

## **Charles M. Arlinghaus: I'm with Washington Post on school choice**

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Bobby Jindal and the ACLU are having a fight in these opinion pages. Guess whose side I'm going to take? I agree with Gov. Jindal, and we both agree with The Washington Post, which wrote: "What shouldn't get forgotten in this seemingly endless fight are the people with the most at stake: parents who simply want what's best for their children." The issue that unites me and The Washington Post is the lawsuit over the state's much-admired school choice scholarship program.

The state crafted legislation in 2012 that created an education tax credit for businesses that chose to donate to a scholarship organization. Those organizations then award scholarships to lower-income students who may choose any public or private school in the state. The goal of the program, as with most school choice programs, is to give students of modest means more choices and therefore more educational opportunity.

The ACLU immediately sued the state to overturn the law. A lower court let the program proceed as long as religious schools were excluded. The lower court explained in its ruling that the issue would ultimately be settled by the state Supreme Court, which heard the case last week.

The Washington Post has not weighed in on our own program here, but is a supporter of a broader program called the "D.C. Opportunity Scholarship Program." The Post points out that children of the privileged in Washington have a variety of educational options and are never limited to the one school assigned by their zip code.

In New Hampshire, as in the District of Columbia, rich people have school choice. Poor people don't. The wealthy can choose among many options to find the best educational fit for each child — quite often different schools in the same family. Poorer students don't have those options.

Critics contended that the New Hampshire scholarship program would not help the poor, but would be used by wealthier families only. The facts are different. Former state rep. Jason Bedrick (a former Josiah Bartlett Center policy fellow), now a researcher for the Cato Institute, found that 91 percent of scholarship recipients qualify for free or reduced lunch.

Bedrick's study (for another state think tank) is posted on our website and encourages other states to consider replicating the success of New Hampshire's program.

The ACLU has argued oddly that the program will "inflict large fiscal losses on municipalities."

Perhaps the ACLU didn't notice the provision in the law that limits the impact on any school district to one-quarter of one percent of its prior budget. Hardly a large fiscal loss.

Opponents of the program contend that schools with any religious affiliation should be excluded. Some choices, they suggest, parents should not be permitted to make. They contend that a tax credit is the same thing as a government grant. History, experience, and the state Supreme Court have suggested the opposite.

There has long been a distinction between tax credits or exemptions and direct grants from the state treasury. Consider that every church is granted a complete exemption from taxation, not just a credit, under state law. This is not a school or an ancillary facility, but the actual house of worship. That's OK because it isn't an actual tax payment, just an exemption or credit. It falls into an entirely different category from the collection and direct granting of money.

Because the court has never ruled directly on school choice, we undertook an examination of the existing "opinions of the justices," advisory opinions without the same standing as ruling because they are not the result of both sides making an argument and marshalling their cases.

It is likely the court ruling would agree with the 1955 court that allowed a nursing education program at religious institutions because "members of the public are not prohibited from receiving public benefits because of their religious beliefs or because they happen to be attending a parochial school." In short, it is important not that programs discriminate, but that they don't discriminate.

In contrast, opponents are in the position of saying the scholarship organization must actively discriminate against schools that happen to also teach religion. The law, in their opinion, must under no circumstance be neutral.

The better choice is to try and do what's best for children. As Bobby Jindal said "parents are the first and best educators and should be allowed to make the best decisions for their children. Every child learns differently; that is why choice and competition are so important in education."

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