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The ACLU's Hypocrisy on School Vouchers

Rule of Law

By Clint Bolick

Like it or not, the one thing people have had to respect about the American Civil Liberties Union is its consistency. No longer.

When the ACLU went to court in June to block Florida's A+ education reform program, which allows children in failing public schools to attend private schools using vouchers called "opportunity scholarships," it unveiled an argument that contradicts core ACLU tenets: If it harms public schools, the ACLU asserts, it's unconstitutional.

The ACLU has long opposed parental choice in education on the premise that the moment a dollar of public school funds crosses a religious school's threshold, it violates the First Amendment's prohibition against establishment of religion. ACLU officials who are intellectually honest admit this logic also would overturn the GI Bill, Pell Grants, daycare vouchers, private-school aid for disabled students—and even tax exemptions for religious institutions.

But the ACLU's belief in the sacrosanctity of public schools is newfound. It's hard to think of another single organization that over the years that has done more to undermine public schools. Decades of ACLU-sponsored litigation have banished from public schools not only prayer and moments of silence but also strict standards of conduct and decorum.

Over the past two years alone, the ACLU has sued the Portland, Ore., public schools for allowing the Boy Scouts to recruit during school hours; it has argued against "zero tolerance" policies under which students who bring drugs and weapons to school are suspended; and it has backed a suit in Pennsylvania challenging a student's suspension for creating a Web site that threatened teachers. The ACLU's assault on standards and autonomy has contributed to the very public school decline that makes vouchers necessary.

But now in Florida, the ACLU has changed its tune. It argues that "by withdrawing resources from the public schools," the opportunity scholarship program "will prevent these schools from providing a 'high-quality system of' public education" guaranteed by the Florida Constitution.

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Indeed? This is the same organization that filed suit against the Polk County, Fla., public schools seeking $5.8 million in damages for the voluntary use of polygraph tests in student discipline cases. The punitive damages sought by the ACLU in that case alone would "withdraw" from the public schools enough funds to pay more than 20 times the number of opportunity scholarships that will be awarded in the coming school year.

The ACLU itself acknowledges that immunizing public schools from competition and accountability falls outside the definition of civil liberties. When I debated Florida ACLU president Howard Simon in Tallahassee, Fla., in April, he insisted that the ACLU's only concern over vouchers was religious establishment, and declared that an ACLU lawsuit challenging the A+ program would not assert public-school claims. But it does.

Why the conversion? In its Florida litigation—as in previous unsuccessful lawsuits in Wisconsin, Ohio and Arizona—the ACLU has teamed up with special-interest groups that are committed to stopping parental choice such as the National Education Association and People for the American Way. The ACLU literally has ceded lead control over the voucher litigation to the NEA's lawyers, whose aim is protecting teachers' jobs, not civil liberties.

The ACLU isn't alone in straying from its mission. In Florida, the NAACP also has joined the challenge, notwithstanding that its constituents strongly support (and benefit from) parental choice. What's more, if the NAACP prevails, the ruling could jeopardize millions of dollars that flow to black religious colleges in Florida under similar programs at the postsecondary level.

Ironically, when the schoolchildren receiving Florida's opportunity scholarships go to court to defend the program, they will wrap themselves inside the very constitutional provision the ACLU and its allies are using to challenge the program. The A+ program vindicates the guarantee of a high-quality public education: Any child who is consigned to a public school that has received a failing grade from the state in two out of four years may instead attend a better public school or a private school.

In the program's first year, two public schools, both in Pensacola, have qualified for the program. Already, more than 50 children from economically disadvantaged families have been awarded opportunity scholarships to attend private schools in the fall. Dozens more will attend better public schools. Next year, students from at least 100 additional schools may receive similar opportunities.

The education establishment that is so bent on challenging the program in court already has the power to prevent a single opportunity scholarship from ever being issued: produce the high-quality education to which Florida schoolchildren are constitutionally entitled. Either way, no child ever again will be forced to attend a failing public school.

That feature is not only what makes Florida's A+ program the most systemic and promising education reform program in the nation, but also what makes it constitutional. How can a state constitution that guarantees a high-quality education be construed to deny it?

Nor should the ACLU's religion claims prevail. The Florida Constitution forbids aid to religious schools "directly or indirectly." But scholarships to children are not "aid" to schools. Not a single public dollar flows to a religious school unless two intervening steps take place: a public school fails, and a parent chooses a religious school from a broad range of public and private options.

Supreme courts in three other states, applying both federal and state religious establishment provisions, already have upheld programs that add private-school options to the array of parental choices. At bottom, these programs are not about aiding religion, but enlisting private schools to fulfill the mission of public education.

It is understandable that interest groups like the NEA would do anything they can to keep children in public schools, even if they're failing. But that goal is incompatible with any notion of civil liberties. Shame on the ACLU for sacrificing principle for expediency.

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