

Council for American Private Education

CAPE outlook

Voice of America's private schools

House Committee Holds School Choice Hearing

Truth be told, congressional hearings can sometimes be a tad pedantic, with experts and elected officials exchanging formal, minor, dry details that can drive listeners to daydreams. But every so often a refreshing witness offers riveting testimony that grabs one's attention, captures the imagination, and provides a deeply personal take on the issue at hand. Denisha Merriweather proved to be that kind of witness.

Ms. Merriweather, a graduate student at the University of South Florida, captivated listeners February 3 at a hearing on school choice conducted by the House Committee on Education and the Workforce. While other witnesses offered valuable findings, theories, and abstractions about the topic, Denisha provided a compelling first-hand account of how the chance to choose a school that works transformed her life.

As an elementary school student, Denisha got a new lease on life by enrolling in Esprit de Corps Center for Learning, thanks to a Florida tax credit scholarship.

Destined to Drop Out

"When I was growing up, college was a dream that I didn't even know I had," said Denisha. "And if it weren't for an educational option Florida gave me 12 years ago, I wouldn't be sitting here today."

In a remarkably forthright presentation, Denisha recalled how as a child she was disruptive in school, got into fights, struggled to keep up, and failed third grade—"not once, but twice." She described herself as "destined to drop out" before even reaching high school, following the footsteps of several family members.

But just before sixth grade, Denisha's godmother, determined to get her in a better school, found out about "Step Up For Students," a state-approved scholarship funding organization that helps administer Florida's Tax Credit Scholarship Program

(FTC), which expands educational options for low-income children.

"Esprit de Corps was the change I needed," said Denisha. Before she even set foot in the new school, one of the teachers helped her with math and reading skills. In her written testimony, Denisha reported: "I would go to her house almost every day over the summer to work on my multiplication tables and go over other subjects that I hadn't grasped. It was so nice to have a teacher who truly cared. The following August, I began the sixth grade at Esprit de Corps, and for the first time in my life, adjusting to a new school was a very positive experience for me!"

Esprit de Corps, a member of the Association of Christian Schools International, has a straightforward mission: "...to provide a safe and nurturing atmosphere of Christian moral excellence where students are trained to lead godly lives in a multi-cultural and technologically sophisticated society. Our academic expectations reflect our commitment to excellence and success."

Passion to Learn

Apparently that mission took root in Denisha. She reported that her grades improved, that she regularly made the honor roll, and that the Esprit community "began to feel like a family." The school "gave me a new perspective on education and...a passion to want to learn." Esprit even helped with fees connected with taking the ACT and SAT, and applying to college.

Denisha set a number of firsts for her

family: the first to graduate from high school, the first to receive a bachelor's degree, and next year, the first to receive a graduate degree. "I can say to all of you here, Esprit de Corps truly changed my life," she said. No one listening needed to be convinced.



Denisha Merriweather speaks to the House Education and the Workforce Committee February 3. (Committee photo)

Denisha went on to explain that her experience with school choice has made her a steadfast supporter. "I am committed to advocating for educational options because so many doors have been opened for me, and I want to create the same opened doors for other students."

Excellence

In remarks at the start of the hearing, Committee Chairman John Kline (R-MN) said, "This committee's work to improve K-12 education has always been guided by the belief that every child—regardless of where they come from or how much money their parents make—should receive an excellent education."

Kline recalled the history of K-12 school choice, noting that the movement "began in Milwaukee, Wisconsin, in 1990, where local leaders piloted the first private school choice program." That program, he said, "has paved the way for thousands of students to receive a better education and inspired 27 other states to create different types of private school choice programs — many of which have been credited with helping students graduate not only from high school, but from college as well."

A video of the hearing and transcripts of testimony are available at <<http://edworkforce.house.gov>>.

CAPE member organizations:

- Agudath Israel of America
- American Montessori Society
- Association Montessori International—USA
- Association of Christian Schools International
- Association of Christian Teachers and Schools
- Association of Waldorf Schools of N.A.
- Christian Schools International
- Council on Educational Standards and Accountability
- Evangelical Lutheran Church in America
- Friends Council on Education
- 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
- 35 Affiliated State Organizations

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Antonin Scalia's Legacy for Private Education

The death of Justice Antonin Scalia, an extraordinary presence on the U.S. Supreme Court and a dominant force in American jurisprudence, will leave a significant void in the court's proceedings this year. The glowing tributes from his colleagues on the bench eloquently attest to that.

"He was an extraordinary individual and jurist," said Chief Justice John Roberts. "His passing is a great loss to the court and the country he so loyally served."

Justice Elena Kagan predicted, "Nino Scalia will go down in history as one of the most transformational Supreme Court justices of our nation."

"We were best buddies," said Justice Ruth Bader Ginsburg. "He was a jurist of captivating brilliance and wit, with a rare talent to make even the most sober judge laugh."

Private School Cases

As influential as Scalia's 282 majority opinions and "occasional" dissents have been to the court's overall vitality, his ideas, words, and votes have had particular significance over the years on decisions affecting private education.

Scalia joined the majority in *Zelman v. Simmons-Harris*, the landmark but narrow 5-4 decision in 2002 that upheld the constitutionality of government-funded vouchers for tuition at religious schools. At issue was a program enacted by the Ohio legislature that offered vouchers of up to \$2,250 to elementary school children who lived in Cleveland.

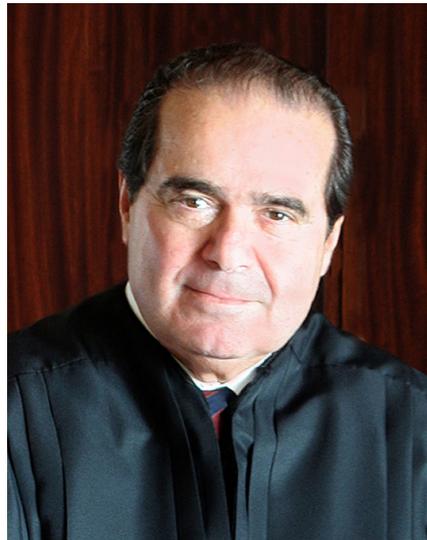
A Monopoly Problem

During oral arguments in *Zelman*, Scalia engaged in a feisty exchange with Robert H. Chanin, general counsel for the National Education Association. Responding to Chanin's claim that more resources were needed to fix Cleveland's public schools, Scalia said, "It isn't a money problem; it's a monopoly problem."

In another scholarship case, *Locke v. Davey*, Scalia found himself in the minority. In 2004, he wrote the dissent in a 7-2 decision that upheld the denial of a Promise Scholarship in the state of Washington to a college student seeking a degree in theology.

"When the state makes a public benefit generally available, that benefit becomes part of the baseline against which burdens on religion are

measured; and when the state withholds that benefit from some individuals solely on the basis of religion, it violates the Free Exercise Clause no less than if it had imposed a special tax," wrote Scalia. "Davey is not asking for a special benefit to which others are not entitled. He seeks only equal treatment—the right to direct his scholarship to his chosen course of study, a right every other Promise Scholar enjoys."



Tax Credits

In 2011, the court cleared the way for scholarship tax credit programs across the country when, in another 5-4 decision, it dismissed a challenge to the constitutionality of an Arizona statute that provided state residents with tax credits for contributions to school tuition organizations. The case, *Arizona Christian School Tuition Organization v. Winn*, has been the only other major K-12 school choice ruling by the high court since *Zelman*. Scalia

concurred with the majority. CAPE had joined an amicus brief in the case urging the court to uphold the program.

Instructional Materials

Mitchell v. Helms, a 6-3 decision by the court in 2000, upheld a federal program under the *Elementary and Secondary Education Act* (ESEA) that required school districts to lend instructional materials and equipment to private, including religious, schools. The question before the court was whether the law authorizing the program respected the establishment of religion in violation of the First Amendment. Scalia joined the majority in finding that it did not. The decision opened a path for similar programs.

Title I

Three years earlier, in 1997, a 5-4 court found, in *Agostini v. Felton*, that the First Amendment was not violated when public school teachers provided services under Title I of ESEA on the premises of religious schools. Once again, Scalia voted with the majority in a decision that actually overturned the 1985 ruling by the court in *Aguilar v. Felton*, which had found onsite instruction in religious schools to be in violation of the Constitution. Notably, the 5-4 decision in *Aguilar* had been decided the year before Scalia started his service on the court.

Proposed Child Care Regulations Spark Pushback

Regulations proposed by the U.S. Department of Health and Human Services (HHS) to carry out provisions of the *Child Care and Development Block Grant Act of 2014* (CCDBG) have created quite a stir among some child care providers, who regard them as running afoul of the spirit and letter of the statute.

When CCDBG was reauthorized in 2014, it included language offered by Senator Tim Scott (R-SC), and supported by CAPE, stating that nothing in the statute “shall be construed in a manner (1) to favor or promote the use of grants and contracts for the receipt of child care services... over the use of child care certificates; or (2) to disfavor or discourage the use of such certificates for the purchase of child care services, including those services provided by private or nonprofit entities, such as faith-based providers.”

Faith-Based Providers

The reason for the language was rather simple. Prior to the enactment of CCDBG, the Administration for Children and Families (ACF) at HHS had sought to increase the use of grants and contracts to the disfavor of certificates. Grants preclude participation by faith-based providers that incorporate religious components within their programs since no direct funds may be used for religious purposes. Certificates, on the other hand, may be used by families to enroll their children with providers that include religious instruction or worship within their programs.

Despite the unambiguous language that the statute should not be construed to “promote the use of grants and contracts,” the proposed regulations, quite astoundingly, seek to *require* states to include “some use of grants or contracts for direct services based on an assessment of shortages in the supply of high quality care.” And despite language that the statute should not be construed “to disfavor or discourage” the use of certificates, the proposed regulations would clearly do so in that every dollar used for the newly mandated grants and contracts would mean a dollar less for certificates.

The net effect of the insistence that states use some funds for grants and contracts would be to diminish the participation of faith-based providers that currently offer high quality services that

are respected and valued by many parents.

CAPE filed comments on the proposed rules urging that the “grants and contracts” requirement be dropped. CAPE’s letter noted that federal data show that roughly 90 percent of children receiving child care under the act are served through certificates. Moreover, only 20 states provide any grants or contracts for child care slots. As CAPE’s letter put it, “Given that states are already free to use grants and contracts to provide child care, the evidence is overwhelming that they prefer to do so through certificates.



States have spoken on this matter, and the message is clear.” Thus, the requirement that states offer grants and contracts “not only ignores the will of states on this matter, it actually thwarts that will by requiring all states to do something that most of them so far

have chosen not to do.”

Numerous other parties interested in child care policy also vigorously objected to the proposed requirement for grants and contracts, including Agudath Israel of America, the Association of Christian Schools International, the Institutional Religious Freedom Alliance, the National Catholic Educational Association, and the U.S. Conference of Catholic Bishops. Members of Congress even weighed in when Senator Lamar Alexander (R-TN), chairman of the Senate HELP Committee, and John Kline (R-MN), chairman of the House Committee on Education and the Workforce, signed a joint letter urging that the offending language be repealed.

Distinctive Approaches

CAPE’s comments also offered numerous amendments to the proposed regulations to ensure that child care administrative agencies accommodate, include, and promote a variety of distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs.

These sentiments were echoed and expanded in a letter from the Montessori Public Policy Initiative (MPPI), a collaboration of the American Montessori Society (AMS) and Association Montessori International / USA (AMI/USA), which expressed concern that certain state requirements could “negatively impact the ability of Montessori programs to operate with fidelity.”

[Photo: ©Sergey Nivens/Dollar Photo Club]

Andrew Coulson

On March 11, 1999, in a luncheon address at the National Press Club, the then 31-year-old Andrew Coulson launched his brilliant book, *Market Education*, and his distinguished career as a preeminent scholar on education policy. The former software engineer from Microsoft said government schools are not “the one and only means” of advancing public education. Indeed, the “path to educational excellence” is to empower parents to “take control of their children’s education.”

In the course of his short but magnificent life, Andrew let facts lead where they may. At a House committee hearing in 2011, he offered an eye-opening statement claiming that a 40-year record of federal education policy had shown the DC Opportunity Scholarship Program to be the “one federal education program that has been proven to both improve educational outcomes and dramatically lower costs.”

The state CAPE community had the good fortune of learning from Andrew directly during their summer retreat in Seattle in 2014, where he argued that scholarship tax credits were the best way to “reduce financial discrimination against private schools” and stem the tide of transfers to charter schools.

Andrew’s passing last month, after a battle with brain cancer, has left an unmistakable void in the world of education policy scholarship. Colleagues have penned plentiful tributes. “There is no one else besides Andrew Coulson that you must read to discover what reforms we need in education and why they will work,” wrote Adam Schaeffer, adjunct scholar at the Cato Institute, where Andrew served as senior fellow. Others lauded Andrew as “provocative, learned, and engaging,” “an almost impossibly sunny colleague,” “a kind, brilliant man.” The school reform movement has lost a genuine giant.

Return service requested

CAPE notes

★ In a rousing speech to 250 school principals, Wisconsin Governor Scott Walker reiterated his support for parental choice in education February 12 at the annual leadership conference of the Wisconsin Council of Religious and Independent Schools (WCRIS).

It was the first time in the organization's 40-year history that a governor visited the day-long event.

The visit was a follow-up to Walker's proclamation of February 15-19 as "Religious & Independent K-12 Schools Week," which he issued in December.

Walker spoke for about 20 minutes to WCRIS K-12 school administrators from across the state and thanked them for their efforts. He told the group that his policy support for educational choice has always been based on the beliefs that parents should have a range of choices when determining the best education for their children, and that being poor or middle income shouldn't prevent parents from having access to those choices.

Prior to the speech, Walker met privately with the WCRIS board of directors and thanked them for their leadership of the state's private schools, which he called an integral asset to the state's educational infrastructure. [Submitted by WCRIS Director Sharon Schmeling]

★ President Barack Obama announced his fiscal year 2017 budget last month, setting the table for the first year of full implementation of the newly enacted

Every Student Succeeds Act (ESSA). The president's proposal provides Congress a starting point for discussions aimed at approving a spending plan for the 2017 fiscal year, which runs from October 1, 2016, through September 30, 2017. Since most education programs are forward funded, the amounts ultimately included in whatever budget is approved for FY 2017 would not actually affect classrooms until the 2017-18 school year, the first full year that ESSA takes hold.

As for several significant ESSA programs affecting students and teachers in private schools, the president's budget asks for \$15.4 billion for Title I-A (up \$450 million from FY 2016), \$2.25 billion for Title II-A (down \$100 million), and \$500 million for the new Title IV-A Student Support and Academic Enrichment Grants program, which offers flexible opportunities to meet student needs through a range of activities.

★ The Oklahoma Supreme Court ruled last month that the state's scholarship program for children with disabilities does not violate the "no aid" clause of the Oklahoma Constitution. The clause at issue, Article II, Section 5 (the state's Blaine Amendment) prohibits the use of public funds to support religious institutions.

The *Lindsey Nicole Henry Scholarship Act* was enacted in 2010 to provide parents of special needs children with state scholarships to educate their children in approved private schools, including religious schools.

Although most scholarship students attend religious schools, the court cited the U.S. Supreme Court's decision in *Zelman v. Simmons-Harris* (see article on p. 2 on Antonin Scalia) noting, "The constitutionality of a neutral educational aid program simply does not turn on whether and why, in a particular area, at a particular time, most private schools are religious, or most recipients choose to use the aid at a religious school." Also drawing from *Zelman*, the Oklahoma court said, "When the parents and not the government are the ones determining which private school offers the best learning environment for their child, the circuit between government and religion is broken." The court went on to say, "Because the parent receives and directs the funds to the private school, sectarian or non-sectarian, we are satisfied that the state is not actively involved in the adoption of sectarian principles or directing monetary support to a sectarian institution through this scholarship."

