

Editorial

"Court must take kids' side on choice"

*By Alan Bonsteel, M.D.
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ORAL arguments were heard Wednesday on the most important U.S. Supreme Court decision of the century—one that ranks with the 1954 *Brown v. Board of Education* ending of overt racial segregation in our public schools or the amending of the constitution to allow women's suffrage.

The fundamental issue of the decision in question is whether low-income and mostly minority families have the same right to choose K-12 religious schools that wealthier families have always enjoyed.

The case arises from the establishment in Cleveland of a school choice program that allows low-income, mostly minority children there to escape from a public school system so horrible that fewer than one-third of its students graduate.

Of the families using the school voucher, more than 90 percent have chosen religious schools, a number only slightly higher than the roughly 85 percent of American private schools that are religious-affiliated. Any Cleveland family in the program objecting to schools that teach moral and ethical values may choose a nonreligious private school or remain in the public schools.

The First Amendment to the U.S. Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

The meaning of that wording is crystal clear -- a school choice program that allowed participants to choose only nonreligious schools would be an unconstitutional abridgement of freedom of religion. The U.S. Supreme Court has already upheld that interpretation in the 1986 *Witters* case in a 9-0 vote in which a theology student won the right to attend a religious school using a Washington state school choice program.

Aside from the clear wording of the First Amendment, the context of that part of the Bill of Rights is equally compelling. At the time the Constitution was ratified in 1788, virtually all K-12 schools were religious, and many received subsidies from local governments.

More than 50 years later, when the first "public" school was established in the United States in 1839, those government-operated schools taught an overtly Protestant ethic.

The notion that the framers of the Constitution intended to limit public funding of education only to nonreligious schools turns history on its head.

The United States already has two major school choice programs at the higher education level that include religious schools –the G.I. Bill of Rights and Pell Grants. The California version of Pell Grants, Cal Grants, also allows the participation of religious schools.

At the preschool level, the federal Child Care and Development Block Grants, passed under the first Bush administration and tripled in size under the Clinton administration, allows the participation of religious schools.

How could it be that school choice including religious schools is permissible at the higher education level and at the preschool level, but nowhere in between?

In fact, voucher programs of many types that allow tax funds to flow to religious institutions based on the free choices of the participants are pervasive in American society. Such programs include Medicare and Medicaid (known as Medi-Cal in California), food stamps, and military and prison employment of chaplains for those who freely choose to attend services.

The U.S. Supreme Court is therefore well aware that it cannot strike down the Cleveland school choice system in any consistent way without tearing apart the very fabric of American society.

Those of us fighting for school reform have a lock on a 5-4 decision favoring the children, and the final vote may go as high as 8-1, with Ruth Bader Ginsburg the only justice the monopolists can count on with any certainty.

America's inner-city public schools are decrepit, morally bankrupt and racially segregated failures. A pro-child decision from the U.S. Supreme Court in the Cleveland case will give the children trapped in these schools hope and a chance at the American Dream.

The United Nations Declaration of Universal Human Rights enshrines the right of parents to direct the education of their children as an inalienable human right. It is now the time to bring America in line with a fundamental civil right that the rest of the world has long since recognized.

---Alan Bonsteel is co-author of "A Choice for Our Children: Curing the Crisis in America's Schools" and president of California Parents for Educational Choice.