



Newsire - June 28, 2002 - Special Supreme Court Victory Edition

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Vol. 4, No. 25 VICTORY FOR PARENTAL CHOICE: The Court has spoken. In a much anticipated ruling, the U. S. Supreme Court left no doubt whether or not policymakers can establish educational programs that allow parents to choose the school that best fits their child's needs, be it public or private. The Court's decision Thursday, determining whether or not parents are permitted to make choices about the education of their children, is among the most important decisions to ever be rendered. (Link to [Full text of U.S. Supreme Court Decision](#).) The Court acknowledged that the context for enacting the school choice program is a major factor in whether or not the state acted within its rights, a point argued in the [brief filed by the Center for Education Reform](#). Indeed, the majority opinion acknowledged that the Cleveland Scholarship Program was only one of a collection of education options available to parents ranging from open enrollment, to magnet schools, to charter schools, and even publicly-funded tutoring. Justice O'Connor emphasized that the Court must look at all options to determine whether the program is valid. The door is now open for other states to follow suit, and since Thursday's ruling we've heard rumblings. (Link here for more about [what choice advocates are saying across the states](#).) This decision will influence the reform efforts of thousands of individuals and groups nationwide that are working to change the way the U.S. delivers education, from that of one, centrally-driven school system, to that of a system of schools that responds first and foremost to families and children. Link here for [more details on the ruling and the Cleveland choice program](#). **BLOB and OPPOSITION RESPONSE:** When you throw open the doors to change, you can generally expect those in the entrenched positions to react negatively. We were not disappointed. Below is just a smattering of responses from the BLOB and their attendant supporters. (We never cease to be amazed by the lack of respect they give parents while revering a system that is continually failing our children.)

"The National Education Association pledges to ...oppose divisive and counterproductive proposals to divert energy, attention, and resources to private school tuition vouchers... We will continue to fight in allegiance with the vast majority of American parents who want good schools in their communities." - *Bob Chase, President of the National Education Association* "Vouchers are bad education policy. Our nation's commitment to public education is longstanding, built upon the principle of open and equal access for all our children. This means these schools – just as public schools are – must be open to all students. They must comply with civil rights laws that protect against discrimination on the basis of race, creed, color, gender or national origin... These schools must meet the same standards required of public schools and report to the public about student achievement, graduation rates and teacher qualifications." - *Sandra Feldman, President of American Federation of Teachers* "Vouchers divert funds from public schools that are already inadequately funded... We will continue to fight voucher programs and advocate for programs that improve education for *all children*." - *Shirley Igo, National PTA President* "A legal ruling will not persuade parents, community leaders and elected officials to change their minds about opposing the use of public money in private schools." - *Julie Underwood, National School Board Association General Counsel* "[T]oday's ruling is very disappointing and could prove to be quite damaging to America's public and private education system in years to come... vouchers may hurt both public and private schools..." - *Dr. Gerald N. Tirozzi, Executive Director, National Association of Secondary School Principals* "Private school vouchers may pass constitutional muster, but they fail the test when it comes to improving our nation's public schools... It's flat wrong to take scarce taxpayer dollars away from public schools and divert them to private schools." - *Sen. Edward Kennedy, D-Massachusetts* "Despite what advocates of vouchers may say, we cannot rescue troubled public schools by providing a way for students to abandon public schools." - *Chris Link, Executive Director of the ACLU* "This decision represents a serious crack in



the constitutional wall between church and state...Cleveland and other urban school systems are in tough financial straits. Giving this voucher program a 'green light' only makes that situation worse." *Ralph G. Neas, President of People for the American Way* "The Supreme Court thinks it's all right to force taxpayers to put their money in the coffers of religious schools....America, watch your wallet or it may end up in the collection plate." *-Rev. Barry W. Lynn, Executive Director of Americans United for the Separation of Church and State*

LEGAL ANALYSIS: Since the opposition has not seemed to grasp that their long-used rhetoric is now obsolete, below we provide a summary of the decision drafted by Robert Destro, one of the authors of CER's amicus brief in this case: The United States Supreme Court was tasked with determining whether the Establishment Clause of the First Amendment prohibits Ohio's School Choice Program in Cleveland from allowing parents to use scholarships at any private school, whether religious or not. The majority opinion found that "neutral educational assistance programs that, like the program here, offer aid directly to a broad class of individual recipients defined without regard to religion" are constitutional. The number of students who choose to use that assistance at a religiously-affiliated private school is irrelevant for constitutional purposes. The Court went on to hold that "[t]here is no dispute that the program challenged here was enacted for the valid secular purpose of providing educational assistance to poor children in a demonstrably failing school system." Further, the Court determined that the Establishment Clause question "must be answered by evaluating *all* options Ohio provides Cleveland schoolchildren, only one of which is to obtain a program scholarship and then choose a religious school." The Court also mentioned that "none of the dissenting opinions explain how there is any perceptible difference between scholarship schools, community schools, or magnet schools from the perspective of Cleveland parents looking to choose the best educational option for their school-age children. Parents who choose a program school in fact receive from the State precisely what parents who choose a community or magnet school receive – the opportunity to send their children largely at state expense to schools they prefer to their local public school." Finally, the majority determined that "[a]ny objective observer familiar with the full history and context of the Ohio program would reasonably view it as one aspect of a broader undertaking to assist poor children in failed schools, not as an endorsement of religious schooling in general." In a concurrence, Justice O'Connor stated that the "inquiry requires an evaluation of all reasonable educational options Ohio provides the Cleveland school system, regardless of whether they are formally made available in the same section of the Ohio Code as the voucher program." She insists that the facts are critical in cases arising under the Establishment Clause, saying that failing to look at all of the educational options is "to ignore how the educational system in Cleveland actually functions." In another concurrence, Justice Thomas stressed that "[t]he failure to provide education to poor urban children perpetuates a vicious cycle of poverty, dependence, criminality, and alienation that continues for the remainder of their lives. If society cannot end racial discrimination, at least it can arm minorities with the education to defend themselves from some of discrimination's effects." In one of three dissenting opinions, Justice Stevens stated that the Court should ignore the three most compelling facts:

- The severe educational crisis that confronted the Cleveland City School District when Ohio enacted its voucher program:
- The wide range of choices that have been made available to students within the public school system, and
- The voluntary character of the private choice to prefer a parochial education over an education in the public school system.

Justice Souter's dissent focuses on his objection to the use of *any* public funds to support educational programs run by religious institutions. In his view, the Court is wrong when it focuses on *all* of the funds the State of Ohio makes available for public education as the backdrop for a decision on whether the program is "neutral" with respect to religion. Finally, Justice Breyer dissented to "emphasize the risk that publicly financed voucher programs pose in terms of religiously based social conflict." In his view, the Court's prior interpretation of the Establishment Clause "appreciated the religious diversity of contemporary American society." Link here for a more complete [Decision Summary](#).

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Link here for [full coverage and links on the U.S. Supreme Court Decision and the Cleveland Ohio School Choice Program](#).

