

Anti-School Choice Religious Bigotry

Using a law with ugly anti-Catholic roots to deny education options for children.



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Anti-Catholicism has been called America's last acceptable prejudice. Acceptable or not, it is enshrined in the constitutions of more than half the U.S. states. Inspired by the original 1875 congressional supporter, James Blaine, state "Blaine" amendments barred funding for "sectarian" schools, which in Protestant America at the time meant Catholic schools.

But the worm has turned. The judges charged with interpreting those constitutions today are interpreting sectarian to mean all religions. Consider recent decisions from Colorado and Missouri, which the U.S. Supreme Court has been asked to review.

The Colorado case, *Doyle v. Taxpayers for Public Education*, concerns a scholarship program that the Douglas County School District adopted to provide greater educational opportunities. The school district provides modest scholarships to students, who can use them to attend private schools—religious or nonreligious—of their parents' choosing.

In 2011 two small groups and 10 individuals filed a lawsuit challenging the program. They say it violates Colorado's old—but convenient to the plaintiffs—constitutional provision that bars aid to “sectarian” schools.

This summer the Colorado Supreme Court agreed with the plaintiffs and invalidated the program. Worse, it ruled that applying Colorado's Blaine amendment to bar religious options from the scholarship program is permissible under the U.S. Constitution. The same Constitution that is supposed to guarantee free exercise of religion and equal protection of the laws.

A decision in the Missouri case, *Trinity Lutheran Church of Columbia v. Pauley*, also came this summer. It involves, of all things, resurfacing playgrounds. The state provides grants to schools and other nonprofits to purchase paving materials made from recycled tires. The program aims to help the environment by recycling scrap tires and to make playground surfaces safer for children.

But when a preschool run by a church applied for a grant, the state, relying on Missouri's Blaine amendment, denied its application. The church filed a lawsuit challenging its exclusion, arguing that the state was discriminating against religion in violation of the U.S. Constitution.

Unfortunately, the Eighth Circuit Court of Appeals upheld the church's exclusion from the program. Like the Colorado Supreme Court, it concluded that applying a state Blaine amendment to bar religious schools from participation in public benefit programs passes muster under the U.S. Constitution.

These cases are the latest illustrations of how 19th-century anti-Catholic bigotry has infested 21st-century constitutional jurisprudence. To be sure, the Blaine amendments in the constitutions of some 37 states date to a time when public schools were much different. In the 19th century, public schools were overtly religious and, invariably, Protestant. Bible reading was standard fare, as was reciting Protestant prayers and hymns.

In the mid-1800s increasing numbers of non-Protestant, primarily Catholic, immigrants began arriving. These new citizens objected to compulsory education in the Protestant public schools, and there are numerous accounts of Catholic children being beaten and expelled for refusing to participate in Protestant exercises. There are even judicial opinions upholding these beatings and expulsions.

When Catholics couldn't secure better treatment in public schools, they established their own schools and sought a share of the public school funds. That did not sit well with the Protestant majority, and a virulent anti-Catholic nativism erupted.

Several states amended their constitutions to preserve the non-denominationally Protestant nature of the public schools, while barring any public funding of so-called "sectarian," or Catholic, schools. Though Rep. Blaine's attempt to pass an amendment to the U.S. Constitution ultimately failed, many states succeeded.

So it is that engines of animus toward Catholics have been transmuted into engines of animus against all religion. Those today who rely on these sordid provisions disclaim any anti-Catholic animus or hostility toward religion. They insist they are merely trying to maintain a "strict separation" between church and state.

That makes no sense. The Douglas County scholarship program does not provide aid to religious schools or any schools. It provides aid to Douglas County students. Not a penny of that money can flow to any school—religious or not—without the private choice of parents. That independent choice breaks any link between church and state.

Although the playground-resurfacing program in Missouri provides aid directly to schools, the program's environmental and safety goals are entirely secular. Those recycled tire bits are not going to indoctrinate the children playing on them. Rubberized playgrounds might save knees and the environment, but they do not save souls.

Fortunately, the U.S. Supreme Court has the opportunity to review these decisions. By hearing the appeals, the court will have a chance to resolve the lingering conflict between the Constitution's command of neutrality toward religion and the vestiges of anti-Catholicism that still haunt the constitutions of so many states.

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