

C APITAL C OMMENTARY

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A Supreme Victory for Religious Freedom

The U.S. Supreme Court made history on June 27th. In a landmark decision, the Court affirmed the constitutionality of Cleveland's voucher program that permits low-income families to choose religious and other nongovernmental schools for their children's education using public tax dollars. The ruling is a major victory for educational and religious freedom and has far-reaching implications.

First, states are now free to move ahead with their own parental choice initiatives. Besides Cleveland, school voucher programs also exist in Milwaukee (serving about 10,000 students), Florida, Vermont, and Maine. In the past year alone, state legislatures in 12 states also considered parental choice proposals. Only hours after the decision was announced, leaders in Congress moved to reintroduce voucher legislation for Washington, D.C. schools that Congress formerly passed but President Clinton subsequently vetoed.

The Court's decision opens the door for the biggest reform of America's education policy since the 1950s. The ruling affirmed that there is no federal constitutional reason why the government cannot fund the tuition at a wide range of schools, including schools run by a diverse range of community and religious associations that educate children in distinctive ways. The Court has effectively redefined the meaning of "public" education to include other community-serving schools that have consistently been denied the same status and access to tax funding enjoyed by their public school counterparts. This judgment ends the preferred status and monopoly control of funding that has, for decades, been given only to secular government-owned and -operated schools.

Second, this ruling marks a major turning point in how government relates to religion in public life. The court has taken a bold step toward ending decades of discrimination against religious schools that has wrongly been done in the name of the "separation of church and state." States now have a green light to adopt new programs like Cleveland's that permit families to choose faith-based schools to educate

their children in accord with their own religious convictions. The Court rejected the idea that this is an establishment of religion. According to the majority opinion, written by Chief Justice Rhenquist and endorsed by Justices O'Connor, Kennedy, Scalia, and Thomas, the First Amendment in no way prohibits public funding for religious schools as part of carefully designed voucher programs. Parents freely choose among many options for their children. The government neither favors nor disfavors religious schools. Thus the government cannot reasonably be accused of "establishing" or advancing religion in violation of the First Amendment.

Finally, this decision is already reverberating far beyond its immediate context of education policy. The church-state landscape in America is now fundamentally shifting. Defending the decision, Judge Rhenquist cites a long string of cases beginning two decades ago that reject the extreme strict separationist reasoning that unjustly forces religion into the closet of private life. The legacy of separationism's anti-religious bias lives on in the Ninth Circuit's recent opinion declaring the Pledge of Allegiance unconstitutional. The voucher ruling shows a new paradigm taking hold that treats all religious institutions with equal respect in public as well as in private, in keeping with religious freedom and the Constitution.

The implication for efforts like the President's Faith-based and Community Initiative is obvious. Just as there should be no law against religious schools using vouchers to educate the public, so also are faith-based social service organizations on solid constitutional ground when they provide drug treatment, job training, and a whole range of services through publicly funded vouchers. This is true religious freedom worthy of celebrating on this July 4th.

—Stephen Lazarus
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