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**A Different Approach to Closing Charter Schools: A
Reciprocal Charter**

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A charter school is a publicly funded school. According to the National Alliance of Charter Schools (2014) there are currently over 6,000 charter schools operating in the United States. More than two and a half (2.57) million children attend charter schools. By state and federal law charter schools must open their schoolhouse to all children. Like traditional public schools, charters cannot charge tuition fees.

Charter schools are a billion dollar industry. Whether charters are for-profit or non-profit (which usually contract with for-profit education service providers) operators are in a business and trying to maximize their earnings.

Diane Ravitch, America's most well-known education historian, has identified charter schools as the most important educational development in the past 50 years. According to Minow (1999), charter schools are squarely centered in the consumer driven American free marketplace relying on marketplace strategies and beliefs.

In practice and theory charter schools represent an expansion of the privatization movement that has gripped local, state and the federal government. Today, traditional government services ranging from prisons to garbage collection to running interstate highways have been outsourced (privatized) to private enterprise.

A charter school is created through a contract (a.k.a. the "charter") between the school and an authorizer. A charter school authorizer is an entity that state law and policy allow "to approve, monitor, renew, and if necessary close charter schools" (National Association of Charter School Authorizers, NACSA, 2014). The authorizer is funded through public funds and is held accountable by a state government entity for its use of the money.

Charter schools receive public education funds in exchange for considerable freedom and flexibility from state laws and local school board rules and regulations. However, charter schools are part of each state's public education system.

All state laws require charter schools to have an independent governing board (similar to traditional local school boards). The governing board is the entity that signs the contract with the charter school's authorizer. The governing board has the authority and charge to make all decisions relating to the charter school's finances. Charter schools are subject to federal and state audit requirements.

In 2009 CREDO at Stanford University (CREDO) reported that 37% of charter schools nationally were underperforming local public schools on standardized test scores. The study also found that only 17% of charter schools were outperforming the local public schools. The study compared the results of charter schools in 25 states to local schools with equivalent demographic and economic profiles.

CREDO conducted the same study in 2013 and found that charter schools were improving but 21% of the charters continued to trail local public schools.

The 2009 CREDO results were a wake-up call for charter school authorizers, state legislatures, and charter school operators. Charter schools were not the educational pinnacle that so many legislators and charter school educators said they would be.

The NACSA (2013) reported that charter school closure rates increased from 6.2% in 2011 to 12.9% in 2012 pursuant to charter school renewal evaluations. The closure rate beyond the renewal proves when from 1.5 percent to 2.5 percent.

Charter school academic under-achievement became a major national issue. The charter school community's response was two-fold: one, to close low performing schools; two, tighten the grounds for non-renewal and expand the grounds for school closure. The

result is a contract (charter) that is more specific, driven by higher standards for student achievement and student growth. In addition, authorizers created more rigorous accountability requirements.

Nearly 200 charter schools closed between the school year 2012-13 and the beginning of the 2014-15 academic year. California witnessed 39 school closings, Florida had 26 closed schools, Ohio had 19 closed schools, Wisconsin saw 17 closed schools and Arizona blinked at 16 closed schools.

What alternatives do charter school authorizers have to the drastic measure of closing schools? The answer might lie in an area of contract law and behavioral economics. Epstein (2013) wrote a paper, entitled: Public-Private Contracting and the Reciprocity Norm, where she argued:

When governments outsource work to private entities--running prisons and schools, administering state benefits, and the like--they tend to write extremely detailed contracts. The conventional thinking is that these private entities need to be constrained lest they act opportunistically. Therefore, governments write contracts that highly specify tasks, contain robust monitoring provisions, and financially reward task compliance. This detailed contracting approach, which views agents as selfish, profit-driven, and looking for opportunities to shirk, finds support in both the agency cost and public law literatures.

[Epstein] challenges the prevailing approach. [She] argues that control-based contracts are not only difficult and expensive to write and costly to monitor, but they stifle intrinsic motivation and innovation. Such detailed contracts frequently fail in practice, with serious negative implications for the public (Epstein 2013).

Charter schools must comply with their contract but the setting of detailed school performance criteria based mainly on standardized test scores and stepped up monitoring requirements certainly squeezes the autonomy out of the charter school.

The different approach that Epstein (2014) espouses is not “predicted on the assumption of fully rational and selfish individuals looking for opportunities to shirk. Viewed this way, agents (charter school operators) need to be controlled or need to be given incentives so that their rational, profit-maximizing interests align with the principals (authorizers)” (p.35).

The behavioral economics literature has recognized reciprocity as an approach to public-private contracting. Cooter and Ulen (2012) refer to relational contracts where in repeated business, which is naturally assumed in the context of permitting an operator to open and run a public school that remedies for broken promises are dealt with by informal devices.

Epstein suggests that a less specified contract and a minimum of monitoring will prompt better agent performance. Further, Epstein asserts:

It is not only specificity that can crowd out intrinsic motivation. Studies have shown that the use of tangible rewards or sanctions undermines motivation for a range of activities. Use of incentives and incentive-based compensation specifically can damage self-esteem and harm the norms of professionalism. Incentive-based compensation (so-called “carrots and sticks”) may actually crowd out intrinsic motivation. Also, monitoring at a certain level decreases work effort. Monitoring and specificity together have been shown to be particularly problematic (Epstein 2013).

Charter schools were built on the cornerstone of innovation, creativity, and flexibility from too much oversight and regulation. Clearly, authorizers must ensure to the extent possible that their charter schools are successful. But setting unreasonable expectations and stifling motivation through excessively detailed contracts is not the answer.

Fortunately, some states have passed charter school laws that establish mandatory closure provisions. This is an excellent idea and all states should do the same. This will relieve authorizers of some pressure associated with deciding to close a school.

Works Cited

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