Private School Choice Advocates Cheer U.S. Supreme Court Ruling

Lauren Camera

June 26, 2017

Private school choice advocates cheered a ruling by the U.S. Supreme Court Monday, which they framed as a big win for their long-term goal of increasing access to educational options for the most underserved students, including at religious schools.

The justices ruled 6-3 that the state could not refuse a playground grant to a church solely because the church is a religious institution. Advocates of private school choice programs, which allow students to use public dollars to enroll in private schools, including religious schools, considered the ruling a proxy win over voucher opponent claims that public funds shouldn't go to religious schools, and one step closer to challenging the constitutionality of provisions in place in 39 states that prevent them from doing so.

"This decision marks a great day for the Constitution and sends a clear message that religious discrimination in any form cannot be tolerated in a society that values the First Amendment," said Secretary of Education Betsy DeVos in a statement. "We should all celebrate the fact that programs designed to help students will no longer be discriminated against by the government based solely on religious affiliation."

At issue in Trinity Lutheran Church of Columbia, Inc. v. Comer was the right of a church in Missouri to receive a state grant to improve the safety of its playground. The church argued that the state violated the U.S. Constitution by discriminating against a religious institution when it denied the church's grant application.

Advocates were particularly heartened by Justice Neil Gorsuch's concurrence, in which the newest justice called denying a public benefit to a religious entity solely because it is religious "odious to the Constitution," and wrote that "the general principles here do not permit discrimination against religious exercise—whether on the playground or anywhere else."

Leslie Hiner, vice president of programs at EdChoice, an Indiana-based organization that supports private school choice policies, said that parents using educational choice options to send their children to faith-based schools should "find comfort" in the ruling.

"We do not yet know how this standard might be applied to educational choice programs moving forward, but we are hopeful that this ruling might help knock down barriers in states that prohibit K-12 student from accessing faith-based schooling options," she said.

Indeed, the decision was narrowly written and does not address private school choice programs, including vouchers, tax credit scholarships and education savings accounts.

“This case involves express discrimination based on religious identity with respect to playground resurfacing,” Justice John Roberts wrote for the majority. “We do not address religious uses of funding or other forms of discrimination.”

The majority of students who receive a voucher or scholarship tax credit to enroll in a private school go to religious schools, in some states upwards of 90 percent.

Proponents of such programs had hoped the court would go a step further and issue a broader ruling that put into question the constitutionality of so-called Blaine Amendments, provisions in 39 states that prevent public dollars from flowing to religious organizations.

But that was not the case.

As Neal McCluskey of the Cato Institute pointed out, both Gorsuch and Justice Clarence Thomas underscored in their concurring opinions that the court’s decision keeps in place the 2004 ruling in Locke v. Davey that a state can deny a student a scholarship otherwise available to him because he planned to study to become a minister.

While the decision “strikes a blow against patently unequal treatment of religious Americans under state laws,” McCluskey said in a statement, “it does not yet get us to where we need to be.”

The two national teachers unions were quick to refute claims by private school choice advocates that the ruling is a good harbinger for future legal decisions.

“This ruling should not be read beyond what it is—a narrow decision about whether a church can get public funds for a playground that would be available to all,” added American Federation of Teachers president Randi Weingarten. “The Supreme Court’s *Trinity* decision cannot be read as opening the door for states to promote religion or expand vouchers.”

Lily Eskelsen Garcia, president of the 3-million member National Education Association went a step further, calling the ruling “a big setback” for voucher proponents.

“We applaud the Supreme Court’s refusal to accept the invitation of voucher proponents to issue a broad ruling that could place in jeopardy the ability of states to protect their public education system,” she said in a statement. “State constitutional provisions and decades of precedent protect our public education system from voucher programs.”