public school academy pupils to another public school.

**380.505 Use of certificated teachers; use of noncertificated individuals by public school academy run by state public university or community college; report of new or revised teaching techniques.**

Sec. 505. (1) Except as otherwise provided by law, a public school academy shall use certificated teachers according to state board rule.

(2) A public school academy operated by a state public university or community college may use noncertificated individuals to teach as follows:

(a) If the public school academy is operated by a state public university, the public school academy may use as a classroom teacher in any grade a faculty member who is employed full-time by the state public university and who has been granted institutional tenure, or has been designated as being on tenure track, by the state public university.

(b) For a public school academy operated by a community college, the public school academy may use as a classroom teacher a full-time member of the community college faculty who has at least 5 years' experience at that community college in teaching the subject matter that he or she is teaching at the public school academy.

(c) In any other situation in which a school district is permitted under this act to use noncertificated teachers.

(3) A public school academy may develop and implement new teaching techniques or methods or significant revisions to known teaching techniques or methods, and shall report those to the authorizing body and state board to be made available to the public. A public school academy may use any instructional technique or delivery method that may be used by a school district.

**History:** Add. 1993, Act 362, Imd. Eff. Jan. 14, 1994 ;-- Am. 1994, Act 416, Eff. Mar. 30, 1995

**Compiler's Notes:** Former MCL 380.505, which pertained to public school academy, prohibition of discrimination, admission, enrollment, grades, and programs offered, was repealed by Act 362 of 1993, Imd. Eff. Jan. 14, 1994.

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

**380.505a Chartered educational clinic.**

Sec. 505a. The board of a school district may grant a charter to an eligible entity for a chartered educational clinic. The application requirements and procedures for such a contract for a chartered educational clinic are the same as for a contract for another public school academy. A

chartered educational clinic is a specialty public school academy and shall only serve public school pupils described in this section during hours outside the pupil's normal class hours by providing special assistance for up to 3 hours per week, pursuant to a written prescription by the principal of the public school in which the pupil is regularly enrolled on recommendation of a teacher of the pupil. A public school pupil enrolled in grades K-12 who is in educational difficulty or is at risk of falling seriously behind other pupils of his or her age level, of not being advanced in grade level, or of dropping out or being expelled from school may be served by a chartered educational clinic.

**History:** Add. 1994, Act 416, Eff. Mar. 30, 1995

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

### **380.506 Personnel.**

Sec. 506. A public school academy, with the approval of the authorizing body, may employ or contract with personnel as necessary for the operation of the public school academy, prescribe their duties, and fix their compensation.

**History:** Add. 1993, Act 362, Imd. Eff. Jan. 14, 1994

**Compiler's Notes:** Former MCL 380.506, which pertained to compliance with statutes and rules, was repealed by Act 362 of 1993, Imd. Eff. Jan. 14, 1994.

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

### **380.506a Public school academy; compliance with public employees health benefit act.**

Sec. 506a. If the board of directors of a public school academy provides medical, optical, or dental benefits to employees and their dependents, the board of directors shall provide those benefits in accordance with the public employees health benefit act and shall comply with that act.

**History:** Add. 2007, Act 107, Imd. Eff. Oct. 1, 2007

**Popular Name:** Act 451

### **380.507 Authorizing bodies; powers; revocation of contract.**

Sec. 507. (1) The authorizing body for a public school academy is the fiscal agent for the public school academy. A state school aid payment for a public school academy shall be paid to the authorizing body that is the fiscal agent for that public school academy, which shall then forward the payment to the public school academy. An authorizing body has the responsibility to oversee a public school academy's compliance with the contract and all applicable law. A contract issued under this part may be revoked by the authorizing body that issued the contract if the authorizing body determines that 1 or more of the following has occurred:

(a) Failure of the public school academy to abide by and meet the educational goals set forth in the contract.

(b) Failure of the public school academy to comply with all applicable law.

(c) Failure of the public school academy to meet generally accepted public sector accounting principles.

(d) The existence of 1 or more other grounds for revocation as specified in the contract.

(2) Except for a public school academy that is an alternative school serving a special student population, if the superintendent of public instruction determines that a public school academy that has been operating for at least 4 years is among the lowest achieving 5% of all public schools in this state, as defined for the purposes of the federal incentive grant program created under sections 14005 and 14006 of title XIV of the American recovery and reinvestment act of 2009, Public Law 111-5, and is in year 2 of restructuring sanctions under the no child left behind act of 2001, Public Law 107-110, not to include the individualized education plan subgroup, the superintendent of public instruction shall notify the public school academy's authorizing body. If an authorizing body receives notice from the superintendent of public instruction under this subsection, the authorizing body shall revoke the public school academy's contract and the public school academy shall be closed, effective at the end of the current school year.

(3) Except for a contract issued by a school district pursuant to a vote by the school electors on a ballot question under section 503(2), the decision of an authorizing body to revoke a contract under this section is solely within the discretion of the authorizing body, is final, and is not subject to review by a court or any state agency.

(4) An authorizing body that revokes a contract under this section is not liable for that action to the public school academy, public school academy corporation, a pupil of the public school academy, the parent or guardian of a pupil of the public school academy, or any other person.

**History:** Add. 1993, Act 362, Imd. Eff. Jan. 14, 1994 ;-- Am. 1995, Act 289, Eff. July 1, 1996 ;-- Am. 2009, Act 205, Imd. Eff. Jan. 4, 2010

**Compiler's Notes:** Former MCL 380.507, which pertained to personnel, was repealed by Act 362 of 1993, Imd. Eff. Jan. 14, 1994.

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

### **380.508, 380.509 Repealed. 1993, Act 362, Imd. Eff. Jan. 14, 1994.**

**Compiler's Notes:** The repealed sections pertained to state school aid, other funding, payment to fiscal agent, counting in membership, oversight of operations, and revocation of charter.

**Popular Name:** Act 451

**Popular Name:** Charter Schools

**Popular Name:** Public School Academies

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