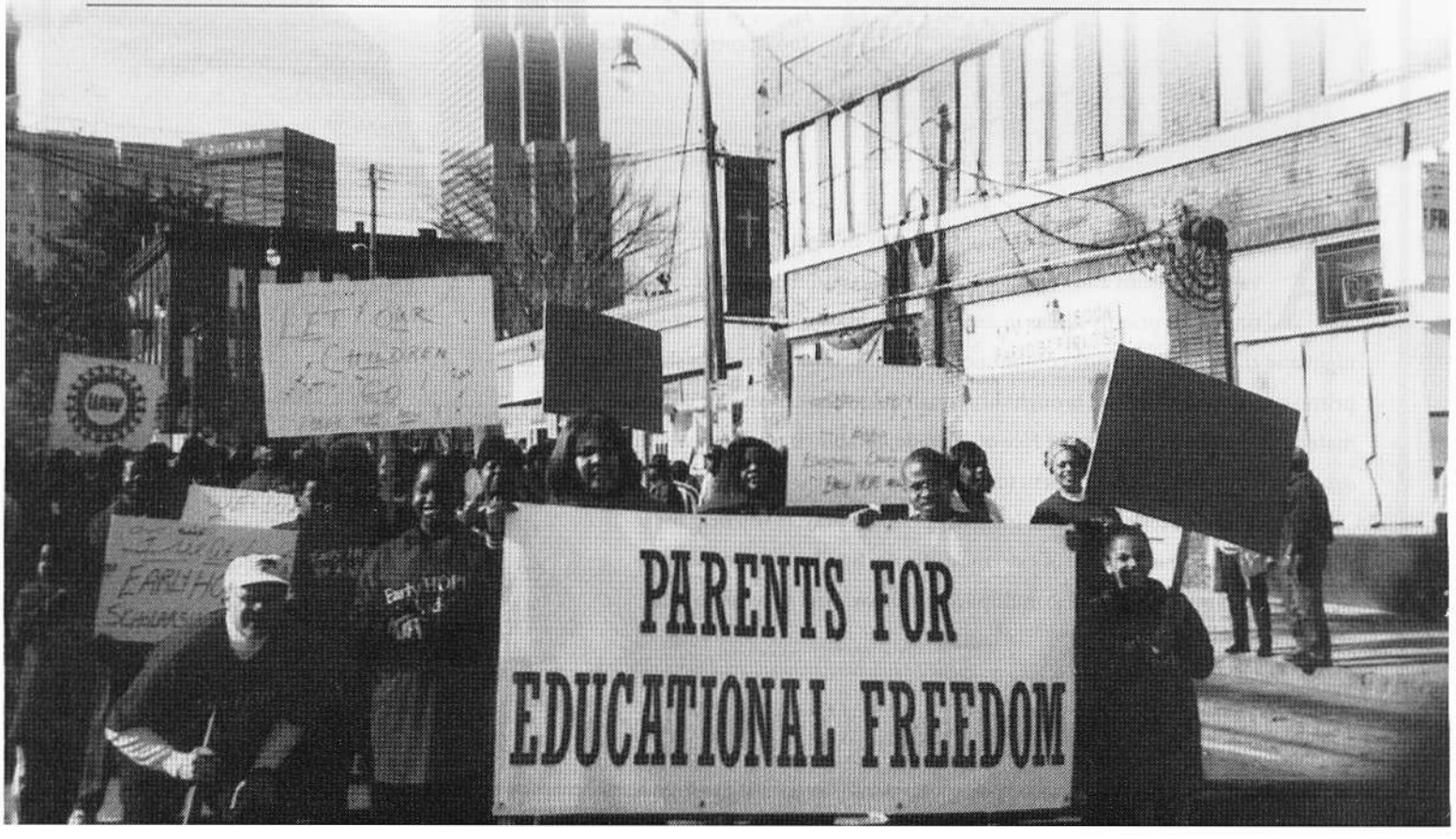
ON THE FRONT LINES OF THE SCHOOL-CHOICE DEBATE

BY TOM HOOPES



Martin Luther King Jr. Day 2000 was the first time Jim Kelly ever marched in a parade. It was also the day he learned an important lesson about the school-choice battle's three volatile components: power, money, and faith.

King's niece, Alveda King Tookes, had invited Kelly to assemble school-choicers to march, and parade officials squeezed his group between union marchers in the lineup. Kelly soon found himself surrounded by members of his biggest political opponent, the American Federation of Teachers. The juxtaposition presented a study in contrasts.

It was cold in January, even in Atlanta, King's hometown. Union activists from other states wore expensive jackets emblazoned with their local chapter logos and names, holding bright vinyl banners. Kelly's tiny contingent, on the other hand, stood shivering in their "Early HOPE for Kids" T-shirts and held a makeshift banner and a few signs that said "Let Our Children Go." It was an unimpressive sight.

"All of a sudden," Kelly said, "the righteousness and rationality of our cause seemed out of place. We were going to be all steak when we needed to be all sizzle."

Then the miracle happened. A boy named Brantley stepped out of the crowd.

"I don't know Brantley's last name," Kelly remembered. "Like most angels sent by God, he didn't use his last name, and I didn't ask."

"Are you marching for school choice?" Brantley asked. He rushed off to round up more supporters.

Then came a woman who had brought her children and some friends to watch the parade. Kelly asked her if she believed that low-income parents should be forced to send their kids to failing schools or if they should be given an option. The new recruits quickly put on the T-shirts as the parade started.

"At first, we were a shy bunch," Kelly said. Then Brantley began to chant, "Let our children go!" The rest joined in. As the small contingent passed by, scores of families lining the parade route joined in the battle cry: "Let our children go, let our children go!" It was a moment of emotional power worthy of King himself. The little band of 18 walked tall, calling out for liberty and justice from a system stacked against them. The big union marchers shifted uncomfortably in their new jackets.

Then it came time to march in front of Georgia Governor Roy Barnes. Kelly positioned the small group front and center at the reviewing stand. What had been an embarrassment now became eye-catching. Who wouldn't notice the freezing, shouting, homemade enthusiasts beside the slick union rent-a-marchers?

"Does the governor see us?" Brantley asked.

Jim Kelly squinted into the reviewing stands just as the governor embraced his special guests, Teamster General President James Hoffa and AFL-CIO President John Sweeney.

Maybe not.

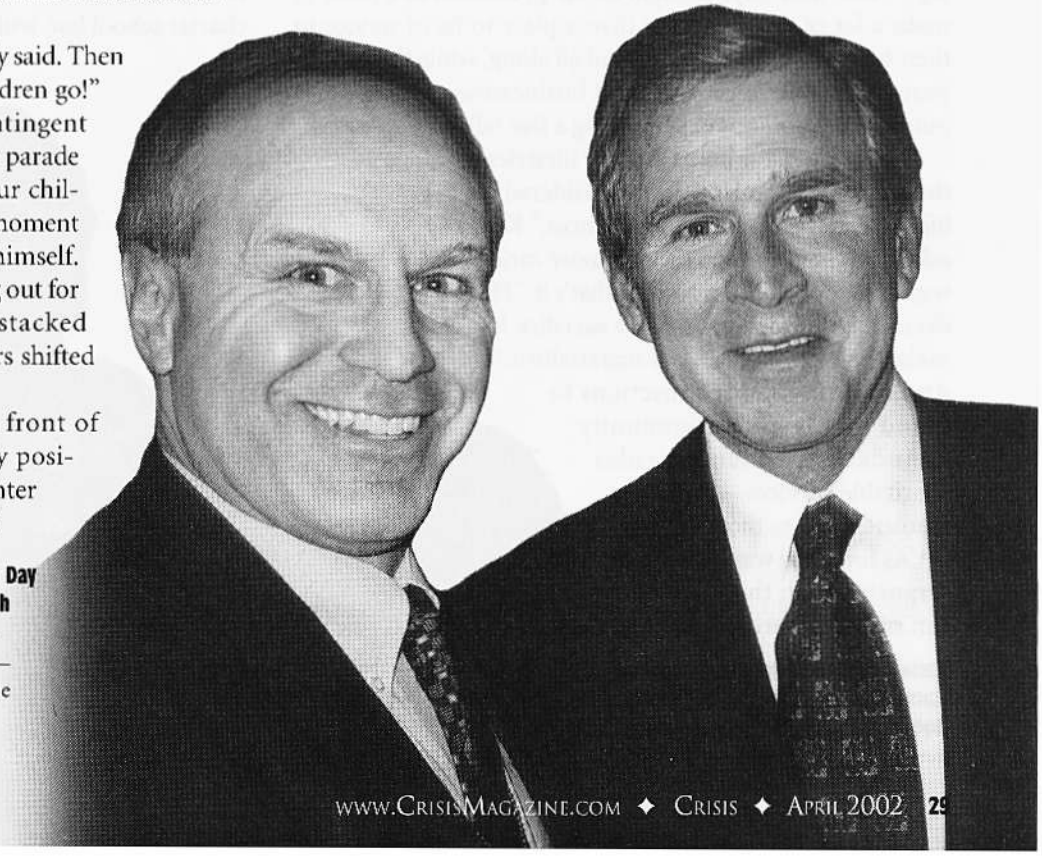
The Origins of the Debate

The school-choice controversy isn't a new one. It started in 1875, with U.S. Senator James Blaine, a Republican from Maine. Blaine failed to get a federal law through Congress barring public money from going to religious institutions, despite the support of the anti-Catholic Know-Nothing Party and President Ulysses S. Grant.

But if the U.S. Congress demurred (the bill nearly passed), many states were less shy, working what came to be known as "Blaine Amendments" into their state constitutions. And so Blaine's anti-Catholic legacy passed indirectly into law.

Catholics seemed to 19th-century Protestants to be a clear threat to the American character. Catholics were strange people with strange ways. They were swarthy and uncouth. They prayed to statues. They swore allegiance to the pope.

At the same time, clauses banning state money for religious schools weren't a threat to Protestants. For public school students at the time, the King James Bible was a textbook for religion and history, and Protestant hymns like "How Great Thou Art" were sung in music class.



Opposite page, the 2000 Martin Luther King Jr. Day March Courtesy of Jim Kelly **Right, Jim Kelly with President George W. Bush** Courtesy of Jim Kelly

Tom Hoopes is the executive editor of the *National Catholic Register.*

The public school logic of the time saw no contradiction in this. The schools weren't promoting a religion; they were just honoring the Christian values fundamental to the American character. But the reliance on Protestant doctrine and revisionist history created a climate hostile to Catholics. It would soon backfire and create a climate hostile to Protestants as well.

In the 20th century, a new public school ethos arose, the ethos of John Dewey, who wrote in *Democracy and Education* (1916), "Ultimately and philosophically, science is the organ of general social progress."

Not faith. Not charity. "Science"—an expansive word that for Dewey entailed secularism. Throughout the 20th century, the Protestant hold on the public schools unraveled. Public school leaders began to adopt a fiercely secular ethos. The wedge the world was driving between religious belief and daily life was rammed through the schools, too.

That leaves us, a lifetime later, with a giant battle still underway. Jim Kelly is on the frontlines of that fight. His story is the story of the school-choice movement in America today.

A Material World

Jim Kelly knows a lot about the power of money. In the late 1980s, he was a tax lawyer and estate planner, helping the extremely affluent manage their money. But he reached a turning point in his faith life.

"I prayed a lot about my career," he explained, "how to use my talents to better serve Christ."

The practice of law had changed, he said. The crusading, lawyer-as-hero role that was possible to imagine before the 1980s was less plausible in the age of large plaintiff verdicts, merger mania, and the money offered by investment banking. "Now, attorneys thought of the profession as a place to make a lot of money rather than a place to be of service to their fellow man," Kelly said. And all along, while the payoffs were increasing for lawyers and businessmen, public education was experiencing a free fall.

Tired of billable hours and the lifestyles of the rich and famous, Kelly reconsidered his life. The answer came simply. "Christ," Kelly asked, "is there a simpler way, a more caring way? You look at the cross and that's it." He decided he needed to "make a sacrifice to make the world a little less materialistic." And so he used his connections to found the Georgia Community Foundation, which provides charitable services—including scholarships—to the poor.

As Jim Kelly was becoming disgusted with the materialism of the suburbs, a woman in urban Atlanta named Marie Lambert was coming to the same conclusions about life in the city.

Around her neighborhood, the single mother says, too much money is spent in "bars of ill repute."

"I think it's just a waste," Lambert says. "The liquor and the lottery. I'm not really opposed to a cocktail hour. But I think too much emphasis goes into liquor and the lottery." Lambert wanted something else for her daughters. "I'm very thrifty, and I'd rather they not have all the Tommy Hilfigers and all that." Instead, Lambert always worked "a job and a half" to put money into their education.

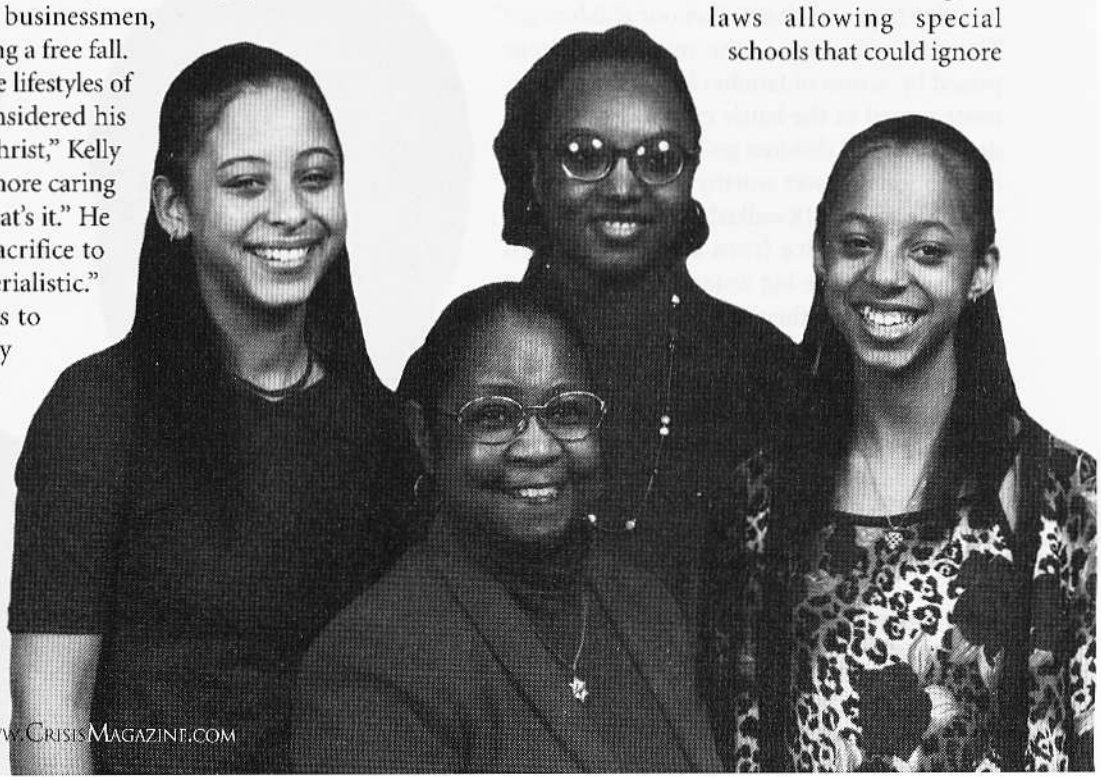
By giving scholarships to the Lamberts, Kelly was able to fulfill a dream. He could make the Lamberts' life a little easier. Seeing the fruits of his work made him "a man with a mission"—not just to reach a few inner-city families with scholarships but to make the government reform a "separate and unequal" education system.

A Catholic who has his own children in Catholic schools, Kelly "almost takes it personally that so many kids are stuck in failing schools," observed Susan Laccetti Myers, an editorial board member of the *Atlanta Journal* before it became the *Atlanta Journal-Constitution* last year.

When Kelly founded the Georgia Community Foundation in 1991, he was in the right place at the right time. Atlanta's rise in the 1990s helped him build a foundation worth millions. As a successful lawyer, Kelly knew rich people in Atlanta's suburbs. Now, he got to meet poor people from Atlanta's urban projects—first as a benefactor bearing scholarships, later as a beggar asking for help building political support.

Charter schools were Kelly's first major legislative crusade.

The charter school idea was young when Kelly started his foundation—1991 was the year Minnesota passed the first charter school law, with California following suit in 1992. By 1995, 19 states had signed laws allowing special schools that could ignore



Marie Lambert and her daughters, Stacey, Sharon-Marie, and Dominique (back row, from left) Courtesy of Marie Lambert

certain public school regulations in order to meet the needs of specific communities. Kelly spent his Thanksgiving vacation in 1996 drafting a charter school bill. At that time in Georgia, public schools could be converted to charter schools, but no new charter schools could be started.

Kelly's bill would change all that.

Then-state senator Clay Land—now a Bush-appointed federal judge—introduced the bill to the Georgia state legislature and needed to drum up support. So Kelly headed to the neighborhoods where he would find his best allies in the fight for school choice. He met Louise Watley, a 70-year-old veteran of civil rights battles and the president of one of the oldest public housing communities in Georgia.

She had the faith.

Kelly described what happened in January when Clay Land told him that, without a Democratic cosponsor, his charter school initiative was headed for certain defeat.

"Clay called me at 11:00 a.m.," he remembered. "At 11:30, I called Louise Watley. At 1:00, David Scott—one of the most powerful black legislators in Georgia—called Clay Land and said he would cosponsor the charter school bill."

Land was surprised. "But don't you want to see the bill first?"

"I don't need to see it," Scott said. "Louise Watley just called me."

Kelly got his charter school bill.

School choice showed great legislative promise in the late 1990s, and various forms of the policy became law in communities nationwide. Its purest form, vouchers, came to Milwaukee and Cleveland in 1995. Milwaukee's passed muster with the state Supreme Court in 1998 and is now thriving. The Cleveland version, on the other hand, got suspended by a judge five days before Christmas in 1999, leaving nearly 4,000 families suddenly in doubt as to where their children would be going to school after the Christmas holiday.

Their fate will be sealed in this year's session of the Supreme Court. So that's where Kelly went.

Jim Kelly's Big Idea

Two camps oppose vouchers for mutually exclusive reasons. On the one hand, there are the shut-God-out types who are afraid of what will happen to our society if poor African-American families spend public money on the Lamb of God School for Baptist Boys. On the other hand, there are a healthy number of Catholics who fear what could happen if the government spent its money at Our Lady of Mount Carmel High. If the secularists are right, the Church is poised to overpower the state. If the religionists are right, the Church is no match for the state.

Vouchers have fallen flat on their faces in state legislatures, and state polling booths, even with suburban money and city muscle behind them.

But if Jim Kelly is right, they're both wrong. His audacious *amicus* brief sits on the desks of U.S. Supreme Court justices who heard arguments about the constitutionality of voucher programs in February. (Their decision will come in June—see page 10.) When faced with the question "Should government fund religion?" Kelly answered simply: It already does.

To illustrate this point, Kelly's brief describes last year's annual governor's summit on character education in Cleveland. There, public school teachers were taught methods for inculcating a particular kind of piety. According to guidelines promoted at the summit, teachers are to "help young people develop into caring, respectful, responsible individuals who make positive choices based on ethical reasoning and a well-developed sense of service, civic involvement and philanthropy."

An education conference would not be complete without exhaustingly long topic titles, and Kelly dutifully recorded the ones used at the summit. They sound like retreat tracks at Our Lady of the Whispering Woods: "Weaving Moral and Emotional Literacy into the Fabric of the School Community," "Creating a Caring Culture," "Building Character School-wide," "Navigating the Heart through Character Education."

Panelists also learned about the model "character-education mission" of Cleveland's John Marshall High School:

> When we at John Marshall identify persons as having "good character," we are saying that they adhere to a set of *behaviors and beliefs* which our culture commonly holds as desirable. Our goal is to produce citizens who are equipped with all the skill needed to thrive in the 21st century. We believe this includes *knowing that which is right and good, desiring these attributes and acting upon them.* [emphasis added]

According to Kelly's brief, the character-education movement that now exists in public schools throughout the country means that taxpayers already fund the promotion of "a set of behaviors and beliefs." So, why can't they fund Catholic behaviors and beliefs?

Back to the Brief

When religion and daily life were split apart in American public schools, the unintended consequences were disastrous. American corporations have seen the effect in the difficulty they have finding honest, disciplined employees with a healthy work ethic. Doctors have seen it in the explosion of

venereal diseases and emotional problems. Police know it all too well.

So do Ohio's public schools. As Kelly puts it in his brief, "Facing a crisis of character among youth that is attributable in significant part to a decades-long absence of effective character formation within their schools, Ohio public school officials have embraced character education and service learning models similar to those for which private religious schools are renowned." But, in so doing, Kelly argues, "the State of Ohio compels students and their families who cannot afford tuition at the private religious schools of their choice to participate in public school religious instruction, community service projects, and school-wide celebrations that resemble the activities of a full-fledged parish community or civic organization."

The question before the High Court is whether a Cleveland program that gives the low-income parents of about 4,000 students private-school vouchers of up to $2,500 per year is tantamount to the establishment of an official religion. The Court need only look at what the state is already funding.

"I support public school character education," Kelly says. "However, not when public schools are granted a monopoly on character education. That's establishment."

Legislative Losses

Kelly and other voucher supporters now hang their hopes on the Court. That's understandable. Vouchers have fallen flat on their faces in state legislatures, and state polling booths, even with suburban money and city muscle behind them. Even with Church support.

FORECASTING THE SUPREME COURT VOTE

"School choice will probably win by a 5-4 or perhaps 6-3 vote," says Kevin Hasson, president of the Becket Fund for Religious Liberty in the Washington, D.C., area. "Three justices are intractably opposed to it: justices John Paul Stevens, Ruth Bader Ginsberg, and David Souter. The four justices who are solidly in favor are Chief Justice William Rehnquist and justices Antonin Scalia, Clarence Thomas, and Anthony Kennedy."

That leaves justices Sandra Day O'Connor and Stephen Breyer. "There is every reason to think that Justice O'Connor will vote in favor of school choice in this case," Hasson says, "because in an earlier phase she voted in favor of letting the Cleveland program continue to operate while the courts scrutinized it. While that does not formally lock her in, and she is free to change, it is a strong indication of her thinking. Justice Breyer's vote in the most recent church-state case, *Mitchell v. Helms,* suggests that he might possibly join [school choice supporters] and provide a sixth vote."

The decision will be announced in the last week of June. The Court's term ends before July 4, and the cases that generate the most detailed dissents are typically released in the last couple days of the term. *T.H.*

There's a reason for that, says Peg Luksik, who heads the National Parents Commission education apostolate in Johnstown, Pennsylvania. As a three-time candidate for governor of Pennsylvania, she has learned that the campaign for vouchers is a losing cause. "It unites your opposition and divides your base," she explains. "When you talk about vouchers, you are directly attacking what the NEA would consider its power base." The union doesn't just have a big parade budget. In an election, it can turn out money and voters like few others.

Conversely, vouchers support is like Jim Kelly's ragtag band of civil rights marchers, she said. The enthusiasts are hard-pressed to find sustained backup. The natural constituents, poor parents, have no money and no time. And those who do have the money are divided on the issue. Some parents mistrust government money and don't want it in the Catholic schools. Others simply don't have a problem with public schools in the first place. Most simply haven't been taught that they have an obligation to provide a Catholic education to their kids.

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This political reality turned what had first looked like a surefire "compassionate conservative" winner into a ballot-box bomb by the year 2000. Eleven months after Kelly marched in Atlanta, vouchers went down to near total defeat in referendums in California—where they had few friends—and Michigan, where Detroit's Adam Cardinal Maida pulled out all the stops to promote them.

The Catholic Duty

If more parents were like Marie Lambert, school choice would be issue number one in America. She understands the importance of a Catholic education. "It's hard to be Catholic in Atlanta," she says. "And it's horrible to be black and Catholic in Atlanta."

Lambert's motivation for sending her children to Catholic school isn't a personal whim. The duty to educate children in the faith is a teaching the Catholic Church has reiterated throughout the 20th century. The *Catechism of the Catholic Church* neatly sums it up in paragraph 2228: "As far as possible, parents have the duty of choosing schools that will best help them in their task as Christian educators. Public authorities have the duty of guaranteeing this parental right and of ensuring the concrete conditions for its exercise."

Opposite page, the U.S. Supreme Court. Front row, from left, associate justices Antonin Scalia and John Paul Stevens, Chief Justice William H. Rehnquist, and associate justices Sandra Day O'Connor and Anthony Kennedy. Back row, from left, associate justices Ruth Bader Ginsburg, David Souter, Clarence Thomas, and Stephen Breyer Photograph by Richard Strauss, Smithsonian Institution, courtesy of the Supreme Court of the United States

It must be said that while this teaching motivates parents like the Lamberts and Kellys to embrace Catholic schools, it convinces other parents to avoid them. It's not necessarily true, some critics say, that a Catholic school will give their children an authentically Catholic education. And the problem of secularization at Catholic secondary schools, they argue, will only get worse with vouchers.

Patrick Reilly, head of the Cardinal Newman Society, which promotes Catholic identity in higher education, is familiar with the argument that government funding forces secularization on academia. It doesn't convince him. "Take a close look at Catholic colleges and universities which receive large amounts of federal and state funds," he argued. "Their secularization over the past 40 years has had very little to do with government discrimination and much more to do with voluntary decisions to follow prevailing trends in higher education." Brigham Young, for example, hasn't been secularized by its willingness to receive government money. It simply refuses to be. Catholic schools, Reilly says, should be aware of the threat—and use the might of a nationwide network of families to shape the laws that safeguard identity.

It's About the Poor

For Jim Kelly, the school-voucher question isn't about delivering money to Catholic schools anyway; it's about delivering education to people like the Lamberts.

"The situation was so desperate, educationally, in urban communities that anyone who came speaking the truth was welcomed with open arms," he remembers. "They've been frustrated for 25 years. It's almost like being led out of Egypt. The exodus story is a very powerful analogy to vouchers."

That's what keeps him squinting at books late at night as he does legal work on behalf of school choice. And that's what put him on the streets of Atlanta in a T-shirt in winter, chanting "Let our children go!" over the sound of the whistling union hordes.

Stacey Lambert is why. The 14-year-old says her life would be very different if she had been stuck in public school.

"The people there," she says gingerly, not meaning to offend, "would be more...not good to have as friends." She searched for the right words to explain. "They would have already learned a lot of things that aren't good."

Life at Catholic school is more like life at home. "We pray a lot in our home, and we pray in the car when we're about to go somewhere," Stacy says. "And at Marist, we pray every morning at school." ✦