

Council for American Private Education

CAPE outlook

Voice of America's private schools



Repeal of Blaine Amendment on Florida Ballot in November

Voters in Florida will have a chance this November to amend the state's constitution in a way that bans discrimination on the basis of religion in the distribution of government funds. The ballot initiative would repeal the state's Blaine Amendment, which prohibits the use of public funds to aid any religious institution directly or indirectly. Because similar amendments appear in state constitutions across the country, the initiative could carry significant consequences well beyond Florida's borders.

Section 3 of Article I of the Florida Constitution states, in part, that no public revenue may be used "in aid of any church, sect, or religious denomination or in aid of any sectarian institution." The proposed amendment would replace that language with the following: "No individual or entity may be discriminated against or barred from receiving funding on the basis of religious identity or belief."

Foresight and Quick Action

The measure got on the ballot thanks to smart thinking by the Florida legislature and quick action by Attorney General Pam Bondi. Responding to a challenge of the ballot initiative by the Florida Education Association, Circuit Judge Terry Lewis in mid-December struck down part of the ballot summary, ruling it was misleading. The original summary described the amendment as "consistent with the United States Constitution," but Judge Lewis said that language should be replaced by "except as required by the First Amendment of the United States Constitution."

Anticipating a legal challenge, the legislature earlier this year passed a law allowing the state attorney general to rewrite a description of an amendment on the ballot if it were disallowed by the courts. Seizing the opportunity of a 10-day rewrite window, Attorney General Bondi drafted and submitted new language to the sec-

retary of state that addressed the judge's concern. "Voters deserve an opportunity to decide whether to remove from Florida's constitution a provision that discriminates against religious institutions," said Bondi. "The revised ballot summary completely cures the legal defect identified in Judge Lewis's ruling striking down the original ballot summary."

Revision

The new ballot measure now reads: "Proposing an amendment to the State Constitution providing that no individual or entity may be denied, on the basis of religious identity or belief, governmental benefits, funding, or other support, except as required by the First Amendment of the United States Constitution, and deleting the prohibition against using revenues from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."

A representative of the teachers union said a challenge to the new language is unlikely, effectively clearing the way for the measure to be on the ballot in November.

Blaine Amendments

Blaine amendments—state constitutional prohibitions against government funding of "sectarian" schools—get their name from Speaker of the U.S. House of Representatives James G. Blaine, who sought such an amendment to the U.S. Constitution in 1875. Although the House passed Blaine's measure by a decisive vote (180-7), the Senate rejected it, though

only by a four-vote margin. In individual states, however, Blaine-like amendments soon took hold, with some states adopting them as a condition imposed by the federal government for statehood. The amend-

ments were rooted in 19th century anti-Catholic prejudice and were aimed at denying public funding for Catholic schools.

Becket Fund

The Becket Fund for Religious Liberty has been a relentless enemy of Blaine amendments. Anthony R. Picarello Jr., former president and general counsel of the Becket Fund



Florida Attorney General Pam Bondi

and now associate general secretary for policy and advocacy for the U.S. Conference of Catholic Bishops (USCCB), met with CAPE's board and state CAPE representatives in 2004 to discuss Blaine amendment jurisprudence. During his presentation, he identified two major arguments against Blaine amendments, which he classified as historical and ahistorical. The ahistorical argument goes like this: If government provides a generally available benefit, it cannot single out a specific category of potential recipients for exclusion on the basis of religion. The historical argument is that Blaine amendments were not enacted from a desire to promote the common good but from animus towards religion. Religious hatred should not be the basis for government action, and laws rooted in such hatred are unconstitutional.

Next November, Florida's voters will have a chance to decide where they stand on the issue, and their decision could send ripples across the country.

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Association of Christian Schools International
Association of Christian Teachers and Schools
Association of Waldorf Schools of N.A.
Christian Schools International
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Lutheran Church—Missouri Synod
National Association of Episcopal Schools
National Association of Independent Schools
National Catholic Educational Association
National Christian School Association
Oral Roberts University Educational Fellowship
Seventh-day Adventist Board of Education
United States Conference of Catholic Bishops
Wisconsin Evangelical Lutheran Synod Schools
33 Affiliated State Organizations

a coalition of national associations serving private schools K-12
Executive Director: Joe McTighe

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13017 Wisteria Drive #457
Germantown, MD 20874
(tel) 301-916-8460
(fax) 301-916-8485
(email) cape@capenet.org

www.capenet.org



Top Private Education Events of 2011

The start of a new year offers a chance to review highlights of the year that just passed. And what a year it was! It turns out that 2011 was packed with public policy breakthroughs for the private school community.

Opportunity Scholarships

In January 2011, House Speaker John Boehner (R-OH) and Senator Joe Lieberman (I-CT) launched an all-out effort to reauthorize the Opportunity Scholarship Program (OSP) for students in the District of Columbia, offering hope that the popular and successful program, which had been slated to phase out, might continue. Their efforts paid off when the House approved Boehner's bill in March and President Obama signed a spending bill in April that continued the program for current students and also opened it to new students. Over 1,600 students have enrolled in the program for the 2011-12 school year, up 60 percent over last year.

Supreme Court

The U.S. Supreme Court in April issued a landmark decision allowing an Arizona scholarship tax credit program to continue, effectively clearing the way for similar programs in other states. The case, known as *Arizona Christian School Tuition Organization v. Winn et al*, enabled taxpayers in Arizona to continue to take a dollar-for-dollar tax credit for contributions to school tuition organizations (STOs) up to \$500 for individual taxpayers and up to \$1,000 for taxpayers filing jointly. Such contributions are used by the STOs to award scholarships to help students attend religious and independent schools. Seven other states (Florida, Georgia, Indiana, Iowa, Oklahoma, Pennsylvania, and Rhode Island) have similar programs.

State Action

Springtime in Indiana brought what was widely described as the most far-reaching school choice legislation in the nation. The measure established a \$1,000 state tax deduction for parents who incur costs connected with private schools or home schooling. It also doubled the cap on the state's existing scholarship tax credit program from \$2.5 to \$5 million. But the main feature of the legislation established a choice scholarship program providing assistance to low- and mid-

income families to help their children attend private schools. Nearly 4,000 students took advantage of the program in the 2011-12 school year, which, according to John Elcesser, the Indiana CAPE executive director, makes it the "largest first-year voucher program in the nation."

Other states saw school choice breakthroughs as well. In Wisconsin, lawmakers expanded the voucher program in Milwaukee and launched a similar program in Racine County. North Carolina passed a dollar-for-dollar tax credit for special needs students. Ohio expanded the state's Educational Choice Scholarship program

(EdChoice) by lifting the cap on participating students from 14,000 to 60,000 over the next two years. Florida lawmakers enacted improvements to the state's corporate tax credit scholarship program as well as the McKay scholarship program for students with disabilities. Okla-

homa passed the *Equal Opportunity Education Scholarship Act*, allowing individuals and corporations to take tax credits for contributions to scholarship-granting organizations. Arizona established Empowerment Scholarship Accounts for students with disabilities, becoming the first state in the nation to do so. Georgia and Iowa improved their tax credit scholarship programs, and Utah increased funds for its special needs scholarship program.

Hoover's Best

CAPE isn't the only organization compiling lists of top education events for the year. Experts at the Hoover Institution released their top five best and worst events in American education in 2011. "We evaluated hundreds of events, laws, programs, and studies in creating this list," said Williamson M. Evers, Hoover research fellow and project coordinator.

At the top of Hoover's best list was "reinvigoration of school choice via opportunity scholarships and vouchers." The report elaborated: "In what history may view as a watershed, private school choice moved ahead in many places in 2011, including the District of Columbia, where the scholarship program was resuscitated in Congress by Speaker John Boehner; Indiana, where opportunity scholarships were made available to perhaps half the state's students; and Ohio, which lifted a too-tight cap on its program for kids exiting low-performing schools."



New Guidance Issued on ESEA Flexibility

The U.S. Department of Education has invited state education departments to request waivers from certain requirements of the *Elementary and Secondary Education Act*. So far, 39 states have said they want a waiver. The department has issued extensive guidance surrounding the process, including guidance that covers services to students and teachers in religious and independent schools.

Waivers would allow states and school districts to transfer funds from certain ESEA programs into others. All allowable transfers are within programs that include equitable services to private school students or teachers. In fact, before a state or school district transfers funds from one ESEA program to another, "it must engage in timely and meaningful consultation with appropriate private school officials," according to the guidance. Also, the state or district "must provide private school students and teachers equitable services under the program(s) to which, and from which, the funds are transferred, based on the total amount of funds available to each program after the transfer." The guidance makes clear that the Secretary of Education may not waive the requirements relating to equitable participation.

With respect to Title I programs, which provide remedial services to needy students,

the guidance specifies the circumstances under which a district is obligated to provide equitable services with freed-up funds that were previously reserved for supplemental educational services, transportation, or professional development.

In connection with the waivers, CAPE asked department officials whether school districts are free, after consultation with private school officials, to allocate funds reserved for private school students in different ways than they allocate funds for public school students. Department



officials responded, "An LEA does not have discretion under ESEA flexibility to provide equitable services to private school students and teachers under a program for which it is not providing services to public school children and teachers." In other words, the obligation for equitable services is

attached only to a program to which the school district decides to transfer funds. The only exception to that rule relates to funds for professional development under Title II, Part A. The ESEA statute stipulates a minimum amount that must be reserved for services to private school teachers under Title II-A, and that amount may not be reduced, even if a district transfers funds out of that title into other programs.

All guidance relating to equitable services is available on CAPE's Web site at <www.capenet.org/ESEAFlex.html>.

Joe Robert Dies

Philanthropist and businessman Joseph E. Robert, Jr., 59, died December 7 of a form of brain cancer.

In a short lifespan, Mr. Robert left an enduring influence on thousands of disadvantaged children in the District of Columbia. He founded Fight for Children in 1990, a nonprofit organization dedicated to providing low-income children with quality educational opportunities and health care. Since its start, FFC has helped direct over \$450 million into programs to improve the lives of children.

Mr. Robert also chaired the Washington Scholarship Fund, described as one of the nation's largest providers of grants to help children attend religious and independent schools. In keeping with his passion for expanding educational choice, Mr. Robert was a tireless and influential advocate for the establishment and continuation of the federally funded Opportunity Scholarship Program in the District of Columbia.

In his homily at Robert's funeral mass, Cardinal Theodore McCarrick, archbishop emeritus of Washington, said, "For many of us, Joe Robert was the icon for caring for the children of the poor."

Cardinal Donald Wuerl, archbishop of Washington, said, "His philanthropic generosity benefited countless children. Over the years of working with Joe, I came to appreciate his deep concern for young people, their education and their opportunities for the future."

In a tribute to Mr. Robert that appeared in *The Washington Post*, Sally Sachar, former chief executive of the Washington Scholarship Fund, wrote, "The effort he led as chairman of the fund will endure as long as students are being given educational options that would otherwise be impossible. In fact, Joe's legacy extends beyond our experience in the District, as the choice program here has offered models and lessons nationwide."

Congress Approves Spending Bill

The House and Senate last month passed the *Consolidated Appropriations Act of Fiscal Year 2012*, a nearly \$1 trillion spending pack-

age to pay for key operations of the government, including defense, health, and education. President Obama signed the bill December 23.

House Appropriations Chairman Hal Rogers (R-KY) called the measure "a bipartisan, bicameral compromise." Senate Appropriations Chairman Daniel K. Inouye (D-HI) said the bill "represents a victory for compromise, a victory for American taxpayers, and a victory for the appropriations process."

The table provides funding levels for key programs affecting private schools.

Federal Education Spending Levels for Key Programs Affecting Private Schools (in millions of dollars)

Program	FY 2011	FY 2012
Career Education (Perkins Act)	\$1,122	\$1,123
Community Learning Centers (IV-B)	\$1,154	\$1,152
English Language Acquisition (III-A)	\$734	\$732
Math & Science Partnerships (II-B)	\$175	\$150
Special Education (IDEA Part B-611)	\$11,466	\$11,578
Migrant Education (I-C)	\$394	\$393
Teacher Quality (II-A)	\$2,465	\$2,467
Title I (grants to LEAs)	\$14,443	\$14,516

Return service requested

CAPE notes

★ A new report released by the Institute for Justice examines the most recent school choice initiative in Indiana against the backdrop of a host of scholarship, grant, tax credit, and voucher programs that the state already provides for students from pre-K through college.

Angela C. Erickson, an Institute for Justice research analyst who authored the report, said, "Indiana has a long and established history of offering voucher programs in which the government pays for needed services and recipients are given the choice of providers, including faith-based organizations. A parent relying on the Choice Scholarship Program to send her child to a Catholic high school is no different than a Hoosier Scholar or a Frank O'Bannon Scholar choosing to attend Notre Dame."

Teachers unions and other groups have filed a legal challenge to the state's new Choice Scholarship Program, which Indiana Governor Mitch Daniels signed into law last May. "This case is about who should control the education of low- and middle-income children in Indiana," said IJ Senior Attorney Dick Komer. "The legislature, the governor, and the Institute for Justice believe parents should direct their children's education, but the teachers' unions believe they should have the power to limit other people's choices."

The report, *Opening the Schoolhouse Doors: Indiana's Choice Scholarship Program Extends Long History Of Choice-Based Aid*, is available at <<http://www.ij.org/about/4197>>.

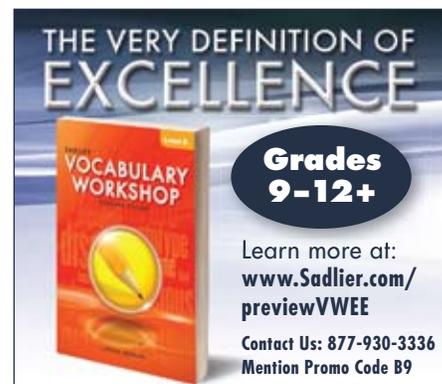
★ Former Philadelphia schools superintendent Arlene Ackerman wrote recently in the *Philadelphia Inquirer* that after 43 years in education, much of that time spent in urban districts, she has come to the following conclusion: "Real reform will never come from within the system because too many powers that be (the teachers' union, politicians, consultants, vendors, etc.) have a vested interest in maintaining the status quo that is failing our children." Ackerman went on to say: "Meaningful education reform must be forced upon the system from outside by giving parents of all income levels real choices about where their children go to school. That requires giving parents comprehensive school choice that includes an expanded charter-school system and a voucher program for low-income parents with children trapped in a failing school."

★ Private schools, their teachers, and administrators are an important part of American elementary and secondary education. The Schools and Staffing Survey, now underway for the 2011-12 school year, is a voluntary sample survey that is designed to be nationally representative of all types of private schools. The National Center for Education Statistics, the statistical agency for the U.S. Department of Education, is seeking the assistance of the private school community. If you are a school that has been randomly selected for the survey, please participate. Every school's participation matters!

★ A new study by the Friedman Foundation for Educational Choice shows that New Mexico is ripe for school choice legislation. Sixty-two percent of voters in the state support legislation through which individuals and corporations would be provided tax credits for donations to organizations that offer private school scholarships.

"The people of New Mexico, especially those less fortunate, deserve choices in education," said Julio Fuentes, president and CEO of the Hispanic Council for Reform and Educational Options (Hispanic CREO), which cosponsored the study. "Providing school choice tax credits can give New Mexico children of all demographics greater access to better schooling options."

"New Mexico parents not satisfied with their children's public schools could be empowered by the state to choose better, more effective private options," said Robert Enlow, president and CEO of the Friedman Foundation.



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