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On June 30, the U.S. Supreme Court decided that it was no longer prohibited for a state to bar private religious schools from participating in its voucher programs. “A state need not subsidize private education,” wrote Chief Justice John Roberts for a five-judge majority in the case, Espinoza v. Montana Department of Revenue. “But once a state decides to do so, it cannot disqualify some private schools solely because they are religious.”

AESA signed on to an amicus brief that was submitted to the Court arguing that it was improper to require a state to fund private religious education and that voucher programs undermine public schools and the obligation of states to fund public schools. The 5-4 decision did not surprise us or many legal experts because by hearing the case at all, which many felt was weak, the Court seemingly tipped its hand that they were unhappy with the decision by the Montana Supreme Court and wished to overturn it.

State “no-aid” provisions which bar funding of religious education exist in 38 states, but 18 of these states already have voucher programs. Thus, while pointing out how the creation of voucher program conflicts with a state’s constitution or no-aid clause has been a helpful argument for public school advocates opposed to these programs, it has not stopped states from disregarding their no-aid provisions and enacting voucher programs.

What are the immediate effects of the SCOTUS decision then? Two states, Vermont and Maine, will have their “town-tuitioning programs” dating back from 1869 to 1873 respectively, (long before vouchers were invented) open to private religious schools. These programs have allowed students in rural parts of the state who did not have access to any public school to attend any other public or private secular school inside or outside the state. Unlike voucher programs that started in the 1950s in response to segregation, these programs are small and specific to very rural communities in those states. They are not “true” voucher programs in the mind of many school leaders, but voucher proponents are already pouncing on the opportunity to claim them as such and ensure parents in these states can opt to send their children to private religious schools on the state dime.

What else is next? According to the Institute for Justice, which represented Espinoza, they are looking to use this decision to push vouchers in Texas, Missouri, South Dakota and Idaho. They say these are the next big “battlegrounds” for vouchers and legislatures and should no longer

feel bound by “no-aid” causes. However, a look at how these voucher fights have played out recently reveals that the winning arguments for public education have centered on opposition by rural Republicans that diverting state funding away from public schools will hurt rural students as well as concerns about academic achievement and accountability in voucher programs.

This decision raises the possibility that voucher proponents could start insisting that it would be religious discrimination if religious schools are not treated the same as other educational entities when it comes to state aid; They could try to argue that when new grant programs are created private religious schools should be eligible for the funding. Meanwhile, they will also want to be granted exemptions, so they don’t have to meet the same academic/curriculum, reporting and discrimination provisions as secular private schools or public schools.

Like other major education decisions, in recent years the Court has issued it can take time to understand the policy ramifications of a case. AESA will remain continue fighting the expansion of vouchers at the federal level.

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