



SPECIAL ALERT

February 20, 2002

**The U.S. Supreme Court's Proceedings
in the Cleveland School Choice Case**
Highlights and Insights

(Washington, DC) Pundits and observers reported in recent days that the issue of religion would be the key in Wednesday's arguments over school choice before the U.S. Supreme Court. As we predicted, they were wrong. The issue that most consumed the Justices in the oral arguments for and against the Cleveland school choice program was education. The Justices asked repeatedly about the number of options available to parents, the quality of available schools, the opportunities children have to attend them, and whether the Court shouldn't look at the entire array of options in determining whether this program is permissible under the U.S. Constitution.

The opponents' attorney and NEA general counsel, Robert Chanin, dodged the ball several times, forcing Justice O'Connor (and other Justices) to repeatedly ask the same question – Shouldn't all (schooling) options be considered? Justice Stevens noted that Chanin had been highly creative in avoiding the question. Chanin was also asked by Justice Stevens if the program would be constitutional if all but one school in the program was secular. Chanin hesitated, and his answer was vague, suggesting said he'd have to look at the information. Later, Justice Kennedy asked Chanin if what he was saying is that the only constitutional choice is public school choice? Amazingly, this attorney ended his argument with time to spare and a silent Court; something none of the other attorneys did, and something unheard of in a case the Court viewed as important enough to expand oral argument for all sides.

Surprisingly, charter schools – which in Ohio are called community schools – figured prominently in the Justices' inquiries. At least 10 times in just over an hour of arguments the Justices asked about how charter schools fit into the system. Justices Ginsburg, Kennedy, O'Connor, Scalia, and Stevens all probed the issue of charter schools and the role of options for parents. At one point, Justice Ginsburg asked whether these were high quality options, and Justice O'Connor inquired about whether or not there were seats available.

(more)

Other points of interest:

- At least 25 questions were asked by at least 6 different Justices about the factual context of the case, ranging from education options to the quality of available schools.
- Justice Scalia often questioned the parties on the role of finances – another of the issues mentioned in The Center for Education Reform’s (CER) amicus brief. As the Justice noted, a number of secular schools that had previously accepted voucher students converted to charter status because they received greater funding. That option was not available to religious schools thus the percentage of students in religious schools increased because of the conversions.
- Chief Justice Rehnquist asked who had the burden of proving that the program was a violation of the Establishment Clause. As noted in our brief (and only in our brief, to the best of our knowledge) the burden is on the opponents to prove, not merely insinuate, that the program is unconstitutional.

Such questioning indicated that CER’s approach in its amicus brief was clearly on target. That is, the educational landscape of Cleveland over the last 30 years must be the central issue that guides the Court as to whether the state acted constitutionally.

“Our efforts to urge the Court to consider this as an education case rather than a religious one appear to have made some headway,” said Jeanne Allen, CER president. “We were encouraged by the questioning and believe that the Justices will consider all of the facts and all of the options available to Cleveland parents in making their decision.”

Attorneys for CER — among them, Robert Destro, Gregory Walden and Matthew Stowe — are extremely pleased that the issues raised in the Center for Education Reform’s brief appear to have been utilized by the Justices. A decision is likely by the end of June and, along with the parents of Cleveland’s children, CER will be anxiously awaiting the ruling.

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The Center for Education Reform is a national, independent, non-profit advocacy organization providing support and guidance to individuals, community and civic groups, policymakers and others who are working to bring fundamental reforms to their schools. For further information, please call (202) 822-9000 or visit our website at <http://edreform.com>.