

Court Erred in Voucher Ruling

By Liam Julian

With its anti-voucher ruling in *Bush v. Holmes*, the Florida Supreme Court's 5-2 majority has outdone itself. In a move breathtaking in its overreach, the Court not only trumped the Legislature, but it also ran roughshod over parents' rights to make decisions about their children's education.

At issue was the constitutionality of Florida's Opportunity Scholarships, which provide students in chronically failing public schools the option of either attending a better-performing public school or receiving a voucher to attend a private school.

The U.S. Supreme Court has already upheld the federal constitutionality of vouchers, so voucher opponents in Florida had to dig deep within state Constitution to find something, anything, to prove the program illicit. They emerged with Article IX, Section 1(a), which simply reaffirms the state's commitment to high quality and well-funded education.

But within a flowery passage, the Court -- a body charged to overturn a law only when its unconstitutionality is *completely* clear and when overruling the statute is *unavoidable* -- found a phantom compulsion to topple Opportunity Scholarships. The majority reasoned that, through the voucher program, the state was "fostering plural, non-uniform systems of education in direct violation of the constitutional mandate for a uniform system of public schools."

Writing in dissent, Justice Kenneth Bell logically pointed out that no constitutional passage "requires that public schools be the sole means by which the State fulfils its duty to provide for the education of children." Such an idea, Bell writes, is total implication.

Worse, it's the wrong implication. Ten other states have within their constitutions explicit prohibitions on giving public money to private schools. If Floridians had wanted such a prohibition in Article IX, they would have put it there in plain English.

If the Court's decision looks awful when evaluated in legal terms, it's far more disappointing when viewed in light of its real-world applications. Ninety-five percent of the 750-odd Opportunity Scholarship recipients are black or Hispanic students, most of them from low-income families. Without vouchers, they are effectively trapped in failing public schools. The state's voucher program gave these youngsters a far better opportunity than they would otherwise have had.

Critics have charged that when a few lucky kids leave and take public money to private schools, it drains money from the public system, makes the bad schools worse, and leaves other students behind to languish in ever-worsening surroundings.

The critics are partially correct. Vouchers do take money out of public schools, but they also take out students and reduce teacher-to-pupil ratios. But most importantly, research has shown that vouchers actually improve the schools most affected by them.

Indeed, a 2003 report by Jay Greene and Marcus Winters of the Manhattan Institute revealed Florida's low-performing schools get better in *direct proportion* to the challenge they face from vouchers. Between 2001-2002 and 2002-2003, voucher-eligible schools (those are chronically failing schools, remember) improved by a statistically significant 9.3 scale score points more than did other Florida public schools.

Martin West and Paul Peterson of Harvard found in a 2005 study that not only did Florida's voucher programs raise state test scores, but they were also far more effective at boosting student achievement than the school choice provisions of the federal No Child Left Behind Act. Solid research unambiguously shows that vouchers, and the competition they generate, help the entire public education system.

What is the Court really protecting? It can't truly believe that Florida's Opportunity Scholarships will threaten public education. The state has steadily increased public school funding in the years since the voucher legislation was enacted.

The Court can't really believe that Opportunity Scholarships make public schools worse. Besides providing relief for hundreds of low-income voucher students and their families, vouchers have helped raise all boats and improve public education.

Nor is there any basis for the Court to think that Article IX, Section 1(a) outlaws vouchers. That portion of the state constitution doesn't mention vouchers or even allude to them.

It's hard to fathom what the Court was thinking, but one thing is certain: This Court's majority bloc has clearly demonstrated its disdain for Florida's elected lawmakers and its distrust of parents' ability to make decisions about their own children's education.

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