I. INTRODUCTION

Due to the election of George W. Bush and the Supreme Court’s recent decision in *Zelman v. Simmons-Harris*, enacting a federally funded private school voucher program may be a real possibility. While extensive academic literature exists on the overall constitutionality of private school voucher systems, very little intensely explores the potential “regulatory strings” that may need to attach should such a program survive judicial scrutiny.

Once the federal government decides to invest public money in private school tuition, the public’s stake in private school activity naturally intensifies. There are a number of key issues surrounding the regulation of school vouchers. Religious freedom, choice, neutrality, and secular educational quality all play crucial roles in examining the necessity and scope of any voucher regulation.

This article does not closely examine the empirical data surrounding private or public education, nor does it analyze the political considerations driving the current voucher debate. Rather, it addresses the key question of how, or should, the federal government monitor an unprecedented investment in private education. Part II examines President Bush’s 2001 voucher proposal and Part III focuses on recent state voucher programs and corresponding judicial decisions. Part IV discusses the development of U.S. Supreme Court Establishment Clause cases. Part V weighs the merits of parental rights and state regulation supporters regarding voucher regulation. Part VI analyzes regulating school safety, teacher quality, and school curriculum and attempts to provide recommendations to voucher regulation drafters.

II. PRESIDENT BUSH’S FEDERAL VOUCHER PROPOSAL

On March 22, 2001, President Bush submitted his first education package to the 107th Congress. Entitled the *No Child Left Behind Act of 2001*, the bill primarily targets improving teacher quality, increasing local flexibility, parental choice, and enhancing educational quality for low-income students. Citing *Nebraska v. Meyer* and *Pierce v. Society of the Sisters*, President Bush’s original...
plan created a federally funded school voucher program for disadvantaged students. Students must attend a “failing” public school. If a designated “failing school” has not made adequate progress after three years, the school’s students can obtain a federal voucher to attend a private school. The average voucher would provide between $700-$1500 to each eligible student.

The program does attach some “regulatory strings.” All schools that accept funding under Title I, part A must utilize secular, non-ideological educational instruction and materials. Participating private schools are not exempt from health and safety standards. Each local educational agency must ensure that all teachers working in program-funded schools are fully qualified. The bill’s text states that it does not fund religious worship or instruction, but cannot be construed to prohibit parents from using voucher funds for sectarian education. Participating private schools cannot define student applicants on the basis of religion, and funding will be granted based on neutral, secular criteria.

Students can only use program funds to attend private schools that agree to assist students in math, reading, and language arts. However, the federal government cannot dictate curriculum and related academic activity. Each local educational agency must ensure that students enrolled in, and applying to, participating private schools are afforded discriminatory protections, similar to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. Funds cannot be used to distribute materials encouraging any form of pre-marital sex or to teach age-appropriate sex education without emphasizing abstinence. Lastly, President Bush’s proposal only allows the federal government to enact subsequent regulations to ensure compliance with the legislation.


12. 115 Stat. at 1445; see Questions and Answers, supra n. 11, at 3.


14. 115 Stat. at 1785 (failing to explicitly define secular or non-ideological).

15. Id. at 1439, 1472.

16. Id. at 1621, 1985 (defining fully qualified teachers as those with state certification and requisite training to teach specific secular subject matter and stating that the federal government cannot mandate national teacher certification standards).

17. Id. at 1975-77 (failing to define “sectarian”).

18. Id.

19. Id. at 1439.

20. Id. at 1983.

21. Id. at 1985 (stating that nothing in the Act “shall be construed to permit discrimination”).

22. 42 U.S.C. § 2000d (2001) (stating “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance”).


26. Id. at 1985.