

Court's ruling won't end all voucher issues

Apr 6, 2011|

The U.S. Supreme Court decision issued Monday gives us a glimpse into how school voucher programs in Indiana -- and other states -- might one day look.

Tax-credited contributions made to an Arizona scholarship organization that provides tuition scholarships to secular and religious schools can not be sued for violating the establishment clause, the court ruled Monday.

The court ruled in 2002 that school vouchers, even those that went to religious schools, do not violate the First Amendment clause often referred to as separation of church and state.

So as far as the U.S. law is concerned, school vouchers for parochial schools and tax-credited scholarship contributions that might fund students' tuition at religious-based schools are kosher.

But state laws are a different matter, and one shouldn't expect school voucher issues to be settled or go unchallenged in Indiana or in other states grappling with education reforms.

House Democrats' six-week walkout failed to stop House Bill 1003, the school voucher bill, which continues to wind its way through the General Assembly.

Proponents and opponents of House Bill 1003 speculate how it will change Indiana public and private schools for the better or worse. But in reality, House Bill 1003 is not likely the panacea proponents tout it to be, and it's not the nail in public education's coffin that opponents claim. But it is a potential game changer for both public and private institutions.

If it becomes law, school vouchers will influence how Hoosier children are educated. And since no bill is perfect, the voucher system would likely need tweaking in years to come.

While acknowledging Indiana's education system needs reform, we've not been quick to jump on the school voucher bandwagon -- nor are we doing that today. There are too many questions left unanswered. But it appears the Republican-controlled General Assembly is bent on making school vouchers the law.

If school vouchers are approved, Hoosiers should expect lengthy legal challenges, including whether vouchers comply with Indiana's Constitution. If the U.S. Supreme Court is any indicator, it is likely school vouchers are not the constitutional aberration some paint them to be. If this is the case, the question is whether they are as effective as some claim they are. That remains unknown as of now.

When these cases are inevitably filed, people are likely to barricade themselves behind tired arguments. In the rush to defend their positions, we hope both sides remember that the status quo in education is not working in Indiana -- or anywhere else. To find what might work requires change, and change is never easy to entrenched institutions.

Court ruling on school money stirs voucher bill debate

By: [MIKEL LIVINGSTON](#) mlivingston@jconline.com 8:30 PM, Apr. 5, 2011|

U.S. Supreme Court ruling this week is already stirring debate on possible ramifications of controversial legislation that would create a school voucher program in Indiana.

On Monday the Supreme Court ruled 5-4 that ordinary taxpayers cannot challenge government programs that use tax breaks to direct money to religious activities. The ruling was directed at an Arizona scholarship program that has mainly benefited religious schools through tax breaks.

Opponents of private school vouchers, including those promoted by Indiana House Bill 1003, fear the ruling will make it more difficult to use federal courts to claim violations of the Constitution's prohibition on direct government aid to religion.

Chris McGrew, a former consultant for the Indiana Department of Education and former board member for the Indiana Coalition for Public Education, said the ruling will "embolden" and "empower" voucher supporters.

Arizona's program has allowed residents to send up to \$500 to a tuition scholarship organization that they would have otherwise paid the state in taxes on their incomes, the bulk of which has gone to private religious schools.

Justice Anthony Kennedy wrote the Supreme Court's majority opinion, saying that because the program operates as a tax credit, instead of a direct appropriation of government money, "contributions result from the decisions of private taxpayers regarding their own funds."

Justice Elena Kagan, who voted against the ruling, predicted lawmakers elsewhere would adopt the "road map" Kennedy provided to subsidize religion without facing judicial review.

But McGrew said differing details in the bill will give some legal leverage.

"Constitutionally the ruling in Arizona is different enough, (the Indiana program) will come before the courts," McGrew said. "I just hate that taxpayers and our schools and students are going to have to pay for it."

Last week, Indiana House Democrats failed with an amendment that would have limited the vouchers to only students attending failing schools.

That amendment was defeated and the bill passed, moving to the Senate. The bill will be discussed by the Senate Education and Career Development Committee later today.

If passed in its current form, Indiana's scholarship program would not be limited to lower-income families, special need students or students in failing schools, making it the broadest voucher program in the nation. The program would be open for families earning up to \$60,000 a year and within three years there would be no limit on the number of children who could enroll.

William McLauchlan, a Purdue University associate professor, has written extensively on the Indiana state constitution and the judicial behavior of Supreme Court justices. He said he believes Indiana's voucher bill violates both the state and federal constitutions.

McLauchlan said it's a near guarantee the voucher bill will be protested in court if passed, and he anticipates the Indiana Supreme Court would rule against it.

"I can't imagine, if it is a raw use of public funds for a system that supports private educational institutions, that it will stand the test, but there's no telling for sure," McLauchlan said.

Some private school leaders have also expressed reservations about the plan, but for different reasons.

Lafayette Christian School Principal Ken Goff said he and his staff are waiting for more specifics on the proposal before forming an opinion.

"We are still mixed on it," Goff said. "There are still a lot of details not specified yet. We want to make sure we can remain a private Christian school as we are."

Goff said maintaining the independence of a private school remains paramount.

"We're accredited by the state, so we take ISTEPs and we're accountable with that, but we do have some freedom as we are a private school," Goff said. "We just want to be sure if we accept (vouchers) we can keep that autonomy."

Monday's ruling and a 2002 decision that upheld the use of vouchers "should give state legislatures wide discretion in adopting school choice programs," said Tim Keller, executive director of the Arizona chapter of the Institute for Justice. The group represented both religious and secular scholarship organizations that receive the tax money.

"School choice programs are not about aiding religion," Keller said. "They're aimed at helping individual families."

Contributing: Associated Press