

# Issue Brief

## Stunting Growth: The Impact of State-Imposed Caps on Charter Schools

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**25 states and the District of Columbia have some type of limit on charter school growth.**



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Elm City College Preparatory School got off to a remarkable start. When this New Haven, Connecticut charter school opened in the fall of 2004, 26 percent of its incoming students read at or above grade level – all too familiar results in schools serving predominantly low-income populations. By May 2005, though, Elm City had accomplished an educational wonder: 96 percent of its students were reading at or above grade level, an astounding increase of 70 percentage points in only one school year.

Given the debilitating achievement gaps across the country, schools like Elm City should be encouraged to flourish and multiply. There's one problem, though: Many states have imposed artificial limits on charter school growth. In 10 states, such caps are a severe constraint on charter schools' ability to serve families who need them now. Although there are other barriers to charter expansion, none looms larger than these state-mandated limits.<sup>1</sup>

Most caps restrict the number of schools, but some, like Connecticut's, actually restrict the number of students that a single school can serve. Elm City, for instance, is currently configured as a K-8 charter school. In its second year of operation, it already has 256 students in grades K, 1, 2, 5, and 6. If the state-imposed enrollment limit of 300 students is not lifted, the school will soon have to stop admitting new students and will not be able to fill out its full K-8 grade structure. Where will these students go?

<sup>1</sup> National Alliance for Public Charter Schools

# As charter schools have proven their worth, policymakers in some states have significantly raised limits on charter growth.

The demand for charter schools like Elm City shows no sign of letting up. In 2002-03, 39 percent of charter schools reported having a waiting list, averaging 135 students.<sup>2</sup> If the charter movement could accommodate all of those students today, its population would be about 20 percent larger and could fill over 700 new charter schools.<sup>3</sup>

Caps resulted more from political trade-offs than from widespread agreement about what makes good education policy. When many states enacted charter laws, charters were the new kid on the public education block. Some state leaders were concerned about the pace of charter growth as well as charters' impact on existing districts. To get charter laws passed in the face of these concerns, policymakers imposed limits.

As charter schools have proven highly successful and wildly popular with families, policymakers in some states have significantly raised limits on charter growth – as in California – or eliminated them entirely – as in Colorado and Minnesota. However, in other states the growth of charter schools has intensified opposition, making future expansion uncertain. New York City Schools Chancellor Joel Klein's ambitious plans for charter growth, for instance, can go nowhere unless the state cap of 100 charters is

lifted. And despite a drumbeat of good news about student achievement in Massachusetts' urban charters, growth is stifled in the Bay State due to rules that limit the amount of money that can follow students from districts into charters – even when students abandon low-performing district schools for high-performing charters.

## Fact

- ▶ Fifteen years into the movement, 25 states and the District of Columbia still have some type of cap on charter schools. These limits are constraining charter school growth in at least 10 states.

To meet the increasing demand for high-quality public school options, states must eliminate these restrictions and use other policy initiatives to ensure that new charter schools are of high quality. To inform these efforts, this issue brief documents the variety of limitations on charter growth that now exist in state laws, identifies the states where such limits are most severely constraining charter school growth, and provides policy recommendations for eliminating those constraints.



# An Array of Artificial Limitations

States have used a variety of strategies, some straightforward and some convoluted, to keep a lid on charter growth. Fifteen years into the charter movement, in fact, 25 states and the District of Columbia still have some type of limit on charter school growth – with some states imposing more than one kind of restriction. A brief summary of these limitations is presented below. For a look at which caps exist in each state, please see page seven.

## **Number of Charter Schools in a State:**

Sixteen states limit the total number of charter schools that may operate. Some restrictions specify the total number of schools for the whole state. For example, Alaska allows 60 charters to operate. Others provide both a total number for the whole state and total numbers for specific parts of the state. Illinois, which has over 4,000 traditional schools and 2.1 million students, allows 60 charters to operate throughout the state – 30 in the 630-school Chicago Public Schools, 15 in the Chicago suburbs,

## **The biggest constraints on charter school growth across the country are state-imposed caps on charter activity.**

and 15 in the rest of the state. If all 60 of these schools were open today, they would be collectively serving about 30,000 students, slightly more than one percent of the state's public school student population.<sup>4</sup>

## **Number of New Charter Schools Per Year(s):**

Seven states restrict the number of new charter schools that may open per year. In Washington D.C., for instance, no more than 20 new charter schools may open annually. New Mexico not only limits the number of charters that may open per year to 15 start-ups and five conversions, it also caps the number of charters that may open over any five-year period to 75 start-ups and 25 conversions.

## **Number of Charter Schools Approved by Particular Authorizers:**

In 11 states, there are limits on the number of charters that may be approved by particular authorizers – i.e., those entities that approve and oversee charter schools. Indiana, for example, limits the number to five of charters that the Mayor of Indianapolis may approve each year.

In Michigan, state universities may authorize up to 150 charters, with no single university authorizing more than 50 percent of the 150.

## **Number or Percentage of Students in Charter Schools:**

Four states limit the number or percentage of students in charter schools. A couple of states restrict the number of students that may enroll in individual schools. For most state board of education-approved

## Fact

▶ Seven states place a cap on the number of new charter schools that may open per year.

charters in Connecticut, for example, the limit is 250 to 300 students or 25 percent of the enrollment of the district in which the school is located, whichever is less.<sup>5</sup> Other states restrict the percentage of students in a state that may enroll in charter schools. For instance, charter schools cannot serve more than four percent of Rhode Island's school age population.

### Miscellaneous Limits:

Five states have unique limits on charter school activity. Rhode Island has enacted a moratorium that prohibits the State Board of Regents from granting final approval for any new charter school to begin operations in the 2006-07 school year. In

Massachusetts, a school district's payments to charters cannot exceed nine percent of their net school spending.

Missouri only allows charter schools to open in the Kansas City and St. Louis school districts. While the state allows an unlimited number of start-up charters to open in these districts, it only allows a maximum of five percent of the operating public schools in each of them to be converted to charters.

Oklahoma permits charter schools to open in just 13 of its over 500 districts. Tennessee only allows charter schools to serve four types of students.<sup>6</sup>

## Ten States That Are Stifling Charter School Growth

State-imposed limits are severely constraining charter school growth in 10 states – eight of which were at their caps at the beginning of this school year (CT, HI, IA, MA, MI, NC, OH, RI) and two of which will likely hit them during this school year (IL, NY).

For most state board of education-approved charters, **Connecticut** allows a maximum of 250 to 300 students or 25 percent of the enrollment of the district in which the school is located – whichever is less. Many charters have hit the ceiling and can't enroll additional students.

**Hawaii's** cap of 23 start-up charter schools has been reached.

In Chicago, **Illinois**, the ambitious Renaissance 2010 reform plan, backed by the mayor, requires more charters than are available under state restrictions. There are currently 26 charters open, with room for four more. However, under Renaissance 2010, Chicago will close up to 20 high schools and 40 to 50 elementary schools and reopen them as 100 or more small schools within six years. One-third of the new schools will be charter schools, one-third will be contract schools, and one-third will be "performance schools" operated directly by the district. The district will likely hit its charter school cap during this school year, potentially causing a major delay in this desperately needed reform initiative.



**Iowa's** cap of 10 conversion charter schools has been reached.

**Massachusetts'** charter law provides that a district's payments to charters cannot exceed nine percent of its net school spending. Approximately 150 of 500 districts are at or near this restriction, including the Boston Public Schools, where there is a high demand for charters because of their success. Without a change in the cap, the State Board of Education – the state's primary authorizer – is unable to approve new schools in these districts. In Boston, this limitation, in combination with the district's school selection system, "compels parents to send their children to failing schools."<sup>7</sup>

In **Michigan**, state universities have authorized 150 schools, the maximum that they are allowed to sponsor. While local school boards, intermediate school boards, and community colleges may authorize an unlimited number of charter schools there, state universities have conducted most of the authorizing activity to date. With the universities at their capacity, the state doesn't expect robust growth until these restrictions are lifted. The cap also means that



Central Michigan University, a highly effective authorizer that recently won a perfect score in a state oversight review, is prohibited from sponsoring any more schools.

In **New York**, 91 charters have been issued, leaving nine available within the state's cap of 100 start-up charters. According to recent estimates, more than 20 applications are being actively considered for the remaining slots. In New York City, these limits are a significant barrier to an initiative backed by the mayor and the schools chancellor to more than double the number of charter schools in the city from 47 to 100.

**North Carolina's** cap of 100 charters has been reached.



**Ohio** limits growth over the next two school years to 30 new charters authorized by non-district entities plus 30 new charters authorized by districts. At the current time, there is no room under these restrictions for more schools to open. However, operators of charter schools with a track record of success are not subject to these limits.

**Rhode Island's** moratorium prohibits the State Board of Regents from giving final approval for any new charter school to begin operations in the 2006-07 school year.

## Policy Recommendations

As the charter movement heads into its next phase of development, there is widespread agreement that charter school growth must be connected to charter school quality. But after 15 years of charter experience, we can say with assurance that there's 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.

If state leaders are sincerely concerned about charter quality, they should look for "direct impact" and address problems that clearly affect quality. Rather than imposing artificial



limits on growth, for example, state leaders will get more bang for their quality buck by working with authorizers to establish rigorous application processes, firm but supportive oversight mechanisms, and reliable, transparent processes for funding and renewal.

Fixing the pervasive problem of inadequate facilities funding would provide another direct impact. When charters need to spend operating dollars on bricks and mortar, the effort to build achievement can falter. Additionally, if charter results are less robust, charter supporters should work to strengthen the performance of those schools that can be turned around and to close schools that are beyond help. Chartering is a vital option for improving public education for all students in all states. So the ideal situation is no artificial restrictions on

## Fact

▶ 39 percent of charter schools reported having a waiting list, averaging 135 students.

▶ Four states limit the number or percentage of students in charter schools.



charter growth. In pursuit of that ideal, we recommend the following:

### 1. Never Limit Quality Schools and Authorizers.

While charter supporters work to eliminate caps, high-performing charters should be exempted from existing limits, as they are in Ohio. Excellent charter schools should be allowed to open either multiple campuses under current charters or new schools under additional charters. States should also give high-quality authorizers, who are effectively carrying out their responsibilities, the option of chartering new campuses.

### 2. Include Sunset Provisions.

If states expand existing caps instead of eliminating them, they should place sunset provisions in the law delineating when these limits will expire. For example, Colorado's charter school law includes the following provision: "No more than sixty charters shall be granted prior to July 1, 1997."

### 3. Make New Charter Laws Free of Limits.

10 states have not yet enacted charter school laws. If and when they do, such laws should not contain artificial limits on charter school growth, but should instead use other means to ensure a prudent pace of expansion in high-quality charters over time.

### 4. Create a Federal Role.

The federal government can encourage states to remove these limits in at least two ways. First, the Federal Charter School Program contains priority criteria that the U.S. Department of Education uses to award grants to states. The program should use the absence of artificial constraints on the pace of chartering as a positive criterion in determining which states get priority for grants.

Second, the No Child Left Behind Act requires districts to offer students in schools "in need of improvement" the option to transfer to a different public school. Several states have limited options for such students, but also restrict the charter school sector from creating more choices for them. To make the choice provision real for these families, the federal government should encourage these states to remove such restrictions on charter schools – or lose a portion of their federal administrative funding for Title I.

## Conclusion

Fifteen years after passage of the nation's first charter law, it's become clear that artificial limits on charter expansion do not ensure quality, but do limit access to high-quality public school choices for the students and families who are demanding them. States must connect charter growth to charter quality, but by providing the resources, oversight, and accountability that helps charter schools thrive – not by artificially restricting charter growth.

1. While this brief focuses on caps imposed by state charter laws, it is important to note that limits on charter growth occur through other means as well, such as enrollment limits negotiated into charter agreements between authorizers and schools and authorizer-imposed moratoriums on charter growth.

2. Center for Education Reform, *Charter Schools Today: Changing the Face of American Education – Statistics, Stories, and Insights*,

Washington, D.C.: Author, 2004. Based on their current average size. Gregg Vanourek, *State of the Charter Movement 2005: Trends, Issues, & Indicators*, Washington, D.C.: National Alliance for Public Charter Schools, 2005.

3. Based on the state's average charter school size.

4. One state board-approved charter school – the Amistad Academy – that currently enrolls 285 students may increase its

enrollment to 300 students. In Tennessee, charter schools may only serve the following types of students: students who were previously enrolled in a charter school; students who are assigned to, or were previously enrolled in a school failing to make adequate yearly progress, as defined by the state's accountability system, giving priority to at-risk students; students who, in the previous school year, failed to test proficient in the subjects of language arts/reading or

mathematics in grades three through eight on the Tennessee comprehensive assessment program examinations; or students who, in the previous school year, failed to test proficient on the gateway examinations in language arts/reading or mathematics.

5. Steve Poflak, "School choices with consequences," *The Boston Globe*, December 20, 2005.

## Types of charter school limits

While state-imposed limits on charter schools are problematic wherever they exist, they are most severely constraining growth in 10 states. These 10 states are highlighted in **Green**.

	Schools in State	New Schools Per Year(s)	Schools Per Authorizer	Percent of Students in Schools	
AK	↑				60 charters are allowed. 24 are open, with room for 36 more.
AR	↑				Limit of 24 start-up charters. With eight currently open, there is room for 16 more.
CA	↑	↑			850 charters are allowed, with increases by 100 each year. There are currently almost 600 charter schools open.
CT				↑	250 to 300 students per state board of education-authorized charter depending on the grades served or 25 percent of the enrollment of the district in which the charter is located, whichever is less. <sup>8</sup> Many charters have hit their ceilings and can't enroll additional students.
DC		↑	↑		Limit of 20 new charter schools per year – 10 authorized by the D.C. Board of Education and 10 authorized by the D.C. Public Charter School Board.
HI	↑				25 conversion charters and 23 start-up charters are allowed. There are four conversions and 23 start-ups open. Since they have hit the start-up cap, there is only room for 21 conversions.
ID		↑			Allows six start-up charters to open per school year, with not more than one start-up charter per district.
IL	↑		↑		Limit of 60 charter schools, with a maximum of 30 in Chicago, 15 in the Chicago suburbs, and 15 in the rest of the state. These restrictions are a significant problem in Chicago, where there are currently 26 charters open, with room for four more. The district will likely hit its charter school cap during this school year, potentially causing a major delay in the mayor's Renaissance 2010 initiative.
IN		↑	↑		The mayor of Indianapolis may approve no more than five charters per year.
IA	↑				Allows 10 conversion charters, with not more than one per district. This cap has been reached.
LA	↑				Allows 42 charter schools. However, those charters authorized in the statewide recovery school district by the state board of education are exempt from this cap
MA	↑		↑	↑	Limit of 120 charters, with 48 reserved for Horace Mann charters and 72 reserved for Commonwealth charters. There are currently 57 charters open – eight Horace Mann charters and 49 Commonwealth charters. Commonwealth charters cannot serve more than four percent of the state's public school population. They currently serve about two percent. A school district's payments to charters cannot exceed nine percent of their net school spending. Approximately 150 of 500 districts are at or near this restriction.
MI			↑		State universities may authorize 150 charters, with no single university authorizing more than 50 percent of the 150. While the state universities have hit this cap, they may still authorize 15 charter high schools in the Detroit School District.

	Schools in State	New Schools Per Year(s)	Schools Per Authorizer	Percent of Students in Schools	
MS	▲				Six charters are allowed. One is open, with room for five more.
MO				▲	Only allows charter schools to open in the Kansas City and St. Louis school districts. While there is no cap on start-ups, no more than five percent of the existing public schools in each district may convert to charters. The biggest constraint on growth, though, is that the state prohibits charters from opening up in other districts.
NV	▲		▲		While Nevada allows an unlimited number of charters serving at-risk students, it limits those for non at-risk students to 23 – six in Clark County School District (Las Vegas), two in Washoe County School District, and one each in the remaining 15 school districts. There are currently three such schools open in Clark County, two in Washoe County, and one in the Carson City School District. These limitations expire on June 30, 2006.
NH	▲		▲		Through a pilot program, the state board of education can grant up to 20 charters by June 30, 2013. Six are open, with room for 14 more. Separate from the pilot program, allows up to 10 charters approved by a local school board and the state board.
NM		▲			Allows 15 start-ups and five conversions per year and 75 start-ups and 25 conversions over five years. There are currently 51 charters open.
NY	▲		▲		Cap of 100 start-up charters – 50 by the State University of New York and 50 by the State Board of Regents. 91 charters have been issued, leaving nine available. According to recent estimates, more than 20 applications are being actively considered for the remaining slots.
NC	▲	▲			Allows 100 charters, with five charters per district per year. The state has reached its cap.
OH		▲	▲		30 new charters authorized by non-district entities plus 30 new charters authorized by districts over the next two school years - 2005-06 and 2006-07. All 60 of these charter schools have opened. Operators of charter schools with a track record of success are not subject to these restrictions, though.
OK				▲	Only allows charters to open in 13 of its over 500 districts.
RI	▲		▲	▲	20 charters are allowed. Charter schools may serve no more than four percent of the state's school age population. The state board of regents cannot give final approval for any new charter school to begin operations in the 2006-07 school year.
TN	▲		▲		Limit of 50 charters, 20 of which must be located in Memphis and four of which must be located within Shelby County. There are currently 10 charters open in Memphis and zero in Shelby County. Also only allows charter schools to serve four types of students. <sup>9</sup>
TX	▲		▲		The state board of education can approve up to 215 charters. The state board granted 13 new charters this past fall, leaving room for just six more charters under the cap.
WI			▲	▲	For the most part, there are no caps in Wisconsin. However, the University of Wisconsin-Parkside may only sponsor one charter school in the Racine School District that may not enroll more than 400 students. The university has sponsored its one school, which is nearing its enrollment capacity.