



K. Hollyn Hollman
General Counsel

Voucher debate reflects important lines to be drawn in protecting religious freedom

“Religious teachings should be funded by voluntary contributions, not through compulsory taxation.”

Recent congressional hearings aimed at building support for a voucher program in the District of Columbia provided a new opportunity for engaging in an old debate. The idea of publicly funded educational vouchers that can be used for tuition at private schools, including private religious schools, has been debated for decades. For good reasons, however, voucher programs remain relatively rare.

Seven years ago Congress established what became known as the D.C. Opportunity Scholarship Program, the first federally funded, private school voucher program in the United

States. The five-year pilot program provided a voucher of up to \$7,500 for about 1,000 of the District’s more than 45,000 public school students per year. Most of the participating private schools were religious schools. Evaluations of the program from the federal government’s non-partisan General Accounting Office and a congressionally mandated evaluation by a private entity found various problems and little evidence of improved education. Specifically, the studies found that the participants did not come from the schools that were most in need of improvement, many schools that accepted voucher students did not meet accreditation and other quality education standards, and student achievement did not show statistically significant improvement. While the program was phased out in 2008, new efforts are underway to reauthorize and expand the program.

The BJC has long opposed vouchers. While we affirm the right of parents to choose a religious education for their children, we oppose using public funds to support religion. Religious teachings should be funded by voluntary contributions, not through compulsory taxation. Voucher programs that provide tuition to religious schools violate the freedom of conscience of taxpayers who have the right to insist that the government remain neutral in matters of religion. In addition, government funding of religious education tends to jeopardize the autonomy of religious schools, bringing regulations or political pressures that threaten the schools’ religious character.

While the U.S. Supreme Court narrowly

upheld a Cleveland, Ohio, voucher program against a federal constitutional challenge in *Zelman v. Simmons-Harris* (2002), the Court did not say that such programs were required or recommended. Voucher proponents continue to face major hurdles because many state constitutional provisions provide greater protection against public funding of religious institutions. In addition, in most places, public opinion opposes vouchers. Whether couched in constitutional or public policy terms, the church-state concerns raised by voucher programs remain a considerable factor in voucher debates. Religious liberty requires both protecting the right of individuals to pursue a religious education and keeping the government from advancing religion. As in many religious liberty debates, some advocates fail to distinguish between an individual’s right to freely exercise religion and the government’s responsibility not to advance it.

During a recent hearing, Sen. Joseph Lieberman, I-Conn., a long-time voucher proponent, skated right over the difference between a family’s choice to send its child to a religious school and the taxpayer expectation that public money will not be used to advance religion. In response to one witness, he said, “What if instead of the D.C. Opportunity Scholarship Program being funded by tax dollars, some wealthy individual came forward, created a foundation and then created this opportunity scholarship program? I think everybody would embrace it. So what’s the difference that we’re putting public money into this?”

The difference is vast. While there are many ways to reform public education, none of them require or should permit using taxpayer funds for religious education. In recent years, voucher proponents have sharpened their tactics and tailored some proposals to address criticisms. For example, the D.C. program under consideration in Congress couples tuition vouchers with additional funding for public schools. Voucher advocates have done little, however, to allay religious liberty concerns or to demonstrate that vouchers are the answer to the public school problems they purport to address.