

WONK'd by the Alliance Defense Fund

Court Decision Impacts More Than Just School Choice

by David Cortman

School choice victory at Supreme Court is no small win.

The recent U.S. Supreme Court decision in the Alliance Defense Fund case *Arizona Christian School Tuition Organization v. Winn* is no small victory.

The decision is extremely important because of the issues that were at stake, including whether taxpayers can bring a lawsuit over someone else's donations to non-profit groups (even churches and charities); whether those donations (or their tax treatment) violate the so-called "separation of church and state" simply because some of those private donations go to religious groups; and the underlying issue of whether all of our money belongs to the government and only by its "grace" does it not tax it all.

And even though these issues came to the court wrapped in the context of school choice, which is an important issue itself, these are tremendously important issues in all contexts.

As a quick bit of background, Arizona is one of the nation's leaders when it comes to school choice. Current educational options include traditional public schools, charter schools, virtual or online schools, free out-of-district schools, home schools, and private schools. To enhance these choices, the legislature passed a law allowing private donations to be made directly to public schools and indirectly to private schools through non-profit 501(c)(3) organizations (called school tuition organizations, or STOs). Any person can make a donation, and taxpayers can take a state tax credit up to a certain limit.

The Supreme Court determined on April 4 that the taxpayers represented by the American Civil Liberties Union who challenged the program had no right to bring their lawsuit in the first place.



Alliance Defense Fund Senior Counsel David Cortman speaks with a reporter outside the U.S. Supreme Court after oral arguments in *Arizona Christian School Tuition Organization v. Winn*.
(Photos courtesy of Alliance Defense Fund)

This is not merely a narrow, technical issue. The arguments of those who brought the suit, if accepted by the Supreme Court, could have had negative, far-reaching consequences. First, if the court would have ruled that the plaintiffs did have a right to bring a lawsuit simply because they are taxpayers, they would have had the right to challenge the constitutionality of any reduction in state taxes (such as tax deductions, tax credits, etc.) that in any way happens to benefit or involve religious groups. But does it really hurt the ACLU's clients if someone else donates their own private money to a church or other non-profit organization? ADF argued that it did not, and the court agreed.

More frightening is that the ACLU argued that when the government decides to refrain from taxing all of our money

(in this case, by reducing our tax burden), it is the same as the government taxing and spending. In other words, they were arguing, in effect, that *all* of our hard-earned pay is really under the government's control.

Think about the consequences of that for a minute. The court did. It rightly dismissed that argument by stating, "When Arizona taxpayers choose to contribute to STOs, they spend their own money, not money the state has collected from respondents or from other taxpayers. ... Private bank accounts cannot be equated with the Arizona state treasury."

The Supreme Court wisely saw through all of the extreme rhetoric and held that the ACLU's clients have no right to come to court because they have no injury about which to complain.

And what about that whole school choice issue?

The ACLU obviously doesn't want parents to be able to choose where their own children go to school. Such dominant



Students at EAGLE College Prep Elementary School, a public charter school in Arizona, leave their hand imprints in freshly poured cement as the school puts the finishing touches on a brand new school building. Arizona is one of the nation's leading states when it comes to school choice. (AP/Ross D. Franklin)

“Does it really hurt the ACLU’s clients if someone else donates their own private money to a church or other nonprofit organization?”

leftist groups, including the National Education Association (which filed a brief in the case supporting the ACLU), enjoy a stranglehold on government-run schools. They control billions of dollars (including forced union dues) and thereby have financial control of the educational system. And they get to impose what is taught to our children, much of which is leftist ideology.

And here's how these groups are doing running our schools: nearly a 30 percent high school dropout rate, a U.S. ranking of 25 out of 30 nations in math scores, and a staggering amount of crime in the schools themselves. A failing grade, by any standard. But Arizona's program, like so many others around

the country, is trying to change that by empowering parents to have more realistic options of where to educate their children. And that threatens the control of these groups, which they will obviously oppose at any cost.

So, while the court had no need to reach the question of whether the program itself was consistent with the Establishment Clause (and ADF believes it is), it nevertheless issued an extremely important ruling that protects school choice programs, parental rights, and charitable giving, while at the same time limiting the ability of others, like the ACLU, to challenge such beneficial programs.

Of course, that doesn't mean they won't try to challenge a school choice program again anyway. When that happens, ADF and its allies are just as determined to fight on behalf of American families, parental choice in education, and the educational future of our children. •

David Cortman is senior counsel with the Alliance Defense Fund, which represented the Arizona Christian School Tuition Organization in the case before the U.S. Supreme Court.



The Alliance Defense Fund (www.telladf.org), a Townhall.com partner organization, is a legal alliance of Christian attorneys and like-minded organizations defending the right of people to freely live out their faith. Launched in 1994, ADF employs a unique combination of strategy, training, funding, and litigation to protect and preserve religious liberty, the sanctity of life, marriage, and the family.