



# Beyond the Battle Lines

LESSONS FROM NEW YORK'S  
CHARTER CAPS FIGHT

*Lisa M. Stulberg*





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# Executive Summary

**C**aps are one of a number of ways in which states have sought to slow or limit the growth of charter schooling. Currently, 25 states plus the District of Columbia have charter school caps. This paper explores the politics of an effort (ultimately successful) to raise the cap and expand the number of charter schools in one state, New York. The paper tracks the political fortunes of charter schools in New York State from 1998 through the spring of 2007. Based on a literature review, analysis of news coverage, and interviews with 28 experts who follow charter issues, the paper focuses on the origins of the state legislation limiting charters and the debate that took place in 2006 and 2007 about raising the cap.

## CHARTERS IN NEW YORK STATE

New York came relatively late to charter schooling, passing its initial law in December 1998. The law was hard-won, depending for final passage on a political deal that provided a legislative pay hike in return for authority to create 100 charters statewide. Republican Governor George E. Pataki, a charter supporter, persuaded the state legislature to authorize 100 start-up charter schools in 1998, but failed, amidst an acrimonious public affairs battle launched by charter supporters, to obtain a cap lift before he left office. His successor, Democrat Eliot Spitzer, succeeded where Pataki had failed. Just three months after Spitzer took office, the legislature sent the new governor a bill doubling the cap to 200 schools.

## NEW YORK'S CHARTER CAP ACTORS

The key actors in the caps fight include the governors, state legislative leaders, the mayor of New York City and his school chancellor, charter advocates, teachers unions, district leaders, and school boards.

The politics of charters in New York State are incredibly complex. Democrats, on balance, are hardly enthusiastic about charters, but this is not true across the board, especially for a younger generation of lawmakers and for Democrats of color. Republicans are more favorable, but Republicans representing smaller urban or rural districts worry about the

financial impacts on district schools. Unions are generally cool to the idea of charters, but there are a number of unionized charter schools, and the largest local in the state is actually in the business of running its own charter schools. While many school board leaders and district administrators are skeptical of charter schooling, they have to live with the reality that the largest district in the state is led by people who have embraced charters enthusiastically.

So, one finds strange bedfellows on both sides of the charter question. But if some of the alliances are hard to understand, the arguments for and against charters and charter school caps are sharp and readily identifiable.

## **PROS AND CONS: THE DEBATE ABOUT LIFTING THE CAP**

Following nearly two decades of thinking about charter schools, advocates and opponents have developed quite clear-cut arguments to justify their positions. In favor of maintaining caps on charter schools, we find arguments such as the following:

- Charters are an unproven or failed experiment
- Charter schools destabilize and harm school districts
- Charters undermine systemic change
- Charters are antidemocratic
- Charter school backers are opposed to public education
- Caps create careful authorizers

The arguments in favor of lifting caps are equally formidable and deeply felt. They include:

- Charter schools work. Take them to scale
- Caps deprive students of high-quality school alternatives
- Caps dissuade talented providers from entering the state
- Charter supply should be limited by the market, not by caps
- Transition aid is a separate issue

As these arguments illustrate, the charter (and the caps) debate has always been contentious. The challenge this presents for public debate and policy is how to move charter policies forward so that they serve the best interest of students and families.

## POLITICAL LESSONS FROM NEW YORK

Charter school caps are especially relevant to charter schooling in the second generation. When caps are within sight or have been reached, as in many states, the debate is no longer about what charter schools *might* look like if they were to become part of the public school fabric in a state, but about what charter schools *do* look like and the impact they have on public schooling more generally. The New York experience offers several lessons

### Lesson 1: Blunt Charter Tactics May Threaten Fragile Alliances

School choice has always made strange bedfellows. Many of the country's charter laws were passed with bipartisan support, however shaky. This has not changed in the second generation of the charter reform. Charter schooling is still a big political tent. Fifteen years of the reform—or even nine years in New York—have not clarified the politics enough to narrow the differences among the actors in these debates. This makes charter schooling all the more political—and fragile. For these reasons, traditional partisan tactics are not always successful.

### Lesson 2: Teachers Unions Are Not Monolithic

Many on the pro-charter side assume that “the union” is opposed to charter schools and will do almost anything in its power to undermine the movement. The reality in New York is more complicated. On one side, there *are* union leaders in the state who are unmistakably anti-charter and who believe strongly in maintaining the cap (if not completely eliminating charter schooling). On the other hand, some union leaders are careful to carve out a balanced position on charters, supporting charter schools and the charter mechanism when it works well for both teachers and students. There is real disagreement about charter schooling within the state union. This is evidenced by the fact that there are unionized charter schools around the country and in New York State.

While there is still, then, a fair amount of knee-jerk anti-unionism on the part of charter proponents and anti-charter sentiment on the part of union activists, the union politics are more complex in New York than they appear on first glance. The complexity of the union position in New York may offer room for a more sophisticated approach to charter politics and policymaking in the state.

### Lesson 3: Claims About Charter Quality Are Central but Good Data Are Scarce

In many ways, the caps debate mirrors the first-generation conversations about charters, in that the cap provides an opportunity to re-argue the merits of charter schooling all over again. But the debate is different in some significant ways, one of which is the argument about charter quality. When a state is considering the charter reform, it has no evidence of local charter performance on which to draw. When a state nears its cap, however, it has some data about how charter schools have fared in the state.

In the caps conversations, in New York and elsewhere, charter school *quality* has become a central sticking point. Being able to establish quality is crucial to pro-charter, anti-cap advocates, who need to be able to point to the fact that the existing charters are working well and the concept is worth expanding. On the other hand, being able to demonstrate that charter schools are failing or are, at least, performing no better than their district counterparts is central to the pro-cap forces, who want to argue that it is not worth investing more resources in the charter reform.

### Lesson 4: District Impact and Response Vary Widely

Perhaps the most striking lesson from New York is that despite the fact that charter policy is made at the state level, charter politics themselves are ultimately local. When faced with the possibility of competition from charter schools and other forms of public and private choice, school districts can respond in a number of ways. Districts around New York vary widely in the way in which they react to charters in their midst, and charter schools impact local districts in very different ways. Some districts embrace charter schools, some believe that charters are not an issue in their communities, while others oppose and feel deeply threatened by the prospect of charters. Simply comparing Albany to New York City illustrates this in a poignant way.

## POLICY RECOMMENDATIONS

New York charter politics have been highly divided and divisive, at one point threatening to produce a policy standstill on charter caps. Charter schooling—like public schooling in general—is complicated, and nuanced discussions and sophisticated policies are essential. Six policy considerations are offered here.

## Policy Recommendation 1: Identify and Address Second-Generation Charter Challenges

There *are* significant and legitimate second-generation charter issues that must be addressed. Charter supporters should not pretend that charters are all working well, should not ignore authorizing problems, and should not wish away disappointing evaluation data. Meanwhile, charter opponents should acknowledge that there is much to be gained from the charter mechanism, that there is a lot of demand for charter schools, and that charters can be effective under the right circumstances.

The second-generation issues should be honestly assessed, debated, and addressed through public policy. The central issue is charter *quality*.

## Policy Recommendation 2: Be Realistic About What a Cap Can Accomplish

Many charter supporters in New York and elsewhere believe that retaining a cap on the number of charter schools will not solve charter school problems. Some also believe that *lifting* the cap, in and of itself, will not solve these problems, though it is viewed as a necessary first step. In New York, however, caps are a *political* fabrication, born of political “horse trading.” They are not primarily an educational reform or solution. A cap is a very symbolic, easy-to-grasp, blunt policy instrument. But caps, themselves, are *not* a form of oversight or assessment or a way of making it easier for districts with charter schools to deal with the impact of these schools on their resources. Caps are not the primary mechanism for ensuring charter quality or for ensuring district viability when districts are faced with charter competition.

## Policy Recommendation 3: Do Not Eliminate Caps Entirely

While caps have limited utility, unchecked chartering is not the answer to the challenge to produce high-quality charter schools. Caps should not be eliminated entirely from state law, in New York or elsewhere, at least not prematurely. Caps are important when a state is just beginning to establish charter schools, to limit an untested reform in the state. Therefore, caps in a well-designed law can also serve as an important mechanism in charter schooling’s second and third generations. Charter authorizers need to be kept in check to ensure that they are chartering high-quality schools, closing failing schools, and

overseeing the charter growth process so that it best serves students in charter schools. Caps, if designed properly, can be a part of producing careful authorizers.

#### Policy Recommendation 4: Tie Caps to Charter Quality

Sophisticated caps policies are needed to ensure that caps serve an educational purpose and not simply a political or symbolic one. This can be accomplished by tying caps to charter school quality. This shifts the debate in a useful way, from the simple question of whether and how many charter schools should be allowed to the question of how high-quality schools can be established and replicated. It also puts charter policy to work for the explicit creation of high-quality public schools.

A sophisticated charter cap law would need to build in a measure of quality that allows for local diversity and a range of measures of success (rather than relying solely on state test performance). Broader measures would have to ensure that high-quality “mom-and-pop” charters—those that were not affiliated with charter management organizations, for-profits, or other larger-scale charter groups—would be supported. Operationalizing quality, then, would be the largest challenge to creating a caps law of this kind.

Finally, on the connection between caps and charter quality, more research is needed to help policymakers understand whether and how charter caps influence the way charter authorizers do their job of chartering, overseeing, and closing schools.

#### Policy Recommendation 5: Adjust Caps for Local Exigencies—Including Aid

Caps laws should take local exigencies into consideration, given how local the impact of charter schools is. This, again, means a more sophisticated law. The optimal cap law would not simply place a blunt cap on the number of charter schools in the state. Rather, it would allow for local variation in will and need. This law might target charter schooling at the lowest-performing, highest-need districts, paired with transition aid, or it might exempt certain locales from the cap, as has been proposed for New York City in the New York case.

State laws, then, should build in some relief for distressed districts—perhaps in the form of transition relief that allows districts some time to adjust their fixed costs when they lose students to charter schools. But, this kind of aid is expensive, and states should ensure that they are not paying districts to compensate for perpetually failing district

schools. Therefore, the aid issue should be connected to quality concerns as well, perhaps by making impact aid contingent on a district's capacity to improve.

### Policy Recommendation 6: **Do Not Introduce Automatic Sunset Provisions**

Some states with caps initially included “sunset” provisions in charter legislation so that the cap would automatically expire after a certain date. Sunset provisions appeal to charter supporters because they mean that charter schooling will not have to be renegotiated when the clock runs out and the state cap is met.

However, it is reasonable to build into a charter law a mechanism to reassess charter schooling in the state once charters have existed for a certain number of years. Charter schools, as public schools, *should* be subject to educational and political review. Charter actors on both sides should have the opportunity to weigh in on the reform once it has been tried. Sunset provisions placed on caps laws eliminate the opportunity for this kind of debate.

## CONCLUSIONS

Charter schools in the second generation and beyond should be of irrefutably high quality, measured in a range of ways to serve a wide range of students and student needs and interests. The schools should be well-supported by bold, active authorizers who do their jobs by setting the bar high for new charter applications, overseeing and supporting charter school development and implementation, and closing failing schools. There is no doubt that such schools and authorizers exist. There also is no doubt that the charter movement has a long way to go to ensure that all schools and their authorizers meet these standards, while also ensuring a democratic reform in which all students and potential charter founders can participate.

New York charter school and charter caps politics have been highly partisan and, at times, quite brutal. In a rancorous political environment like New York, it is difficult to have a nuanced approach. But, ultimately, this kind of approach benefits both districts and charter schools.

The New York charter caps debate is relevant to the growing number of states in which charter schools are reaching their legislated limit. The observations and proposals presented here provide policymakers with a road map for understanding the political

dynamics and arguments in play in many states and offer a set of recommendations to help leaders reconcile the political convictions of adults with what is best for all public school students.

# Introduction

In the midst of a bitter charter cap battle in May of 2006, a group called Parents for Public Charter Schools aired hard-hitting ads aimed at charter opponents in the New York State Assembly. The ads were part of a campaign to encourage legislators to raise the “cap” on charter schools, a 1998 provision limiting the number of charters in the state to 100 start-up schools.

Radio listeners in cities around the state heard a mother of two charter school students criticize Assemblyman Ron Canestrari, a Democrat from Albany. “Not everyone can afford to send their children to private schools like the one he attended,” she said. “That’s why options like public charter schools are so important to moms like me. Which public school my child attends is my decision, not some politician’s.” The ad ended with the woman urging other parents to call Assemblyman Canestrari and tell him “We don’t need him to place a cap on our children’s future.” Television viewers saw a series of similar ads, all featuring women of color. One ad urged viewers to appeal to Assemblywoman Susan John, an anti-charter Democrat from Rochester. It ended with an adorable African American girl with a forlorn look, pleading: “Don’t cap my future.”<sup>1</sup>

The ads gained notoriety across the state, earning significant press attention, infuriating charter opponents, and dividing New York’s charter advocates. Some even blamed the ads for state lawmakers’ refusal to raise the cap during the 2006 legislative session.

The following January, New York found itself with a new governor, Democrat Eliot Spitzer. Elected by an enormous margin, Spitzer used his mandate to introduce a series of bold reforms within the first month of his term. Education was a top priority, and he hit the ground running. In his State of the State address on January 3, 2007, Spitzer called for “a vibrant education system that demands accountability and rewards excellence.” This system, he urged, should include raising the charter school cap, to allow New York to “continuously experiment with new approaches.”<sup>2</sup>

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1. See ads at the Parents for Public Charter Schools’ website: <http://www.parentsforpubliccharterschools.org>.

2. Governor Eliot Spitzer, “State of the State Message,” January 3, 2007, pp. 19, 11, <http://www.state.ny.us/governor/keydocs/NYS-SoS-2007.pdf> (accessed February 7, 2007).

By the end of his first month in office, Governor Spitzer had proposed a list of sweeping education reforms, which earned the top story in the *New York Times*. As part of these reforms, Spitzer unequivocally stated his support for more charter schools: “I will strongly push for raising the current cap on charter schools.”<sup>3</sup> This position elicited, according to the *Times*, “an audible gasp and some boos from an audience of professional educators and Education Department staff members.”<sup>4</sup>

The New York cap on charter schools is relatively low—just 100 schools out of about 4,500 schools in the state.<sup>5</sup> Over the past few years, as New York approached the limit, the caps fight has become active and controversial, as it has elsewhere in the country. Fifteen years after the introduction of charter schools as a policy innovation, the debate over whether to lift or retain charter school caps has become the latest charter battleground.

Charter schools are no longer a new phenomenon in most states. From their 1991 beginnings in Minnesota, charter schools quickly have become a national reform. There are now charter school laws in 40 states plus the District of Columbia, with almost 4,000 schools across the country. Charter schools serve more than one million students nationwide, or about two percent of the nation’s students.<sup>6</sup>

As they move through their second decade, charter schools have amassed academic track records, weathered raucous politics, and faced very public victories and equally public defeats. In many states, most charter schools are neither abject failures nor stellar successes. They struggle with many of the same challenges as their district counterparts. They also now face a host of “second generation” issues unique to the charter mechanism. These include: political fights over caps as legislative limits are reached; debates about the most effective kind of charter school oversight; questions about accountability and the closure mechanism for failing schools; arguments over achievement data and accurate assessments of whether charter schools are working; and replication questions about how

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3. Governor Eliot Spitzer, “A Contract for Excellence,” January 29, 2007, [http://www.ny.gov/governor/keydocs/0129071\\_speech.html](http://www.ny.gov/governor/keydocs/0129071_speech.html) (accessed January 30, 2007).

4. David Herszenhorn and Danny Hakim, “Spitzer to Seek Major Increase in Education Aid,” *New York Times*, January 30, 2007.

5. According to the National Center on Education Statistics, New York contained 4,531 public elementary and secondary schools in 2003-2004, including 50 charter schools. See *Digest of Education Statistics, 2005* (Washington, DC: National Center on Education Statistics, 2006), NCES 2006-030, Table 95, [http://nces.ed.gov/programs/digest/d05/tables/dt05\\_095.asp?referer=list](http://nces.ed.gov/programs/digest/d05/tables/dt05_095.asp?referer=list) (accessed April 13, 2007).

6. National Alliance for Public Charter Schools, *Growth and Quality in the Charter School Movement: 2006 Dashboard*, <http://www.publiccharters.org/content/publication/detail/1075> (accessed December 6, 2006); Center for Education Reform, “National Charter School Data: New School Estimates 2006-2007,” [http://www.edreform.com/\\_upload/CER\\_charter\\_numbers.pdf](http://www.edreform.com/_upload/CER_charter_numbers.pdf) (accessed February 9, 2007).

to learn from and reproduce the best charter models. This paper addresses only the issue of charter school caps.

## WHAT IS A CHARTER CAP?

Caps are one way in which states have sought to slow or limit the growth of charter schooling. They are not the only mechanism for this. Some states, like Rhode Island, have placed moratoria on charter schools. Other states have limited charter schools before they have even begun. In Washington State, for example, voters nullified a charter school bill passed by the legislature. Still other states have de facto caps, according to Andrew Rotherham of Education Sector<sup>7</sup>: ways to substantially limit charter school growth without a formal cap, like the designation of only one kind of charter authorizer (local school boards, for example) in a state.

Charter school caps have been widespread in state legislation. They served to check the growth of an untested reform. According to Todd Ziebarth, senior policy analyst for the National Alliance for Public Charter Schools and the author of two reports on charter caps, “almost every state that passed a charter law initially had a cap. There was a decent policy reason for a cap. You could make a legitimate case in the mid- even the late-’90s that charters are a new, untested thing. Let’s allow some and see how they work.” In some states, as charter schools became an established feature of education reform and seemed to perform fairly well, legislators either removed caps or raised them significantly. In many other states, caps have remained. Currently, 25 states plus the District of Columbia still have charter school caps.<sup>8</sup>

These 26 cap laws vary significantly. A January 2006 National Alliance for Public Charter Schools report identifies five kinds of caps.<sup>9</sup> Sixteen states have a blunt cap that limits the absolute number of charters in the state (for example, New York) or that specifies the total number that can operate in particular parts of the state (for example, Illinois). Seven states, like New Mexico, employ a different kind of cap: a limit on the number of new charter schools that can open in any given year. Eleven states, including Michigan, have a third kind of cap, which limits the number of charter schools that specific authorizers

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7. Unless otherwise noted, quotations come from interviews with the author, conducted in 2006.

8. Todd Ziebarth, *Peeling the Lid Off State-Imposed Charter School Caps* (National Alliance for Public Charter Schools, February 2007), <http://www.publiccharters.org/content/publication/detail/1973> (accessed March 19, 2007).

9. Todd Ziebarth, *Stunting Growth: The Impact of State-Imposed Caps on Charter Schools* (National Alliance for Public Charter Schools, January 2006), <http://publiccharters.org/content/publication/detail/533> (accessed December 6, 2006).

(for example, universities) may approve. The fourth kind of cap is evident in four states (for example, Connecticut): it limits the percentage of students in charter schools per district or in the state as a whole, or the number of students that enroll in specific schools. There are also a number of “miscellaneous limits” placed on charter schools, including a cap on the percentage of district spending that can go to charter schools (Massachusetts) and a limit on where in the state charter schools can operate (Missouri and Oklahoma).

To limit charter growth, many states combine the five strategies. According to the National Alliance for Public Charter Schools’ follow-up report in the beginning of 2007, there are nine states for which these various caps are “severely constraining growth” of charter schooling.<sup>10</sup>

## THE NEW YORK CAPS FIGHT

This paper explores the politics of an effort (ultimately successful) to raise the cap and expand the number of charter schools in one state, New York. The paper tracks the political fortunes of charter schools in New York State from 1998 through the spring of 2007. It focuses on the origins of the limitation on the number of charters in the state and the debate that took place in 2006 and early 2007 about raising the cap.

Outlining the arguments of the supporters and opponents of charter schools in the state, the paper defines their positions, lays out how the dynamics of charter schools (and charter caps) play out in local communities, and draws policy inferences for New York and other states. The paper was developed based on a review of the literature about charter schools and charter caps, an analysis of charter newspaper coverage in the state, and interviews with nearly 30 experts from a wide range of backgrounds (district and charter leaders, union and nonprofit leaders, and charter school analysts) in New York and nationally.

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10. Ziebarth, *Peeling the Lid Off*, p. 3.

## CHAPTER 1

# The Lines Are Drawn

**T**he debate about lifting the charter cap in New York has been made all the more high profile by the strength and visibility of its key actors: an outgoing Republican governor with broader political ambitions, who has been a steadfast champion of charter schools but failed to lift the cap during his tenure; an aggressive, incoming Democratic governor with a wide mandate and political ambitions of his own, who was able to work with key sources of Democratic resistance in the state legislature to lift the cap within his first few months in office; a powerful Republican mayor of the largest city in the country who also is playing to a national audience and who enthusiastically supports charter schools; a forceful teachers union at the state level and in the state's largest city; a small core of influential state legislators; and large urban school districts with widely varying views of charter schools.

While each of these actors typically lines up on one side of the issue or the other, as this chapter makes clear, charter politics makes for strange bedfellows. The charter school caps fight in New York is an instructive place to examine those politics. This chapter explores the history of the charter movement in the state, and then turns to an examination of the cast of characters in the charter drama.

## CHARTERS IN NEW YORK STATE

New York came relatively late to charter schooling, passing its initial law in December 1998. The law was hard-won, depending for final passage on a political deal that provided a legislative pay hike in return for authority to create 100 start-up charters statewide.

Republican Governor George E. Pataki, a charter supporter, had for years been looking in vain for a way to strike a deal on charters with the state legislature, made up of the State Senate (controlled by Republicans under the leadership of upstate Senator Joseph L. Bruno), and the State Assembly (controlled by Democrats and led by Speaker Sheldon Silver of Manhattan). To sway skeptical legislators, Pataki found his leverage in a pay-raise provision supported in both houses and by members of both parties. Threatening to veto the pay raise unless given something in return, Pataki spent weeks wrangling with

the state's lawmakers over the charter school bill. Finally, the governor agreed to the first legislative pay raise in ten years. In exchange, in the very early morning of December 18, lawmakers delivered a version of the governor's charter law.

This 1998 legislation did not give Pataki all that he asked for. It allowed only for 100 start-up charter schools in the state, along with an unlimited number of conversion schools (existing public schools that could be converted to charter status). It also limited the number of authorizers in the state to two: the gubernatorially appointed Charter Schools Institute of the State University of New York (SUNY) and the New York Board of Regents, the body that oversees all education in the state. Whereas charter supporters typically prefer to launch charters without teachers unions, the charter bill signed by Pataki also provided that charter schools opening with more than 250 students in their first year would be required to have unionized teachers (with the exception of 10 exemptions from one of the charter authorizers).

The charter school cap had not been part of Pataki's initial bill. It, too, was a compromise. In addition, although many charter supporters prefer caps to expire after a certain date (so-called "sunset" provisions), the New York cap contained no expiration date.

## THE CAP FIGHT, 2006-2007

Over the past few years, the cap fight has been a dominant feature of charter school politics and policy in New York. By 2004, conversations in the state's charter world turned to the lifting of the cap, as the limit of 100 schools was in sight. By the fall of 2005, there were approximately 15 charters left to be assigned, and the cap conversations grew more urgent. By January 2006, New York had reached its cap and could no longer issue charters. At this point, there were 79 functioning charter schools in the state, serving approximately 22,000 students.<sup>11</sup> (Of the remaining 21 charters, most were authorized but not yet functioning. A few had opened and closed, but still retained a charter.)<sup>12</sup>

With the chartering of new schools at a standstill, in his final State of the State address (January 2006), Governor Pataki called for "dramatically expanding charter schools

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11. Jacob Gershman, "Split on Strategy Develops Over Charter Schools," *New York Sun*, May 30, 2006, <http://www.nysun.com/article/33497> (accessed May 31, 2006).

12. According to Peter Murphy of the New York Charter Schools Association, there have been only a very small number of conversion charter schools in the state, though the law allows for an unlimited number of these schools. By his count, there are six currently in operation, two that were chartered but returned their charters, and one that opened but was closed after just a year or two of operation.

throughout the entire state.”<sup>13</sup> In the winter of 2006, as part of his budget package, the governor proposed to raise the cap to 250 schools. His proposal included special provisions for New York City, which, under the leadership of Republican Mayor Michael R. Bloomberg and his school chancellor Joel I. Klein, strongly supported charter schooling. Under Pataki’s plan, New York City schools would be exempt and would not count against the cap, and the city would become its own charter authorizer, with 50 schools of its own to approve.<sup>14</sup>

The legislature rejected the governor’s plan. But, in the spring of 2006, Pataki and lawmakers indicated their willingness to bargain around the cap. Again, the issue on the table was a pay hike for state legislators, who had not had a raise since the 1998 bargain that created the charter school law. Some close to the legislative process believed that a pay raise was the only trade that Pataki could offer that might move the legislature to lift the cap, though legislators had little to say about this.

Once begun, negotiations during the spring were feverish, and the politics were rough. The television and radio ads cited in the introduction, which blasted individual Assembly Democrats by name, appeared in May, angering many. The *New York Times* reported that Speaker Silver “told several members that they would not talk about the issue until the ads went off the air.” A charter supporter in the Assembly, Darryl C. Towns, from East New York, said of the ads: “There are so many ill feelings around the issue that it makes it impossible to have a conversation around the merits. . . . We were really feeling good about convincing other members, but that seems a long way off for now.”<sup>15</sup>

Before summer recess, on June 23, 2006, the legislature failed to pass Pataki’s charter provision. By the end of the term, in a special session in December, lawmakers again failed to raise the cap. Pataki, ultimately, did not accomplish the cap lift before he left office.

When Eliot Spitzer was elected in November of 2006, charter school supporters believed he wanted to work with them to raise the cap and that he was sincere in his support for charter schools. In Governor Spitzer’s first month in office, he unequivocally expressed his desire to expand the number of charter schools in the state. From the beginning,

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13. Governor George Pataki, “State of the State,” January 4, 2006, <http://www.gothamgazette.com/article/20060105/202/1700> (accessed February 18, 2007).

14. Jennifer Medina, “Pataki Plan Would Allow City to Create Charter Schools,” *New York Times*, February 8, 2006.

15. Jennifer Medina, “Legislature Deals Setback to Mayor in Declining to Allow More Charter Schools,” *New York Times*, June 24, 2006.

some national experts believed that Spitzer had a better chance at lifting the cap than his predecessor, given the partisan divisions around charters. Ziebarth said: “People have had different reactions to Democratic control now. I think it creates an opportunity. Someone like Spitzer . . . might be able to break the political logjam.”

That assessment proved accurate. Just three months after he took office, on the morning of Sunday, April 1, 2007, Spitzer accomplished a cap lift. Following lengthy closed-door negotiations between the governor and the legislative leadership, lawmakers approved a version of the state budget that included a charter cap lift (without much discussion, this time, of a legislative pay hike as *quid pro quo*). The compromise measure doubles the number of start-up charter schools allowed in the state, to 200. Up to 50 of these new schools will be in New York City, though the city will not have the ability to act as its own authorizer, as was proposed. The new law also requires that new schools with more than 250 students in their first two years of operation must unionize all staff. The law does not, however, contain some items considered much more problematic by charter proponents in the state—like cuts to charter school funding and the elimination of SUNY as one of the state’s authorizers.<sup>16</sup>

## NEW YORK’S CHARTER CAP ACTORS

New York charter politics draw a wide range of key players from around the state. Here is a look at the central actors.

### Governors

The former governor, Republican Pataki, put charter schooling on the map in New York and championed it throughout his tenure. Charter schools were part of a broader package of school choice supported by Pataki. He also supported tuition tax credits for private and parochial schooling. Many believed that Pataki was nursing long-standing presidential ambitions and was playing to a national audience with his support of choice. As a spring 2006 article noted, quoting an Assembly Democrat: “If he expects to gain support among Republicans nationwide, ‘you’ve got to be pro–death penalty and you’ve got to be

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16. See Jacob Gershman, “Spitzer Wins a Victory on Charters: 100 New Schools To Be Allowed Under Budget Deal in Albany,” *New York Sun*, March 30, 2007, <http://www.nysun.com/article/51496>; New York City Center for Charter School Excellence, “It’s Official: Charter Cap Lifted,” [http://www.nycchartercenter.org/breaking\\_news.asp](http://www.nycchartercenter.org/breaking_news.asp) (accessed April 6, 2007); New York Charter Schools Association, “Five, Four, Three, Two, One, Charter School Cap Lift!” <http://www.nycsa.org/index.asp> (accessed April 6, 2007).

pro-charter school,' remarked [Assemblyman John] McEneny [D-Albany]."<sup>17</sup> But some charter supporters believed that while Pataki was a strong friend of the movement, he was unwilling or unable to spend significant political capital to lift the charter cap.

His successor, Democrat Spitzer, is also a charter advocate. As a candidate, Spitzer indicated his support for charter schools and for lifting the charter cap. His first few months in office signal that he is willing to make charter schooling a key feature of a bold education agenda. In his January 29, 2007, "A Contract with Excellence" speech, Spitzer delivered the following rationale for his charter support: "Charter schools help demonstrate educational innovations that work, many of which can be adapted to other parts of the public school system. Charter schools make other public schools compete . . ."<sup>18</sup> When Spitzer took office, charter supporters did not question his commitment to charter schools, but they questioned how much political capital he was willing to spend on the issue. They believed, though, that his huge win in the 2006 election earned him significant freedom to push his agenda, even with a skeptical state legislature.

Spitzer did not disappoint New York's charter advocates during the March 2007 budget negotiations. Reflecting on the budget deal that accomplished the cap lift, Bill Phillips, president of the New York Charter Schools Association, indicated that Spitzer was willing to expend the political capital to accomplish the cap lift, and that he "worked and fought harder for it" than Pataki did. Phillips also noted that "while Spitzer's accompanying inattention to key operational features of the law—like the upstate cap language, retroactive unionization on the 2/250 rule, and supporting the cost of prevailing wage without providing state building aid—was unnerving, charter advocates were ably defended from the Assembly 'poison pills' by Senate leaders Bruno and [Minority Leader Malcolm] Smith."

Spitzer is also believed to have presidential ambitions and to be playing to a national audience. As Whitney Tilson—investment manager, New York charter supporter, and cofounder of a new Political Action Committee called Dems for Education Reform—said of Spitzer: "To the extent that he has national political ambitions, supporting charters allows him to frame himself as a new kind of Democrat." He appears to be willing to break with the Democratic old guard on issues like school choice. This signals, to some Democrats, a new kind of partisan charter politics in Albany. Tom Carroll—a former

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17. Rick Karlin, "Taboo Subject Raised at Capitol," *Times Union*, April 5, 2006, <http://timesunion.com/AspStories/storyprint.asp?StoryID=468382> (accessed April 25, 2006).

18. Spitzer, "A Contract for Excellence."

Pataki staffer and founder and chair of Brighter Choice Charter Schools in Albany— noted of Spitzer’s win: “The under-50 crowd in the Democratic party is pro-charter. The old guard is anti-charter. The Young Turks are now in power. Eventually, the old guard will probably fade away.”

## State Legislature

The legislative politics of charters in New York are complex and often quite confusing. Charter politics do not break down along easily identifiable partisan lines, and one often finds strange political bedfellows on both sides of the issue.

The most powerful individuals in New York State politics are the governor and the heads of both branches of the state legislature: the speaker of the assembly and the senate majority leader. Decisionmaking is often believed to be centralized in this “triumvirate,” as Ziebarth dubbed it. Silver, the Democratic assembly speaker, and Bruno, the Republican senate majority leader, have both been lukewarm, at best, on charters, though Bruno’s Senate had an easier time supporting Pataki’s charter agenda. The Senate eventually passed Pataki’s winter 2006 charter cap proposal. Before summer recess in 2006, Speaker Silver abandoned Pataki’s proposal, indicating there simply was little support for charter schooling among Assembly Democrats.<sup>19</sup>

There have been some exceptions to this view of charters. African American and Latino Democrats from New York City have been more supportive of charter schools, often in a very outspoken way. Many charter supporters mentioned that they had long-standing allies in two high-profile African American legislators: David Paterson, a state senator from Harlem who became the senate minority leader in 2002 and is now the first African American lieutenant governor of New York, and Malcolm Smith, a state senator from Queens, who replaced Paterson as the senate minority leader.

While some Democrats of color from New York City have embraced charter schools, some white Republicans from elsewhere in the state have not. In particular, many upstate lawmakers—both Democrats and Republicans—worry about the financial and educational impact of charter schooling on smaller urban districts upstate, like Buffalo and Albany. In fact, a number of upstate lawmakers from both parties called for a

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19. Erin Einhorn, “‘F’ Is for Full: Charter Schools Top Out, Students Left Behind,” *New York Daily News*, June 25, 2006.

moratorium on charter schools and were, in Democratic Assemblyman Ron Canestrari's words, "dead set" against a cap lift.<sup>20</sup>

These "strange bedfellows" in the state legislature mirror both the charter and voucher movement nationally. Some legislators of color—most of whom are Democrats—cross party lines to side with some white Republicans in their support of charter schooling. Similarly, suburban and rural lawmakers come together across party lines to oppose the expansion of charter schooling in the state.

### New York City Mayor and School Chancellor

New York City has had a long-standing tradition of small, alternative schools, so charter schooling fits easily into the city's educational landscape. Unlike most school districts around the country, even large urban ones, the New York City Department of Education has embraced charter schools as part of a broad reform agenda. Bloomberg defined education as a priority when he ran for mayor in 2001, seeking control of the city's flagging school system. When he was elected, he gained mayoral control, appointing Klein as the district's chancellor in 2002. They earned national attention by proposing a host of sweeping systemic reforms to the 1.1 million-student, 1200-school district.

As a part of a bold reform agenda, charter schools allow New York City school leaders flexibility in building schools to fit their visions and in personnel decisions. Most small charter schools, unlike other small-schools alternatives in the city, operate outside of the teachers union's reach. Bloomberg and Klein have been vocal advocates for charter schools. They have supported charters through the district's Office of New Schools and, recently, through the commitment of district funds to charter schools' facilities costs (often one of the most formidable expenses for charter schools). Garth Harries, the chief executive officer of the Office of New Schools, said that the Klein administration believes charters to be a way of "injecting energy into the system." By the start of the 2006-2007 school year, New York City had 58 charter schools, serving approximately 15,000 students.

Klein and Bloomberg have spoken out frequently against the state charter cap. "There is no rational reason, no legitimate reason, no good reason for a cap on our kids' future,"

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20. Rick Karlin, "Charter Schools Stoke Debate," *Times Union*, January 25, 2006, <http://timesunion.com/AspStories/storyprint.asp?StoryID=443265> (accessed February 1, 2006).

Klein said in 2006.<sup>21</sup> A spokesperson for Klein indicated that “releasing the cap is one of our foremost goals.”<sup>22</sup> The mayor and his schools chief pushed a cap lift measure that would designate Klein an authorizer and that would at least exempt New York City from the statewide cap.

## Charter Support Organizations

There are two charter school support organizations in New York that have been particularly active in the fight to lift the cap: the New York Charter Schools Association, which is based in Albany, and the Manhattan-based New York City Center for Charter School Excellence. Both organizations established a significant presence in Albany, through lobbyists and staff, during the caps negotiations of 2006. The head of the Association, Bill Phillips, was behind the controversial upstate ads through a group that he founded called Parents for Public Charter Schools. The New York City Center has a particularly interesting history as a partnership between New York City’s Department of Education and private interests. It began in 2003 as a Klein/Bloomberg effort to support the city’s charter schools and was backed—with \$41 million—by pro-charter philanthropists and other private funders. These supporters include Joe and Carol Reich, who have personally been major contributors to the Center and to charter schooling in New York City, and who founded the Beginning with Children Foundation, which created two charter schools in Brooklyn.

## Charter Leaders

Over the past few years, a few high-profile charter school operators have emerged as vocal opponents of the cap, lending additional visibility to the issue. The outspoken former chair of the New York City Council’s Education Committee, Eva Moskowitz, is one example. After she lost a bid for Manhattan borough president, she founded her own charter school, Harlem Success Academy Charter School, in the fall of 2006.

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21. Quoted in Kathleen Lucadamo and Paul H.B. Shin, “Klein Kicks Charter School Foot-Druggers,” *New York Daily News*, March 19, 2006, <http://www.nydailynews.com/news/local/v-pfriendly/story/400920p-339668c.html> (accessed March 21, 2006).

22. Quoted in Jennifer Medina, “Legislature Deals Setback to Mayor in Declining to Allow More Charter Schools,” *New York Times*, June 24, 2006; also see Jill Gardiner, “With Spitzer at Helm, Mayor Will Push for Charter Schools,” *New York Sun*, January 3, 2007, <http://www.nysun.com/pf.php?id=46022> (accessed January 4, 2007).

Moskowitz dramatized the problem with the cap by inviting the press to attend the first admissions lottery for her school, in which the school had to turn away many interested parents because it was oversubscribed. She explained:

*There were hundreds of families who left the Harlem Success lottery disappointed that their kids didn't win a spot. I felt it was important for those disconnected Albany legislators to see the faces of the families who were affected by their policies. As a former elected official, I know that when you're looking down from 30,000 feet, it can be hard to make out a clear picture of who benefits and who loses. The press played a critical role in this effort. Charter school opponents can be devious.*

Geoffrey Canada, president and CEO of a well-known community-based organization in Manhattan, Harlem Children's Zone (HCZ), also has publicly opposed the cap. HCZ now runs two of its own charter schools, HCZ Promise Academy Charter School and HCZ Promise Academy 2. Canada spoke out against the charter cap in a March 2006 event at City Hall in New York City. In a press release on the issue, HCZ urged: "With the overwhelming need for more charter schools, any delay in lifting the cap must be interpreted in only one way: pressure to maintain the *status quo* blocking expanded opportunity for kids who need it most."<sup>23</sup>

## Teachers Unions

The state teachers union, New York State United Teachers (NYSUT), and its local affiliates have a more complicated relationship to charter schooling than many believe. The statewide entity officially expresses "reservations" about charters and in recent years has actively opposed them. Its largest local, on the other hand, is in the charter school business.

NYSUT, itself, has a policy on charter schools, which is the result of deliberations among the state's local chapters. The policy does not expressly oppose charter schools. However, in recent months, particularly since Spitzer's election, NYSUT has taken a stronger and more aggressive stance against the cap lift and against charter schools.

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23. Harlem Children's Zone, "Community Leaders, Parents and Educators Demand: 'Lift Cap on Charter Schools NOW!'" March 27, 2006, <http://www.hcz.org/press/press.html> (accessed February 21, 2007).

In December of 2006, the state union published a report on charter performance to coincide with the state legislature's last special session before the end of the Pataki administration. This report, entitled *Broken Promise: How the Charter School Experiment Is Falling Short*, compared charter school performance to comparable district schools and found that charter schools did not measure up.<sup>24</sup> The president of NYSUT, Richard C. Iannuzzi, concluded: "This mediocrity has exacted a price. Charter schools are draining precious resources from school districts, triggering tax increases and devastating program cuts that disproportionately hurt poor students and children of color."<sup>25</sup>

Stepping up its efforts even further, during state budget negotiations in March of 2007, NYSUT launched an Albany-based advertising campaign against Spitzer's cap lift proposal.<sup>26</sup> A March 7, 2007, editorial by Iannuzzi criticized Spitzer for his charter school plan, calling charter schooling "a failed experiment." Iannuzzi wrote that "charter enrollment and district expenses should be capped to protect taxpayers from having to fund two parallel school systems—one accountable and one not."<sup>27</sup>

It is notable that NYSUT's largest local, the United Federation of Teachers (UFT) in New York City, is in the unusual position of being in the charter business. It runs two schools of its own in New York City. The UFT's president, Randi Weingarten, has been a vocal charter advocate but has taken a relatively agnostic public position on the cap. During the caps battle, she indicated that she was willing to support a cap lift for New York City in exchange for additional labor and organizing protections in the charter law, though UFT staff members have indicated that they would not take a position on caps for the rest of the state.

Other locals around the state have grappled with charter schools as well. Some, like the Albany Public School Teachers' Association, are indisputably opposed, while others, like the Rochester Teachers Association under the leadership of Adam Urbanski, historically have been more open to them.

In general, there appears to be some agnosticism on the cap on the part of union leaders

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24. New York State United Teachers, *Broken Promise: How the Charter School Experiment Is Falling Short*, December 2006, [http://www.nysut.org/cps/rde/xchg/nysut/hs.xsl/mediareleases\\_5903.htm](http://www.nysut.org/cps/rde/xchg/nysut/hs.xsl/mediareleases_5903.htm).

25. Richard C. Iannuzzi, Draft Letter to the Editor, *New York Post*, December 12, 2006, Personal files.

26. Jacob Gershman, "Teachers Open a Campaign Against Spitzer," *New York Sun*, March 6, 2007, <http://www.nysun.com/pf.php?id=49829> (accessed March 12, 2007).

27. Richard C. Iannuzzi, "Charter Schools a Weakness in Spitzer's Plan," *Times Union*, March 7, 2007, <http://www.timesunion.com/AspStories/story.asp?storyID=569604> (accessed March 12, 2007).

who are not explicitly opposed to charter schools. In the course of this research, no union official appeared to be an enthusiastic, or even unequivocal, supporter of lifting the cap.

## School Boards Association

The New York State School Boards Association (NYSSBA), like the state teachers union, has had to balance the differing interests of a diverse constituency of more than 700 school boards around the state. It, too, has a charter school policy. That policy is even more anti-charter than the state teachers union's. In fact, in 2003, NYSSBA called for a moratorium on new charter schools in the state.

However, NYSSBA also has to contend with the fact that its largest member, New York City, is staunchly pro-charter. It resolves this by calling for local control on both the chartering and the caps decision. While NYSSBA called, in June of 2005, for the legislature to "reject charter school expansion," labeling the reform "New York's dubious charter school experiment," it indicated that it "does not oppose New York City's request to be exempted from the cap, but does oppose subjecting other school districts that have not made such a request to a proliferation of charter schools."<sup>28</sup>

## BLURRED LINES

The politics of charters in New York State are incredibly complex. Democrats, on balance, are hardly enthusiastic about charters, but this is not true across the board, especially for a younger generation of lawmakers and for Democrats of color. Republicans are more favorable, but Republicans representing smaller urban or rural districts worry about the financial impacts on district schools. Unions are generally cool to the idea of charters, but there are a number of unionized charter schools, and the largest local in the state is actually in the business of running its own charter schools. While many school board leaders and district administrators are skeptical of charter schooling, they have to live with the reality that the largest district in the state is led by people who have embraced charters enthusiastically.

So, one finds strange bedfellows on both sides of the charter question. But if some of the alliances are hard to understand, the arguments for and against charters and charter school caps are sharp and readily identifiable.

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28. New York State School Boards Association, "Reject Charter School Expansion," June 22, 2005, [http://www.nyssba.org/scriptcontent/VA\\_Custom/News/newspage.cfm?Category\\_ID=36&Content\\_ID=3693&showarchive=Yes&itemtitle=Article&Title=News](http://www.nyssba.org/scriptcontent/VA_Custom/News/newspage.cfm?Category_ID=36&Content_ID=3693&showarchive=Yes&itemtitle=Article&Title=News) (accessed October 25, 2006).



## CHAPTER 2

# Pros and Cons: The Debate About Lifting the Cap

**F**ollowing nearly two decades of thinking about charter schools, advocates and opponents have developed quite clear-cut arguments to justify their positions. On both sides, the arguments appeal to democracy and equity, to sound public policy, and to the practical effects of charter schools on school districts and students. This chapter first lays out the position of those who would maintain the cap on charter schools in New York and then reviews the position of those in favor of lifting or eliminating it.

### ARGUMENTS FOR MAINTAINING THE CAP IN NEW YORK

New York State players make a number of arguments in favor of maintaining the cap on charters.

#### Pro-Cap Argument 1: Charters Are an Unproven or Failed Experiment

This argument comes in two parts. Some make the argument that the academic track record of charters is still unproven. Others argue that we *do* know enough about charter school performance, and that charter schools do not work. If charter schools are failing, how can they be the solution, cap supporters argue. Or, if charters are still too unknown, a cap curbs the pace of change, allowing slow growth of an unproven “experiment.”

The argument that charter schools are untested is an argument for caps that even some charter advocates acknowledge has—or *had*—some validity. Norman Atkins is the cofounder of the highly successful and nationally recognized North Star Academy Charter School of Newark and founder and chief executive officer of Uncommon Schools, Inc., a nonprofit charter management organization. While fervently supporting a cap lift in New York, he acknowledged that this argument about the unknown quality of charter schooling made public policy sense as a rationale for a cap in the earlier days of the charter reform:

*It makes sense for the legislature that's embarking upon a new policy initiative—especially when it's a mandate that comes with funding—to draw lines around the initiative so that it doesn't grow too fast and have unintended consequences. And so it makes sense when the legislators were negotiating the initial charter law to seek to limit the number of schools. They set the limit at 100. Obviously those of us who believe in the promise of charter schools would've liked the number to be higher. But it's reasonable that they should put a cap on it until they have a chance to evaluate the program.*

However, other supporters of the cap argue that charter schools have been evaluated and have failed to live up to their promises. NYSUT's December 2006 report on charter performance, for example, included a letter to legislators from Executive Vice President Alan B. Lubin. He urged: "When all the evidence of the report is carefully considered, it's clear that raising the cap on the number of charter schools is unjustified. . . . I ask you to reject an unwarranted expansion of the state's deeply troubled charter school experiment."<sup>29</sup> Similarly, Bill Ritchie, president of the Albany Public School Teachers' Association, claimed: "Charters were supposed to be innovative laboratories for educational change. This promise has failed to materialize. . . . The vast majority of them are using instructional approaches, which already exist, throughout the state."

In its press release against the cap lift, the New York State School Boards Association echoed this argument as a rationale for maintaining the cap. NYSSBA's executive director, Timothy G. Kremer, claimed: "There's scant evidence of the academic innovation we were promised. Charter school test scores have consistently disappointed."<sup>30</sup> In a *New York Times* piece, Kremer summed up this argument: "We think that charter schools have been nothing more than an expensive experiment to date. . . . So this is not a time to put more pressure on the local taxpayer."<sup>31</sup>

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29. Alan B. Lubin letter to legislators, in New York State United Teachers, *Broken Promise: How the Charter School Experiment Is Falling Short*, December 2006, n.p.

30. New York State School Boards Association, "Reject Charter School Expansion."

31. Quoted in Elissa Gootman, "Lines Are Drawn in Fight to Add Charter Schools," *New York Times*, January 9, 2006.

## Pro-Cap Argument 2: Charter Schools Destabilize and Harm School Districts

One of the most emphatic arguments in favor of maintaining the cap is the belief that charter schools harm school districts and that unchecked growth of a “parallel system” of schools will further destabilize embattled districts. In New York, this is an “upstate” issue, with Albany, which has 18 district schools and 7 operating charter schools (with 2 more approved), serving as the prime example of a district that has been ostensibly ravaged by charter schools.

Eva Joseph, the superintendent of Greater Albany Public Schools, is adamant in her belief that charter schools in her area have severely harmed her district. She explained that students leave for charters, then sometimes return to district schools, making long-term fiscal and organizational planning impossible. She indicated that the funding lost for each student does not easily correspond with cost-cutting options at the district level, since students leave from and return to many different grades and different schools, often with little notice.

Joseph believes that the charter movement in Albany “has been a detriment, on the whole, to the educational system in the city” and has not offered “competitive quality choice options.” In her view, allowing more charter schools into Albany, via a cap lift, without some form of accompanying, long-term aid would further harm the district:

*There absolutely can be no increase on the cap without some legislative relief in terms of capping the number of charter schools, the student population of charter schools, the financial impact of charter schools. . . . A public school system cannot be expected to support two school districts.*

Others, too, raise the Albany example as a cautionary tale about the cap lift. Ritchie, of the Albany teachers union, believes that charters have “financially debilitated the Albany public school system.” He noted:

*With the opening of more charter schools, the situation is deteriorating rapidly. . . . The fundamentally flawed charter legislation is forcing the district and Albany voters, who have no say whatsoever in the expansion of charter schools, to fund two school systems and in effect privatize the already existing public school system. The largest charter school in Albany has been teetering on the edge of closure for several years and more than 600 children have been returned from it and other charter schools*

*to the Albany public school system. This has a sabotaging impact on long-term planning for cities like Albany.*

Ritchie continued: “Robbing Peter to pay Paul is a despicable tactic to use in the education of children.”

Similarly, Nancy Van Meter, a deputy director for the national teachers union, the American Federation of Teachers (AFT), said: “Albany is a district that’s been extraordinarily hard hit by the growth of a parallel system. What happens is that the district becomes crippled. So, is there room in the debate about lifting caps for a conversation about what you do for a district like Albany, where parents who have *chosen* district schools are being hurt now by charters?”

This question has been addressed by proposals and policies elsewhere (for example, in Massachusetts) that districts with charter school students or with a certain percentage of their students in charter schools receive “transition aid” from the state. These funds would reimburse school districts—for a predetermined number of years after a student has left the district—for some or all of the per-pupil revenue that districts have lost to charter schools. This aid thus lessens the financial impact of charter schools on districts and makes longer-term financial planning possible for these districts. In New York, Governor Spitzer supports transition aid for districts like Albany,<sup>32</sup> and the April budget bill, which lifted the cap, provides for transition aid to districts with relatively high proportions of students in charter schools. Some, however, like Albany’s Joseph, reject the notion of transition aid in favor of a more permanent “continued” state aid to compensate the district in an ongoing way for funds lost to charter schools.

### Pro-Cap Argument 3: Charters Undermine Systemic Change

Adam Urbanski is a nationally recognized labor activist in Rochester who believes that people on both sides of charter politics have dug in their heels, taking absolute positions to the detriment of real debate on the issue. He also believes in giving new ideas a chance, and he recognizes that there is significant need for new ideas in urban public schooling. So, when the charter concept first emerged in New York, he strongly supported it.

He has changed his mind, though, for two reasons. First, Urbanski believes that charter school performance has not lived up to the promise, and that charter schools are not really

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32. Spitzer, “A Contract for Excellence.”

outperforming their district counterparts. Second, he worries that charter schools create exceptions, leaving problem *systems* in place. He argues that charters allow a kind of opt-out option and that “by opting out, we undermine prospects for systemic change. Those that opt out,” he says, “are those that are most likely to be agents of change.” In Urbanski’s view, “by simply raising the cap on charter schools, you undermine—unwittingly or not—the ability to create systemic change.” Charter schools allow a way out for dissatisfied parents, teachers, and administrators, “robbing us of precisely the kind of change agents we need.” The creation of more charter schools creates more *exceptions* to the system, more safety valves for dissatisfied parents and educators. It does not spur much-needed systemic change.

#### Pro-Cap Argument 4: Charters Are Antidemocratic

Charter school skeptics and opponents also worry that charter schooling is a form of school privatization that takes decisionmaking out of the hands of citizens. Why, in this view, should the state support an expansion of an antidemocratic reform?

NYSSBA, for instance, argues that charter schooling in New York flies in the face of its organizing principle, *local control*, because local districts in New York do not control the decision to host a charter school. Diane Ward, governmental relations representative for NYSSBA, explained:

*It’s our position today if there’s going to be a lifting of the cap then we feel that it’s critical that it become a community decision, especially in school districts that have the authority to vote on their own budgets. And that’s just a really prickly point to many people, if you’re going to use property tax dollars to fund schools does it ever make sense to say “oh and here are schools where there’s absolutely no accountability. You have no authority on how they spend their money or anything else but keep handing over that money.” That, I think, rubs people the wrong way. . . . And that’s really at the heart of what our objections is: . . . this whole idea that if you’re going to do this, then let people have buy-in. And there is absolutely none, and I think that’s a hard pill for people to swallow.*

NYSSBA called this “taxation without representation” in its February 2006 report on charters.<sup>33</sup> This concern was echoed by the special project coordinator for NYSUT,

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33. New York State School Boards Association, “Taxation Without Representation: The Reality of Charter Schools,” February 2006.

Robert A. Carillo: “When you deal with a charter school you deal with a public entity where there’s no public accountability. The taxpayers, the public is paying for the schools, yet the public has no oversight or approval.”

Others have a particular concern with for-profit management organizations, believing that the charter mechanism does not hold them publicly accountable. Amy Stuart Wells, a professor at Teachers College, Columbia University, who has studied charter schools and school choice, made this point in an editorial on charter caps in the *New York Times*: “The focus on quantity encourages private investors to try to make money by running substandard charter schools and skimming off public money for themselves. . . . I . . . urge my fellow New Yorkers not to support a law that could open the door to the proliferation of such institutions.”<sup>34</sup>

### Pro-Cap Argument 5: Charter School Backers Are Opposed to Public Education

A number of New York charter skeptics and opponents, particularly from the political left, believe that charter school supporters are ideologically opposed to public schooling and smuggle a politically conservative agenda into public schooling through charters (and vouchers). These skeptics believe that lifting the cap encourages the growth of conservative political views and spurs the destruction of public education. As AFT’s Van Meter noted: “You look very closely when funding comes from people who would like to destroy you.” Mentioning the group that supports many of the charters in Albany, Ritchie of the local teachers union said: “Brighter Choice is not interested in coexisting with the Albany public schools. With the assistance of their deep-pocket, neoconservative friends and the Bush regime, they are attempting relentlessly to dismantle the Albany public schools.”

### Pro-Cap Argument 6: Caps Create Careful Authorizers

Some charter *supporters* in New York articulate a possible argument for a cap: that it forces a charter authorizer to be judicious about the schools that it charters, since it has a limited number of charters to distribute. Since a cap creates competition for a scarce resource among charter applicants, this should result in a higher-quality successful charter applicant. Norman Atkins of Uncommon Schools, who actively supports lifting the cap,

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34. Amy Stuart Wells, “No Charter School Left Behind,” *New York Times*, January 22, 2006.

said: “One of the positive elements to come out of the New York cap is that it should’ve caused the authorizers of schools in New York to be careful about the charters that they issued, so that if each charter is dear and precious they’ll have 100 fantastic schools.”

## ARGUMENTS FOR LIFTING THE CAP IN NEW YORK

The arguments in favor of lifting the cap are no less formidable or deeply felt than those on the other side. Those who argue for the cap lift in New York offer a number of arguments emphasizing the performance of charters in the state and the detrimental impact of the cap.

### Anti-Cap Argument 1: Charter Schools Work. Take Them to Scale

Charter advocates in New York generally believe that charter schools are working well and that they provide an important form of quality schooling. Caps, they argue, prevent the expansion of an effective public school option. In arguing for the cap lift, the New York Charter Schools Association claimed:

*Charter Schools are working for students, with a majority of schools academically outperforming the school district in which they reside on state elementary and middle school exams in English language arts and mathematics. Simply put: there should be more of them.*<sup>35</sup>

Similarly, Whitney Tilson noted that New York was able to attract talented charter school leaders who ran excellent schools, and that the cap prevented them from expanding their work: “In New York, we have a large collection of the premiere charter operators in the country, and we have this crazy cap stopping them from opening more schools.”

### Anti-Cap Argument 2: Caps Deprive Students of High-Quality School Alternatives

Many charter proponents believe that charter schools provide a way out of failing district schools. Caps, therefore, deprive students of much-needed school alternatives,

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35. New York Charter Schools Association, “Raising the Cap on Charter Schools,” Talking points, March 2006, Personal files.

limiting the number of public options that students have. This is generally offered as an equity argument: that placing a cap on charter schools is a thinly veiled form of elitist policymaking that does a disservice to students in underserved areas, particularly low-income students and students of color. The television and radio ads referenced in the introduction make an implicit argument of this kind. Similarly, said James Merriman, former executive director of the SUNY Charter Schools Institute:

*Lifting the cap will not solve all the problems that lie at every level [of charter schooling]. We also face a huge problem in making sure that there are sufficient number of talented and dedicated leaders and teachers who have been taught how to use the precious autonomies that charters allow. But let me be crystal clear: while lifting the cap in and of itself won't solve all our problems, if we don't, the chance of making true and fundamental change for the better in inner city education, in my view, and with all due respect to the enormous number of well-meaning, talented and dedicated people working within the district model, drops to zero.*

This argument against the cap is prevalent in the public debate in New York. A *Daily News* editorial on the lottery at Moskowitz's Harlem Success Charter School reported on four children who had not earned lottery-assigned spots in the charter school. The editorial implored:

*Assembly Speaker Sheldon Silver, state Senate Majority Leader Joe Bruno, please look at the faces of Darshawn, Jaylin, Sydney and Kayla and try to comprehend how their hopes, and the hopes of all the rest, are being dashed because you have refused to authorize any more charter schools. Try also to imagine the frustration of parents who are only looking for decent educations for their kids. . . . To deny them because some upstate districts say they are losing too many children to charters or because teachers unions think charters should be more easily unionized would be an outrage. Shelly and Joe, can you really look at the faces of Darshawn, Jaylin, Sydney and Kayla and say no to more charters?<sup>36</sup>*

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36. Editorial, "Too Many Children Left Behind," *New York Daily News*, March 24, 2006.

While, in a *Daily News* column in support of lifting the cap, Stanley Crouch wrote:

*We should all know by now that the public school system needs to be overhauled, and the changes will not come about as quickly as necessary. . . . Mayor Bloomberg and Schools Chancellor Joel Klein are serious about bringing New York's public schools out of the darkness. That is why they want the cap removed. It is but one way to address a crisis in which many kids suffer from poor preparation or the intellectual suicide symbolized by dropping out.*<sup>37</sup>

In similar language about the life-or-death stakes of schooling, Canada of Harlem Children's Zone said of the charter cap: "If the city water system were failing and children were dying of thirst . . . Would the State limit the number of private relief organizations allowed to save our children? Of course not—and getting a good education can literally save a poor child's life."<sup>38</sup>

Education Sector's Andrew Rotherham made a broader equity argument about charter schools: that their existence in a district *raised* parents' expectations about public schooling in general. Drawing an analogy to coffee, he said: "If we capped Starbucks, would we see such a rapid shift in coffee consumption and quality over the last 20 years? Starbucks has changed consumer taste and expectations and quality of coffee. Everyone expects better coffee now." He believes that charter caps "limit people's exposure to charter schools" and keep expectations about public schooling lower than they could be. Therefore, a cap impacts not only the charters in a district or a state and access to these schools, but the potential quality of all public schooling.

### Anti-Cap Argument 3: Caps Dissuade Talented Providers from Entering the State

Some charter school supporters worry that the existence of a cap deters talented charter operators from seeking out New York as a place to open high-quality charter schools. Joe Reich, for example, mentioned the huge amount of work necessary to apply for a charter in New York State: "We had a pipeline. . . . And what this [cap] has done is slammed the door. It's very hard to keep people interested . . . when they don't know whether it's going to happen." Harries, of New York City's Office of New Schools, expressed similar concern:

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37. Stanley Crouch, "Chartering a Course: Lifting the Cap on Schools Paves the Way for Proper Learning," *New York Daily News*, April 27, 2006.

38. Quoted in Harlem Children's Zone, "Community Leaders, Parents and Educators Demand."

“There’s a lot of educators and educational entrepreneurs out there that would have an interest in coming to New York that are getting frozen out.”<sup>39</sup>

While Reich and Harries worry about talent, others express concern that the cap deters funders in the same way. Meryll H. Tisch, a member of the New York State Board of Regents, which oversees public education in the state, said: “If getting the cap lifted becomes such a complicated endeavor, I’m worried that a lot of potential donors to the charter school movement might be frightened away, and that would be tragic.”<sup>40</sup>

#### Anti-Cap Argument 4: Charter Supply Should Be Limited by the Market, Not by Caps

Some charter proponents also believe that the cap is not the proper mechanism to limit charter supply. Rather, they make some form of market argument, that if parents want more charters, such schools should be allowed to exist. If these schools do not work, parents will not enroll their children in them, providing a natural cap tied to quality. Dave Levin, cofounder of the Knowledge is Power Program (KIPP)—a network of 52 public schools across the country, 49 of which are charter schools—said: “If the parents don’t want charter schools, then they wouldn’t send their kids to charter schools.”

Levin and others also spoke of “natural caps” tied to limits in the “supply” side of chartering: limits to charter funding, as well as to high-quality charter staff, school leadership, and charter leadership. Levin said of the legislative cap strategy:

*Ultimately limiting the growth of charters is only fueling the strength of the charter movement. And someone’s going to realize that there’s just not enough people to keep opening charters and all this other stuff and I think they’re going to realize the more attention that’s focused on the cap, the more strength they give to charters, and they’re going to say, “you know, it’s not worth it.”*

Rotherham, too, noted: “Politically imposed limits that are not tied to any goal except restricting charter growth are arbitrary and counterproductive. There are limits in terms of the number of people who will start or convert schools to charter status and the parental demand for them and these serve as natural checks on growth.”

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39. Quoted in Einhorn, “‘F’ is for Full.”

40. Quoted in Gootman, “Lines Are Drawn.”

Related to this is the pro-charter belief that charter schools actually are held to a higher standard of accountability that renders caps irrelevant. This accountability is an accomplishment of both public policy and the market: charter school operators have short-term contracts that must be renewed after a certain number of years, and this renewal is contingent upon demonstrated quality; charter schools can be closed if they are failing to adequately serve their students; and if charter schools are not serving students well, parents will not send their children to these schools and there will be no market for them.

### Anti-Cap Argument 5: Transition Aid Is a Separate Issue

Finally, some charter school supporters also believe that the cap issue should be resolved independently of the issue of aid to districts like Albany, which have been significantly impacted by charter schools in their midst.

Peter Murphy, policy director, and Phillips, president, of the New York Charter Schools Association are strong supporters of charter schools and claim that they are “agnostic” on transition aid. As Murphy said: “Our view always has been if the state legislature wants to throw even more money at school districts, go ahead. Just don’t cut funding for charter schools. Let charters operate freely and allow them to get their money the way they’ve received it.” Murphy reiterated this in response to Spitzer’s proposed cap lift: “If he wants to give aid to more school districts with charter schools, we have no problem. And that could potentially alleviate some of the concerns that they’ve raised, and that could be the answer.”<sup>41</sup>

## A CONTENTIOUS AND INSTRUCTIVE DEBATE

As these arguments illustrate, the charter (and the caps) debate has always been contentious. The challenge this presents in public debate and policy is how to move charter policies forward so that they serve the best interest of students and families. From this complex and vigorous debate in New York State, we can learn a number of useful lessons about charter politics and policymaking.

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41. Quoted in Jola Szubieslski, “Officials React to Spitzer’s Plan to Increase Cap on Charter Schools,” January 4, 2007, <http://www.capitalnews9.com> (accessed January 9, 2007).



## CHAPTER 3

# Lessons From the Experience in New York State

**C**harter school caps are especially relevant to charter schooling in the second generation. When caps are within sight or have been reached in many states, the debate is no longer about what charter schools *might* look like if they were to become part of the public school fabric in a state, but rather about what charter schools *do* look like and the impact they have on public schooling more generally. In places like New York, where caps debates have become an occasion to rethink charter schools more broadly, this kind of active second-generation debate is underway. Four broad political lessons stand out from the New York experience.

### Lesson 1: Blunt Charter Tactics May Threaten Fragile Charter Alliances

It has been clear since the early 1990s, when charter schools and private school vouchers became real public policy possibilities in many states, that choice reforms attract people with a wide range of political views and interests. School choice always has made strange bedfellows. Many of the country's charter laws were passed with bipartisan support, however shaky. This has not changed in the second generation of the charter reform. Charter schooling is still a big political tent. Fifteen years of the reform—or even nine years in New York—have not clarified the politics enough to narrow the actors in the movement. This makes charter schooling all the more political—and fragile.

There is no way around the political nature of charter schooling, and charter advocates have to play politics. But, if they take a blunt or bludgeoning approach, they risk being dismissed as ideologically driven charter zealots by their opponents. If they employ risky tactics, they endanger their precarious alliances.

The spring 2006 television and radio ads blasting charter opponents in the legislature—and the controversy surrounding these ads—demonstrate the sometimes-brutal and often-fragile nature of charter school politics in New York. The ads themselves, which aired in the midst of intense caps negotiations between Pataki and the state legislature,

were anything but subtle. Phillips—of the New York Charter Schools Association and the group sponsoring the ads, Parents for Public Charter Schools—noted that, with the ads, he wanted to “change the operating dynamic” of Albany charter politics:

*At that point, the Assembly was perfectly comfortable with doing nothing on charters. We tried to make that environment less comfortable. Obviously, the best targets for that type of effort were folks who would never be charter supporters.*

So, he took a more aggressive approach:

*What we were attempting to do was to basically combine positive leverage, horse trading, with a not-so-subtle reminder that if you're going to be gratuitously anti-charter, which is what every single person that got hit with an ad was, that it was going to be—you're going to get called out on it.*

The ads came, according to Phillips, at a critical political moment:

*Charter supporters in the Assembly told us at the end of the prior session that the cap was a budget issue—presumably because of transition aid. When it came time to do the budget in 2006, the Speaker [Silver] declared that charters were not a budget issue. Pro-charter assemblymen did not challenge the Speaker on that point, and the budget passed without addressing the charter cap.*

*The other thing to know was that we had learned that the Speaker told a few members that the charter cap was to be a pay raise deal. While we realized that the pay raise provided extraordinary leverage, we were very wary about the six-month wait. A lot of things can change over six months, especially with an election in that time frame. Unfortunately, as we saw in December, our wariness was justified.*

*Basically, we were doing everything in our power to get them to do the charter cap in June, not December.*

Some in the charter community appreciated the boldness of this tactic. Ziebarth, of the National Alliance for Public Charter Schools, said that the ads were a fantastic example of charter politics at work:

*The political tack that Bill Phillips and company took is very interesting. They said, for the first time I can remember in the charter movement,*

*“We’re going to bloody some noses. We’re tired of being shot at by these [anti-charter] guys.”*

He said that he supported this tactic, because charter supporters need to ask: “How can we get more political, in the way our opponents have?” The ad campaign:

*was one of the boldest moves in any charter fight in the country. It was the right thing because it sent the message that there would be a political price to pay for legislators who don’t support charters. Whereas, previously, there was only a political price to pay for supporting charters.*

Some charter supporters, however, felt that the attack ads were a mistake. The ads, as Phillips himself acknowledged while describing his detractors, “drove people berserk.”

Paula Gavin, former chief executive officer of the New York City Center for Charter School Excellence, believes that the ads impacted the cap lift movement in a number of ways. First, legislators expressed distrust of pro-charter forces after the ads appeared. Second, pro-charter legislators, too, expressed that they could not be as outspoken on charters for fear that they would be associated with negative attacks on their colleagues in the Assembly. Third, the ads “gave Assembly members a rationale to remain opposed to lifting the cap rather than focus on the quality of charter schools being the reason to increase the cap.”

Charter schools, concluded Gavin, “have bipartisan support, and we need to make it easy for Democrats to support the cap lift, rather than give them reasons to oppose not associated with the quality of the education charter schools offer.”

The caps ads highlighted the partisan nature of the charter debate in New York and illustrated that charter school actors have the ability to insert themselves quite forcefully and bluntly into the Albany fray. Some within the charter movement viewed this as a good thing, while some believed that it did serious damage to the cap lift cause.<sup>42</sup>

## Lesson 2: Teachers Unions Are Not Monolithic

Many on the pro-charter side assume that “the union” is opposed to charter schools and will do almost anything in its power to undermine the movement. In New York, many pro-charter, anti-cap people believe that even the UFT is working to undermine the cap

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42. See Gershman, “Split on Strategy.”

lift and the charter movement, despite the fact that it is now running charter schools. Some of the most vigorous charter advocates in the state truly believe that the teachers union is a looming force that pulls most of the strings in the fight to keep the charter school cap. For example, Murphy, of the New York Charter Schools Association, said that when it comes to charter schools, “The teacher unions—both UFT in New York City and the statewide umbrella organization, NYSUT—are the proverbial schoolyard bullies in Albany, wielding tremendous influence over state legislators.” He said, of the cap negotiations in the spring of 2006, that “the union was working overtime in the legislature twisting arms and warning members not to allow for more charter schools by raising the statutory cap.”

Many teachers unions, too, have been equally as entrenched in their anti-charter position, and equally as suspicious of the other side, believing that charter schooling poses an enormous threat to public education and to teacher professionalism.

The charter school debate in New York between unions and charter school supporters does not seem much more nuanced than it was a decade ago. Yet the New York reality is more complicated than the debate reveals.<sup>43</sup> Examined closely, the New York discussion reveals significant differences among union leaders. On one side, there *are* those union leaders in the state who are unmistakably anti-charter and who believe strongly in maintaining the cap (if not completely eliminating charter schooling). On the other hand, some union leaders are careful to carve out a balanced position on charters, supporting the schools and the mechanism when it works well for both teachers and students. There is real disagreement about charter schooling within the state union. This is evidenced by the fact that there are other unionized charter schools around the country and in New York State. Van Meter, of the AFT, indicates that her union represents teachers in more than 50 charter schools across the country. In New York State, according to NYSUT’s Carillo, “Eight of the 100 new charter schools and all six of the conversion charter schools are NYSUT-affiliated.” The start-up schools are generally their own locals, while, by law, the conversion schools are members of their district’s unions.

New York City’s UFT has played an important role in complicating the state union’s position on charters. The pro-charter stance of the UFT helped to soften NYSUT’s initial anti-charter stance. NYSUT’s Carillo describes his organization’s current policy as an attempt to balance the very anti-charter view of many suburban districts in the state with

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43. As it is elsewhere. See Paul T. Hill, Lydia Rainey, and Andrew J. Rotherham, *The Future of Charter Schools and Teachers Unions: Results of a Symposium* (Seattle: Center on Reinventing Public Education, National Charter School Research Project, October 2006).

the UFT’s pro-charter position and the initially open view of charters of some other cities in the state, like Rochester and Syracuse.

The UFT was willing to discuss the possibility of a cap lift for New York City because it believes that the city—unlike others around the state, in its view—is not negatively impacted by charter school competition. Said Leo Casey, a UFT staff member who is heavily involved in the union’s charter schools:

*Randi [Weingarten] offered a bargain around New York City because . . . we represent New York City educators. . . . In addition to not presuming to speak for others, we recognize that our position in New York City is quite different from teachers in the upstate communities. As a result of our extraordinary economies of scale in New York City, a truly unique situation in the U.S., let alone New York State, the establishment of charter schools has not had a negative economic effect on the district public schools. That is not the case upstate.*

Casey and a colleague at the UFT, Jonathan Gyurko, also believe that unions have a role to play in reclaiming the late Al Shanker’s initial vision of charter schooling. In the late 1980s, this UFT and AFT leader articulated a vision for charter schools as community institutions built by a partnership of teachers and parents who would be empowered to implement their educational vision. Casey, too, who is on the board of the UFT charter schools, believes it is important for people on the political left, from unions and otherwise, to reclaim charter schools from the right: “We have . . . allowed the right wing to get this incredible foothold in charter schools. And I think it was a . . . big strategic mistake.” He feels that the UFT schools are also working against the *pro*-charter forces in their city, including Klein and Bloomberg, who, in his view, “have an agenda, which is to use charter schools to create basically non-union public schools.” For him, union-run or -organized schools are important counters to this kind of reform.

Casey believes, as well, that charter schools are part of the American school landscape now, so it is in teachers unions’ interest to embrace and reshape the reform:

*We have this battle within the union itself. We’re telling our colleagues across the country . . . that charter schools are here to stay in terms of being part of American education, and you need to figure out a way to build more progressive charter schools and you also need to figure out a way for charter schools to unionize.*

Some union leaders around the state seem to see themselves as just playing defense, warding off the charter encroachment in their districts. Others see that teachers unions have a role to play out front in charter schooling, carving out a space within the reform for the political left and for teachers. Some, regardless of their stance on charters, recognize that the debate, itself, is not helpful in this political moment. According to Urbanski of the Rochester Teachers Association: “Unfortunately, people generally have predictable party lines” on charters. They either have a “social Darwinist” survival-of-the-fittest rationale for supporting charters or they have a “lock-step just-say-no opposition mentality.” Urging a fuller debate, he said, “I hope you’ll see that I’m not in either of these two camps.”

While there is still, then, a fair amount of knee-jerk anti-unionism on the part of charter proponents and anti-charter sentiment on the part of union activists, the union politics are more complex in New York than they appear upon first glance. The complexity of the union position in New York may offer room for a more sophisticated approach to charter politics and policymaking in the state.

### Lesson 3: Claims About Charter Quality Are Central but Good Data Are Scarce

In many ways, the caps debate mirrors the first-generation conversations about charters in that the cap provides an opportunity to re-argue the merit of charter schooling in general. But, in some significant ways, the debate is different. One of these ways is the debate about charter quality. When a state is considering the charter reform, it has no evidence of local charter performance on which to draw. When a state nears its cap, however, it has some data about how charter schools have fared in the state. In the caps conversations, in New York and elsewhere, charter school *quality* has become a central sticking point. Being able to establish quality is crucial to pro-charter, anti-cap advocates, who need to be able to point to the fact that the existing charters are working well and, therefore, are worth expanding upon. On the other hand, being able to demonstrate that charter schools are failing or are, at least, performing no better than their district counterparts is central to the pro-cap forces, who need to be able to argue that it is not worth investing more resources in the charter reform.

Charter school experts point to this debate about quality as critical to the caps conversations in New York and elsewhere. Merriman, of SUNY, said that the relatively high quality of charter schools in New York made the cap lift a possibility:

*If we didn't have the data, though it is not as robust as ideally we would want, that showed that charters are outperforming the districts, we wouldn't be talking about lifting the cap. We'd be talking about a moratorium. We'd be talking about other bad things happening to charters. . . . It's only because of [this record of achievement] that we are talking about raising the cap and why, in my opinion, Governor Spitzer has proven to be such a stalwart supporter of raising the cap while making sure that charters deliver on their promise and their obligation.*

On the other hand, Ziebarth noted, "it's hard to have a conversation about lifting the cap if charter performance isn't good." Mike Petrilli, vice president for National Programs and Policy at the Thomas B. Fordham Foundation, gave Ohio as a negative example here, noting of the state that "even Republicans who support charters don't feel comfortable supporting a raise of the cap, because the charter schools have not proven to be of a high quality yet."

Thus, in the caps debate, there is a lot at stake in the data on charter school performance, and therefore the quality and meaning of data are hotly contested. In New York, the claims about charter performance represent the full spectrum of charter support and opposition. There are exuberant supporters, who claim charter success.<sup>44</sup> There are also more measured, but cautiously optimistic reports. In accordance with the charter school law, each year the Board of Regents submits an annual report on the state's charter schools. The Board also submitted a mandated five-year report in December 2003. This report indicated that charter school students were still failing to meet state standards on 4th and 8th grade English Language Arts (ELA) and 8th grade math tests. But, in general, charter school students' test scores improved more rapidly than their district counterparts.<sup>45</sup> The latest "Annual Report on the Status of Charter Schools in New York," for the 2004-2005 school year, indicated that charters in the state fared fairly well on these tests when compared with their host districts. According to a synopsis of this report on the U.S. Charter Schools website: "76 percent of charter schools outperformed their district on

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44. E.g., Carl Campanile, "Smarter Charter Kids," *New York Post*, July 20, 2006.

45. State Education Department, "Report to the Governor, the Temporary President of the Senate, and the Speaker of the Assembly on the Educational Effectiveness of the Charter School Approach in New York State," December 2003, <http://www.emsc.nysed.gov/psc/5yearreport/aExecutivesummary.pdf> (accessed February 9, 2007).

the 2005 4th grade math exam and 67 percent of charter schools outperformed their district on the 2005 8th grade math exam and 8th grade English Language Arts test.”<sup>46</sup>

Of course, there are much more skeptical readings of achievement data. The December 2006 NYSUT report, for instance, compared each charter school with a “comparable” district school, defined as a school in the charter’s district with the same or higher percentage of students who qualified for free lunch (although it is unclear how the comparable school was chosen from among all schools matching this description in the relevant district). The study examined only those schools that took the state test, so those charter schools with 4th- and 8th-grade students during the 2004-2005 school year. Of these 44 charter schools in the state, NYSUT claimed that only 13.6 percent had a higher percent of students scoring at “proficient” levels on the state tests than their comparison district schools. In other words, they concluded that “fully 86.4 percent of the comparable public [district] schools equal or best the charter school in a side-by-side comparison.”<sup>47</sup> On the basis of this finding, as noted above, NYSUT took a very strong position against expanding the number of charter schools in the state, disseminating this report while the state legislature had a final opportunity to consider Pataki’s cap lift bill.

From this debate, it is easy to see that claims about charter school quality play a central role in the politics and policymaking of charter schooling. This concern about quality especially comes into play in second-generation charter conversations, like debates about whether to allow the expansion of charter schooling. Yet, often, actors with a stake in particular findings produce the data wielded in these arguments and use it in ways that are immediately politically expedient.<sup>48</sup>

#### Lesson 4: District Impact and Response Vary Widely

Perhaps the most striking lesson from New York is that despite the fact that charter policy is made at the state level, charter politics themselves are ultimately local. When faced with the possibility of competition from charter schools and other forms of public and private choice, school districts can respond in a number of ways to “adapt and survive.”<sup>49</sup>

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46. U.S. Charter Schools, synopsis of “Annual Report on the Status of Charter Schools in New York State,” [http://www.uscharterschools.org/cs/r/view/uscs\\_rs/2192](http://www.uscharterschools.org/cs/r/view/uscs_rs/2192) (accessed February 9, 2007). See note 51.

47. New York State United Teachers, *Broken Promise*, p. 1.

48. Frederick M. Hess, “The Wrong Way to Argue for Charter Schools,” *New York Daily News*, June 25, 2006, [http://www.aei.org/publications/filter.all.pubID.24594/pub\\_detail.asp](http://www.aei.org/publications/filter.all.pubID.24594/pub_detail.asp) (accessed April 5, 2007).

49. Christine Campbell, Michael DeArmond, Kacey Guin, and Deborah Warnock, *No Longer the Only Game in Town: Helping Traditional Public Schools Compete* (Seattle: Center on Reinventing Public Education, September 2006), p. 12.

Districts around New York vary widely in the way in which they react to charters in their midst, and charter schools impact local districts in very different ways.<sup>50</sup> Simply comparing Albany to New York City illustrates this in a poignant way.

New York City, under Bloomberg and Klein, has publicly embraced charter schooling as part of a larger effort to dramatically change the character and form of public schooling in the district. The mayor and chancellor view themselves as bold innovators who want to take daring, sometimes controversial steps to improve their massive system. They see charters as part of this system-wide reform effort. While the city has more than half of the state's charters, it actively has sought to double this number. Klein and Bloomberg have courted charter dollars and charter stars enthusiastically, and they seem to see charter growth and success as part of their own success. They draw, too, on a history of alternative schooling. Charter schools are just one more form of small, nontraditional public schools in the city. As Merriman noted: "New York has a history, in New York City in particular, of school experimentation and alternative schools. . . . So that people . . . get charters a little bit more in New York City and they are perhaps not seen as quite as radical maybe as elsewhere."

New York City school leaders have the political will to welcome charter schools into their massive fold. They also have economies of scale on their side. With 15,000 students, New York City's charter schools serve less than 1.5 percent of the district's students. According to the latest Board of Regents annual report, the fiscal impact of charter schools on the district is relatively tiny. Payment to charter schools represented 0.30 percent of the district's budget in 2004-2005.<sup>51</sup>

Albany is another story. As noted earlier, Albany is an 18-school, upstate district with nine approved charter schools. There are 10,200 students total in the city's public schools, with approximately 1,200 of those students in charter schools. The district's superintendent, Eva Joseph, noted that these numbers are "out of proportion," and that these nine charter schools have "created . . . a devastating impact" on her district. Charter schools' impact on Albany's financial and organizational well-being has been relatively substantial, even from the very beginning. Joseph relayed that the first charter school in Albany (and one

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50. Eric Rofes, *How Are School Districts Responding to Charter Laws and Charter Schools?* (Berkeley: Policy Analysis for California Education, April 1998).

51. State Education Department, "Annual Report to the Governor, the Temporary President of the Senate, the Speaker of the Assembly and the Board of Regents on the Status of Charter Schools in New York State, 2004-2005," July 2006, p. 23, <http://www.regents.nysed.gov/2006Meetings/July2006/0706bra3.htm> (accessed September 4, 2006).

of the first charters in the state), New Covenant Charter School, was approved after the district had already passed its school budget for the year:

*We were told that this charter school was going to start, they're going to be taking \$4 million of our money after our budget is adopted. . . . We had to come up with \$4 million in reductions just before school was about to start. In August we were dismantling programs.*

The state's annual charter report indicated that Albany was the New York district most fiscally impacted by charter schools in 2004-2005. That year, Albany spent 10.15 percent of its budget on its charter schools.<sup>52</sup> The district's own calculations, according to testimony that Joseph provided to the New York State Assembly's Standing Committee on Education in November of 2006, indicate that if its nine charter schools were fully enrolled as per their charters, which it projected to be possible by 2011-2012, charter school students would make up about 34 percent of the district's enrollment, at a cost of almost \$63 million, or 35.1 percent of the district's net general fund budget (the budget minus charter school costs).

There is a perception, accurate or not, that charters are *the* destabilizing influence in a district like Albany, while they are allowed to operate unscathed. According to a February 2007 district press statement:

*As a result of charter schools, the district has had to severely limit its extended school year opportunities for elementary and middle school students; increase class sizes; reduce staff that provides valuable student supports; and operate with a budget that is less than a contingency level for the current school year. Indeed, all of the budget cuts in recent years—including 105 administrative, teaching and instruction support positions in the last two—were taken directly from the programs and services the City School District of Albany provides for its students. At the same time, charter school costs have been maintained at their full level, in accordance with the existing legislation.*

The Albany Board of Education, the local teachers union, the city's Common Council, and the mayor have all called for a moratorium on charter schools in the city.<sup>53</sup> Albany,

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52. State Education Department, "Annual Report to the Governor," July 2006, pp. 6, 22.

53. Brian Nearing, "Cry for Help With Charter Schools," *Times Union*, May 19, 2006, <http://timesunion.com/AspStories/storyprint.asp?StoryID=483578> (accessed May 22, 2006); City School District of Albany, "Charter School Issues and Concerns," March 13, 2006, Personal files.

unlike New York City, blamed rather than embraced charter schools when the district faced educational and financial challenges.

While the cap is a statewide policy and charter politics play out at the state level, in negotiations between the governor and the state legislature, the relevance of charters and their impact is much more local. On one hand, the charter debate is largely irrelevant in a large number of districts. As Diane Ward of NYSSBA said: “for many of the hundreds of school districts in the state this is an argument that is just in theory for them. They don’t anticipate going charter, they don’t anticipate other charters moving in, and so it’s someone else’s fight.” Still, there are other districts, like Albany, which view charters as a significant threat. Merriman, of SUNY, said of small districts in the state:

*They’re just deathly afraid of charters, and the thought of a charter just keeps them up . . . at night. Unfortunately, the challenge that charters pose for them hasn’t yet caused them to enact fundamental reforms from top to bottom that might result in no one demanding that a charter be started. Instead too often district officials spend their midnight hours simply trying to come up with political strategies to stop them from starting in the first place. It’s a monumental waste of energy and a case of fundamentally misplaced priorities.*

## LOOKING AHEAD

These four lessons—blunt tactics threaten charter alliances, unions are not monolithic, quality is critical but good data are scarce, and local impact varies enormously—may appear self-evident in some ways. Still, they bear repeating simply as a reminder of the current state of the charter school debate and the need for a new, more nuanced and sophisticated direction in charter politics, policymaking, and analysis. We see, well into our second decade of charter schooling, that both sides of the charter debate tend to fall back on well-worn arguments. With nearly two decades of experience with charters, the lessons outlined in this chapter provide a new foundation for a second-generation discussion of charter schools. Chapter 4 offers several policy suggestions to help guide that discussion.



## CHAPTER 4

# Policy Recommendations

**N**ew York charter politics have been highly divided and divisive, and, for a long time, this produced a policy standstill on charter caps. Given the incredibly political nature of charter schooling, it has been challenging in states like New York to have nuanced, reasoned conversations about it. It has been even more difficult to produce sophisticated laws that are politically realistic and that serve students and families well. Charter schooling—like public schooling in general—is complicated, and this kind of sophistication is needed. So, too, because it is in the general interest of students and families, the state *should* be an active and involved player in ensuring charter success. However, given the New York context, this will be difficult to achieve. With this caveat, six policy considerations are offered here:

### Policy Recommendation 1: Identify and Address Second-Generation Charter Challenges

There *are* significant and legitimate second-generation charter issues that must be addressed. Charter supporters should not pretend that all charters are working well, should seek to improve charter authorizing and oversight, and should not wish away disappointing evaluation data. Meanwhile, charter opponents should acknowledge that there is much to be gained from the charter mechanism, that there is a lot of demand for charter schools, and that charters can be effective under the right circumstances.

After 15 years of national experience with charter schools, the challenges facing charter schools are well known, as are the practices of the best-performing charter schools. Despite that, the caps conversation in New York seems not to have moved much beyond the 1998 debate on the merits of charter schooling in the state. It is time to move past the rhetoric and obstinacy on both sides to a more nuanced discussion of what kinds of charter schooling might work for particular states, districts, and communities.

The second-generation issues should be honestly assessed, debated, and addressed through public policy. The central issue is charter *quality*. The movement has produced some truly stellar schools and some truly awful ones. Movement veterans and experts

acknowledge this. As Joe Nathan, director of the Center for School Change at the University of Minnesota’s Humphrey Institute, said, charter schools vary enormously: “In the beginning, we didn’t focus enough on quality, and we were naïve about the number of charlatans who came in and ripped people off.” Ziebarth agrees that the focus on quality was not as great in the beginning of the charter movement as it is now, as charter supporters are beginning to realize that “if the charter movement wants to succeed, it needs to focus on quality.”

For many, this connects closely to the issue of establishing clear measures of charter school success and *closing* schools that fail to meet these measures. Ensuring quality also means creating and sustaining responsible, high-quality authorizers and a system of effective charter school oversight and renewal.<sup>54</sup> Achieving quality also requires that charter schools have access to the full range of resources to which they are entitled as public schools, and that additional forms of support are written into charter laws (for example, around charter school facilities funding).

## Policy Recommendation 2: Be Realistic About What a Cap Can Accomplish

While we should address the second-generation challenges directly, we need to be realistic about what challenges a cap itself solves.

Many charter supporters in New York and elsewhere believe that retaining a cap on the number of charter schools will not solve charter school problems. Nathan believes that “quality control” is essential to charter schooling, but that this is “unrelated to caps.” Rather, the cap mechanism is “clearly a political effort to blunt and block the movement.”

In New York, however, caps are a *political* fabrication, born of political “horse trading.” They are not primarily an educational reform or solution.<sup>55</sup> A cap is a very symbolic, easy-to-grasp, blunt policy instrument. But caps, themselves, are *not* a form of oversight or assessment, or a way of making it easier for districts with charter schools to deal with the impact of these schools on their resources. Caps are not the primary mechanism for

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54. See, for instance, National Association of Charter School Authorizers, *Principles & Standards for Quality Charter School Authorizing*, 2007 revised edition, [http://www.qualitycharters.org/files/public/final\\_PS\\_Brochure.pdf](http://www.qualitycharters.org/files/public/final_PS_Brochure.pdf) (accessed April 22, 2007).

55. This is an argument made, as well, in Ziebarth’s (2006) *Stunting Growth* report on caps: “Caps resulted more from political trade-offs than from widespread agreement about what makes good education policy” (p. 2).

ensuring charter quality or for ensuring district viability when districts are faced with charter competition.

### Policy Recommendation 3: **Do Not Eliminate Caps Entirely**

While caps have limited utility, unchecked chartering is not the answer to the challenge to produce high-quality charter schools. Therefore, caps should not be eliminated entirely from state law, in New York or elsewhere—at least not prematurely. Caps are important when a state is just beginning to establish charter schools, to limit an untested reform in the state. However, in a well-designed law, caps also can serve as an important limiting mechanism in charter schooling’s second generation. Charter authorizers need to be kept in check to ensure that they are chartering high-quality schools, closing failing schools, and responsibly overseeing the charter growth process so that it best serves students in charter schools. Caps, if designed properly, can be a part of producing careful authorizers. They can also be an important part of moderating charter growth, allowing authorizers to build expertise and allowing districts to adjust in response to charters.

### Policy Recommendation 4: **Tie Caps to Charter Quality**

Sophisticated caps policies are needed to ensure that caps serve an educational purpose and not simply a political or symbolic one. This can be accomplished by tying caps to charter school quality. This shifts the debate in a useful way from the simple question of whether and how many charter schools should be allowed to exist to the question of how high-quality schools can be established and replicated. It also puts charter policy to work for the explicit creation of high-quality public schools.

Perhaps a charter cap law designed to encourage charter quality would ensure that schools that are high performing, when compared with similar schools in their district, do not count against the cap. Or perhaps schools and school operators that have a demonstrated record of success could start new schools that would not count against the cap. The cap, in these cases, would effectively be a cap on lower-performing or untested schools.

Petrilli, of the Fordham Foundation, mentioned Ohio as an example of a state that has recently connected charter quality to a cap on the number of charters in the state. The Ohio law says that charters that have demonstrated success may replicate without being

subject to the state cap.<sup>56</sup> Ziebarth notes, as well, that Connecticut recently amended its charter school law to raise the possible number of students in those charter schools “with a demonstrated record of achievement.”<sup>57</sup> Ziebarth proposes that states should “never limit quality schools and authorizers,” which means that “high-performing charters should be exempted from existing limits” by allowing successful charter operators to “open either multiple campuses under current charters or new schools under additional charters.”<sup>58</sup>

There are complications when the state becomes involved in defining quality. This is particularly true with charter schooling, which was partially designed to create and encourage diversity and innovation in public schooling. If schools’ quality is measured by performance on state tests, and if schools’ survival and their ability to replicate is tied to this performance, this limits programmatic and curricular flexibility and autonomy.

A sophisticated charter cap law would need to build in a measure of quality that allows for local diversity and a range of measures of success (rather than relying solely on state test performance). This was one of the early promises of the charter reform: that it allowed enough freedom for curricular and programmatic innovation. Operationalizing quality, then, would be the largest challenge to creating a caps law of this kind. As Ziebarth noted, relevant legislative discussions about charters have not usually involved “deep discussion . . . about how we define quality.” Rather, “during the legislative process, people punt on what quality means.”

Assuming that a meaningful definition of quality could be written into a caps law, tying quality to caps is also a politically realistic solution. Given the controversial nature of charter schools, and the difficulty that politicians across the political spectrum would have appearing to be against high-quality public school options, a proposal that allows the growth of high-quality charters, but checks the growth of those that are not performing well or have not yet been reasonably assessed, seems politically feasible. As Petrilli proposed: “There’s a deal to be made on caps: Keep your cap, but let there be exceptions for proven good schools, and incentives for these schools.”

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56. Also see Louann Bierlein Palmer, Michelle Godard Terrell, Bryan C. Hassel, and C. Peter Svahn, *Turning the Corner to Quality: Policy Guidelines for Strengthening Ohio’s Charter Schools* (Thomas B. Fordham Institute, National Association of Charter School Authorizers, and National Alliance for Public Charter Schools, October 2006), <http://www.edexcellence.net/doc/TurningtheCornertoQualityOH2006.pdf> (accessed March 27, 2007).

57. Ziebarth, *Peeling the Lid Off*, p. 2.

58. Ziebarth, *Stunting Growth*, p. 6.

Finally, on the connection between caps and charter quality, more research is needed. In general, the methodology of measuring charter performance is complicated and highly contested.<sup>59</sup> Which district schools, for example, represent the relevant and fair comparison to charter schools? Which students can be legitimately compared to charter school students? How can value added be measured? How can trends in charter performance be best established? Given this complexity and given what is at stake, there is a need for high-quality, non-ideological, responsible assessments of charter schooling, if policymakers are to accurately evaluate how to move forward. This assessment should move away from one-time comparisons between charter and district students, even if the most apt comparisons can be found and school effects can be isolated. Rather, assessment should strive for student-level longitudinal data that can measure progress over time, or the value added of charter and district schooling.<sup>60</sup>

Research also should specifically address the connection between charter school quality and caps legislation, as the relationship between them is not well established. Some charter supporters submit that there is “no demonstrable connection between charter caps and stronger outcomes. Caps have proven to be blunt instruments that don’t lead to high-quality charter schools.”<sup>61</sup> Systematic data can help policymakers understand whether and how charter caps influence the way charter authorizers do their job of chartering, overseeing, and closing schools.

### Policy Recommendation 5: Adjust Caps for Local Exigencies—Including Aid

Caps laws should take local exigencies into consideration, given how local the impact of charter schools is. This, again, means a more sophisticated law. The optimal cap law would not simply place a blunt cap on the number of charter schools in the state. Rather, it would allow for local variation in will and need. This law might target charter schooling at the lowest-performing, highest-need districts, paired with transition aid. Or, it might exempt certain locales from the cap, as was considered for New York City in the New York case.

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59. See Paul T. Hill, “Assessing Achievement in Charter Schools,” in *Hopes, Fears, & Reality: A Balanced Look at American Charter Schools in 2005*, ed. Robin J. Lake and Paul T. Hill (Seattle: Center on Reinventing Public Education, National Charter School Research Project, November 2005).

60. See Charter School Achievement Consensus Panel, *Key Issues in Studying Charter Schools and Achievement: A Review and Suggestions for National Guidelines*, NCSR Project White Paper Series, No. 2 (Seattle: Center on Reinventing Public Education, National Charter School Research Project, May 2006).

61. Ziebarth, *Stunting Growth*, p. 5.

Transition aid is a policy consideration that is separate, but related, to caps policy. It, too, is a part of charter laws designed to respond to local exigencies, and it should be addressed in caps laws. Built into the debates about caps and aid is a debate about the theory of charter school change. One of the primary arguments for a cap is to check the extent of the charter burden on districts like Albany. But many charter proponents would argue that the point of charter schools is to spur district improvement through competition and the threat of “consumer” exit. Under this reasoning, if districts face the threat of significant exit, they must improve to retain students. However, others argue that a rapid loss of students (and the funds that follow them) to charter schools prevents districts from mounting effective improvement plans. Charter supporters must acknowledge that charter schools *can* have destabilizing influences on districts like Albany, and they should not be market ideologues here. The state has the responsibility to provide a high-quality education to all public school students, and helping districts learn to compete is consistent with that charge.

State laws, then, should build in some relief for districts like Albany—perhaps in the form of transition relief that allows districts some time to adjust their fixed costs when they lose students to charter schools. Of course, this kind of aid is expensive, and states should ensure that they are not paying districts to compensate for perpetually failing district schools. Thus, the aid issue should be connected to quality concerns as well. Transition-aid funding could be contingent upon districts developing a plan to *respond* to charter competition rather than become paralyzed by it or use it as a scapegoat. If transition aid were tied to *district* quality—or, at least, the development and implementation of an improvement plan—then charters could function as they were intended to: as an engine for *systemic* change.<sup>62</sup>

Some districts have begun to respond in useful and effective ways to charter competition.<sup>63</sup> The issue of aid raises a host of questions about how to think about district change in the context of charters. While aid may be a means to, in Ziebarth’s words, “placate the school districts,” it could also be a useful way to spur district improvement.

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62. Thanks to Paul Hill and, especially, Robin Lake for the ideas in this paragraph.

63. Campbell, et al., *No Longer the Only Game*, p. 12.

## Policy Recommendation 6: Do Not Introduce Automatic Sunset Provisions

Some states with caps initially included “sunset” provisions in charter legislation so that the cap would automatically expire after a certain date. This is appealing to charter supporters because it means that charter schools will not have to be renegotiated when the clock runs out and the state cap is met. Potentially, a sunset provision could have helped avoid what became evident in New York: that caps politics can become a receptacle for many other political and educational issues—issues of funding and resources, local control, race and class, upstate and downstate politics, union relations, and educational questions about what makes a good school. These debates make the cap incredibly difficult to overcome. A sunset provision would have made the 2006-2007 cap fight unnecessary.

Yet it is reasonable to build into a charter law a mechanism to reassess charter schooling in the state once charters have existed for a certain number of years. To re-argue the merits of charter schools—particularly given how polarized these arguments can be—can be incredibly frustrating to both sides. Lack of reliable data also threatens to render the debate irrational and ill-informed. But, this is part of the democratic process. Charter schools, as public schools, *should* be subject to educational and political review. Charter actors on both sides should have the opportunity to weigh in on the reform once it has been tried. Sunset provisions placed on caps laws eliminate the opportunity for this kind of debate.

While many charter opponents believe that charter schools are antidemocratic and are unaccountable to the public because they operate under a different governance structure than district schools, many charter proponents believe that charter schools are *more* accountable. Supporters argue that charter schools, during the renewal process, are held accountable for their particular missions and for demonstrating student achievement. Charter schools can be closed if they are not doing their jobs—unlike most district schools, which can languish in mediocrity or failure for decades. It is in this spirit of heightened accountability, as well, that sunset provisions should not be introduced.

## CONCLUSIONS

Charter schools in the second generation and beyond should be of irrefutably high quality, measured in a range of ways to serve a wide range of students and student needs and interests. They should be well supported by bold, active authorizers who do their jobs by setting the bar high for new charter applications, overseeing and supporting

charter school development and implementation, and closing failing schools. There is no doubt that such schools and authorizers exist. There also is no doubt that the charter movement has a long way to go to ensure that all charter schools and authorizers meet these standards—while also ensuring a democratic reform in which all students and potential charter founders can participate.

Caps policies and debates are part of this second-generation conversation about quality and can be part of improving the quality of charter and district schools. In places where charter schools and authorizers are doing their jobs, the kind of blunt caps that are in place in many states may stand in the way of the expansion of high-quality charter schools. In places where charter schools are not unequivocally successful, the right kind of cap law could serve as a quality control measure for authorizers. A sophisticated cap law could also serve to encourage the replication of successful charter school models.

In terms of charter policy and politics, however, New York has not reached a place of sophistication. Although New York policymakers were finally able to broker a caps deal in 2007, the politics have been highly partisan and, at times, quite brutal. In a political environment like New York, it will be difficult to have a nuanced approach.

There are other legislative barriers to sophisticated charter laws. As noted by Phillips of the New York Charter Schools Association, charter laws often are tied to budget negotiations, and, during the budget process, there is so much on the table and lawmakers are under such pressure to pass state budgets on time that it is difficult to have nuanced conversations or a sophisticated approach to any one item.

Despite the fact that it would be difficult to achieve, a sophisticated approach would ultimately benefit both districts and charter schools. A nuanced approach to the cap in New York would acknowledge local variation—in political will and in resources—that impacts the charter environment. A nuanced approach would acknowledge that unions can and have collaborated with charter proponents to build creative approaches to public schooling, and it would build on these collaborations in the caps conversations. A nuanced approach would acknowledge that district leaders and charter school leaders have common interests—when it comes to the exigencies of standardized testing and *No Child Left Behind*, when it comes to public funding and resource questions, when it comes to serving local students—and it would harness these common interests in a more subtle debate about charter-district relations. A nuanced approach would recognize that charter schools can be the engine of district change, either by prompting districts to step up their own reform efforts so that they retain the students who might leave for area

charter schools, or by furnishing the means by which the state provides aid to districts that lose students to charters in exchange for district improvement and innovation.

The New York charter caps debate is relevant to the growing number of states in which charter schools are reaching their legislated limit. The observations and proposals presented here provide policymakers with a road map to understand the political dynamics and arguments in play in New York, and they suggest a set of recommendations to help leaders reconcile the political interests of adults with the best interests of all public school students.



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# Bibliography

Bierlein Palmer, Louann, Michelle Godard Terrell, Bryan C. Hassel, and Peter C. Svahn. *Turning the Corner to Quality: Policy Guidelines for Strengthening Ohio's Charter Schools*. Thomas B. Fordham Institute, National Association of Charter School Authorizers, and National Alliance for Public Charter Schools, October 2006. <http://www.edexcellence.net/doc/TurningtheCornertoQualityOH2006.pdf> (accessed March 27, 2007).

Campanile, Carl. "Smarter Charter Kids." *New York Post*, July 20, 2006.

Campbell, Christine, Michael DeArmond, Kacey Guin, and Deborah Warnock. *No Longer the Only Game in Town: Helping Traditional Public Schools Compete*. Seattle: Center on Reinventing Public Education, September 2006.

Center for Education Reform. "National Charter School Data: New School Estimates 2006-2007." [http://www.edreform.com/\\_upload/CER\\_charter\\_numbers.pdf](http://www.edreform.com/_upload/CER_charter_numbers.pdf) (accessed February 9, 2007).

Charter School Achievement Consensus Panel. *Key Issues in Studying Charter Schools and Achievement: A Review and Suggestions for National Guidelines*. NCSR White Paper Series, No. 2. Seattle: Center on Reinventing Public Education, National Charter School Research Project, May 2006.

Crouch, Stanley. "Chartering a Course: Lifting the Cap on Schools Paves the Way for Proper Learning." *New York Daily News*, April 27, 2006.

Einhorn, Erin. "'F' Is for Full: Charter Schools Top Out, Students Left Behind." *New York Daily News*, June 25, 2006.

Gardiner, Jill. "With Spitzer at Helm, Mayor Will Push for Charter Schools." *New York Sun*, January 3, 2007. <http://www.nysun.com/pf.php?id=46022> (accessed January 4, 2007).

Gershman, Jacob. "Split on Strategy Develops Over Charter Schools." *New York Sun*, May 30, 2006. <http://www.nysun.com/article/33497> (accessed May 31, 2006).

- Gershman, Jacob. "Teachers Open a Campaign Against Spitzer." *New York Sun*, March 6, 2007. <http://www.nysun.com/pf.php?id=49829> (accessed March 12, 2007).
- Gershman, Jacob. "Spitzer Wins a Victory on Charters: 100 New Schools To Be Allowed Under Budget Deal in Albany." *New York Sun*, March 30, 2007. <http://www.nysun.com/article/51496>.
- Gootman, Elissa. "Lines Are Drawn in Fight to Add Charter Schools." *New York Times*, January 9, 2006.
- Harlem Children's Zone. "Community Leaders, Parents and Educators Demand: 'Lift Cap on Charter Schools NOW!'" March 27, 2006. <http://www.hcz.org/press/press.html> (accessed February 21, 2007).
- Herszenhorn, David, and Danny Hakim. "Spitzer to Seek Major Increase in Education Aid." *New York Times*, January 30, 2007.
- Hess, Frederick M. "The Wrong Way to Argue for Charter Schools." *New York Daily News*, June 25, 2006. [http://www.aei.org/publications/filter.all,pubID.24594/pub\\_detail.asp](http://www.aei.org/publications/filter.all,pubID.24594/pub_detail.asp) (accessed April 5, 2007).
- Hill, Paul T. "Assessing Achievement in Charter Schools." In *Hopes, Fears, & Reality: A Balanced Look at American Charter Schools in 2005*, edited by Robin J. Lake and Paul T. Hill, 21-32. Seattle: Center on Reinventing Public Education, National Charter School Research Project, 2005.
- Hill, Paul T., Lydia Rainey, and Andrew J. Rotherham. *The Future of Charter Schools and Teachers Unions: Results of a Symposium*. Seattle: Center on Reinventing Public Education, National Charter School Research Project, October 2006.
- Iannuzzi, Richard C. "Charter Schools a Weakness in Spitzer's Plan." *Times Union*, March 7, 2007. <http://www.timesunion.com/AspStories/story.asp?storyID=569604> (accessed March 12, 2007).
- Karlin, Rick. "Charter Schools Stoke Debate." *Times Union*, January 25, 2006. <http://timesunion.com/AspStories/storyprint.asp?StoryID=443265> (accessed February 1, 2006).
- Karlin, Rick. "Taboo Subject Raised at Capitol." *Times Union*, April 5, 2006. <http://timesunion.com/AspStories/storyprint.asp?StoryID=468382> (accessed April 25, 2006).

- Lucadamo, Kathleen, and Paul H.B. Shin. "Klein Kicks Charter School Foot-Draggers." *New York Daily News*, March 19, 2006. <http://www.nydailynews.com/news/local/vpfriendly/story/400920p-339668c.html> (accessed March 21, 2006).
- Medina, Jennifer. "Pataki Plan Would Allow City to Create Charter Schools." *New York Times*, February 8, 2006.
- Medina, Jennifer. "Legislature Deals Setback to Mayor in Declining to Allow More Charter Schools." *New York Times*, June 24, 2006.
- National Alliance for Public Charter Schools. *Growth and Quality in the Charter School Movement: 2006 Dashboard*. May 2006. <http://www.publiccharters.org/content/publication/detail/1075> (accessed December 6, 2006).
- National Association of Charter School Authorizers. *Principles & Standards for Quality Charter School Authorizing*. 2007 revised edition. [http://www.qualitycharters.org/files/public/final\\_PS\\_Brochure.pdf](http://www.qualitycharters.org/files/public/final_PS_Brochure.pdf) (accessed April 22, 2007).
- National Center on Education Statistics. *Digest of Education Statistics, 2005*. NCES 2006-030, Table 95. Washington, DC: National Center on Education Statistics, 2006. [http://nces.ed.gov/programs/digest/d05/tables/dt05\\_095.asp?referer=list](http://nces.ed.gov/programs/digest/d05/tables/dt05_095.asp?referer=list) (accessed April 13, 2007).
- Nearing, Brian. "Cry for Help With Charter Schools." *Times Union*, May 19, 2006. <http://timesunion.com/AspStories/storyprint.asp?StoryID=483578> (accessed May 22, 2006).
- New York Charter Schools Association. "Five, Four, Three, Two, One, Charter School Cap Lift!" April 1, 2007. <http://www.nycsa.org/index.asp> (accessed April 6, 2007).
- New York City Center for Charter School Excellence. "It's Official: Charter Cap Lifted." [http://www.nycchartercenter.org/breaking\\_news.asp](http://www.nycchartercenter.org/breaking_news.asp) (accessed April 6, 2007).
- New York Daily News*. "Too Many Children Left Behind." March 24, 2006.
- New York State School Boards Association. "Reject Charter School Expansion." June 22, 2005. [http://www.nyssba.org/scriptcontent/VA\\_Custom/News/newspage.cfm?Category\\_ID=36&Content\\_ID=3693&showarchive=Yes&itemtitle=Article&Title=News](http://www.nyssba.org/scriptcontent/VA_Custom/News/newspage.cfm?Category_ID=36&Content_ID=3693&showarchive=Yes&itemtitle=Article&Title=News) (accessed October 25, 2006).

- New York State School Boards Association. "Taxation Without Representation: The Reality of Charter Schools." February 2006.
- New York State United Teachers. *Broken Promise: How the Charter School Experiment Is Falling Short*. December 2006. [http://www.nysut.org/cps/rde/xchg/nysut/hs.xsl/mediareleases\\_5903.htm](http://www.nysut.org/cps/rde/xchg/nysut/hs.xsl/mediareleases_5903.htm).
- Parents for Public Charter Schools. <http://www.parentsforpubliccharterschools.org>.
- Pataki, George. "State of the State." January 4, 2006. <http://www.gothamgazette.com/article//20060105/202/1700> (accessed February 18, 2007).
- Rofes, Eric. *How Are School Districts Responding to Charter Laws and Charter Schools?* Berkeley: Policy Analysis for California Education, April 1998.
- Spitzer, Eliot. "State of the State Message." January 3, 2007. <http://www.state.ny.us/governor/keydocs/NYS-SoS-2007.pdf> (accessed February 7, 2007).
- Spitzer, Eliot. "A Contract for Excellence." January 29, 2007. [http://www.ny.gov/governor/keydocs/0129071\\_speech.html](http://www.ny.gov/governor/keydocs/0129071_speech.html) (accessed January 30, 2007).
- State Education Department. "Report to the Governor, the Temporary President of the Senate, and the Speaker of the Assembly on the Educational Effectiveness of the Charter School Approach in New York State." December 2003. <http://www.emsc.nysed.gov/psc/5yearreport/aExecutivesummary.pdf> (accessed February 9, 2007).
- State Education Department. "Annual Report to the Governor, the Temporary President of the Senate, the Speaker of the Assembly and the Board of Regents on the Status of Charter Schools in New York State, 2004-2005." July 2006. <http://www.regents.nysed.gov/2006Meetings/July2006/0706bra3.htm> (accessed September 4, 2006).
- Stuart Wells, Amy. "No Charter School Left Behind." *New York Times*, January 22, 2006.
- Szubieslski, Jola. "Officials React to Spitzer's Plan to Increase Cap on Charter Schools." *Capital News 9*, January 4, 2007. <http://www.capitalnews9.com> (accessed January 9, 2007).
- U.S. Charter Schools. Synopsis of "Annual Report on the Status of Charter Schools in New York State." [http://www.uscharterschools.org/cs/r/view/uscs\\_rs/2192](http://www.uscharterschools.org/cs/r/view/uscs_rs/2192) (accessed February 9, 2007).

Ziebarth, Todd. *Stunting Growth: The Impact of State-Imposed Caps on Charter Schools*. National Alliance for Public Charter Schools, January 2006. <http://www.publiccharters.org/content/publication/detail/533> (accessed December 6, 2006).

Ziebarth, Todd. *Peeling the Lid Off State-Imposed Charter School Caps*. National Alliance for Public Charter Schools, February 2007. <http://www.publiccharters.org/content/publication/detail/1973> (accessed March 19, 2007).

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The National Charter School Research Project (NCSRP) aims to bring rigor, evidence, and balance to the national charter school debate. For information and research on charter schools, please visit the NCSRP website at [www.ncsrp.org](http://www.ncsrp.org). Original research, state-by-state charter school data, and links to charter school research from many sources can be found there.



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