NATIONAL REVIEW ONLINE

In Alabama, a Victory for School Choice

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March 5, 2015

The Left's war against parental choice in education suffered a major setback on Monday, when the Alabama supreme court ruled that the state's school-choice law is constitutional.

In 2013, Governor Robert Bentley (R.) signed the Alabama Accountability Act (AAA), which allows low-income students assigned to persistently low-performing district schools to apply for scholarships to attend the schools of their choice. Like scholarship tax-credit laws in other states, the AAA grants tax credits to individual and corporate taxpayers who donate to the nonprofit scholarship organizations that aid those students. Uniquely, the AAA also included a voucher-like provision that granted refundable tax credits directly to low-income families.

Predictably, defenders of the government's near-monopoly over K-12 education immediately ran to the courts to prevent any children from escaping. The Southern Poverty Law Center filed a lawsuit in federal court, absurdly claiming that the AAA violated the U.S. Constitution's Equal Protection Clause because it failed to rescue all children from low-performing district schools. In other words, the SPLC argued that the U.S. Constitution would prohibit any incremental reforms to address social problems. Fortunately, the federal judge dismissed the SPLC suit, holding that the "equal protection" it sought was, "in effect, equally bad treatment."

The Alabama Education Association, the state's largest teachers' union, also filed a series of separate lawsuits challenging the AAA in state court. The Alabama supreme court dismissed the first two union lawsuits, which had challenged the law on procedural grounds. In its third attempt, the union raised ten legal claims in a desperate spaghetti-against-the-wall gamble. A few of them stuck in a lower court, but the state supreme court rejected all ten in a 222-page decision. The Institute for Justice, which successfully defended the AAA on behalf of low-income scholarship recipients, provides a helpful summary of all ten legal claims at its website, but one is worth highlighting because it is relevant to anti-school-choice cases pending in other states.

The union alleged that the AAA violated the state constitution's two historically anti-Catholic Blaine Amendments, which prohibit the government from making appropriations of public funds to religious schools, and require a two-thirds majority to make an appropriation to "any charitable or educational institution not under the absolute control of the state." While opponents of school choice have had some success with this argument against voucher laws, scholarship tax-credit laws have withstood such challenges every single time. As the Alabama supreme court ruled, a "tax credit to a parent or a corporation . . . cannot be construed as an 'appropriation'." The court cited the U.S. Supreme Court's decision in ACSTO v. Winn that when "taxpayers choose to contribute to [scholarship organizations], they spend their own money, not money the State has collected." Private funds do not become government property until they "come into the tax collector's hands."

The second component of the AAA, which grants "refundable" tax credits to low-income families with children assigned to low-performing schools, is a hybrid of personal-use education tax credits and vouchers. While the tax credits themselves do not constitute public funds, the "refundable" credits are a public subsidy. However, following the reasoning of the U.S. Supreme Court's decision in Zelman v. Simmons-Harris, the Alabama supreme court noted that this is subsidy for parents and students, not for schools. Moreover, the AAA had the primary secular purpose of expanding educational opportunity, it is neutral with respect to religion, and "any aid that may ultimately flow to a religious school as a result of the [AAA] will do so only as a result of the private decision of individual parents rather than flowing directly from the state." [Emphasis in the original.]

The Alabama supreme court had previously upheld the constitutionality of a higher-education tuition voucher — a state version of the Pell Grant — that students could use at Alabama colleges, secular or religious. The court found no compelling reason to treat the subsidy of a 17-year-old attending a religious high school differently from a subsidy to an 18-year-old attending a religious college.

The Alabama supreme court's decision adds to the growing consensus of high courts upholding the constitutionality of school-choice laws. Let's hope that the state supreme courts in Florida and Georgia take note.

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