



December 20, 2013

Re: Constitutional Right of Religious Schools to Participate in North Carolina's Opportunity Scholarship Program

Dear School Officials,

By way of introduction, Alliance Defending Freedom is an alliance-building legal ministry that advocates for the right of people to freely live out their faith. Alliance Defending Freedom has been a leading proponent of the school choice movement, most notably in its successful defense of Arizona's tax credit scholarship program at the U.S. Supreme Court. See *Arizona Christian School Tuition Organization (ACSTO) v. Winn*, 131 S. Ct. 1436 (2011). The North Carolina Family Policy Council is an independent, nonpartisan, nonprofit organization providing research and education on public policy issues affecting the family, including school choice, parental rights and religious freedom. The NC Values Coalition is a coalition of conservative Biblically-based citizens, working to promote a pro-family culture in North Carolina in which human life is valued, marriage and families flourish, and religious liberty thrives.

As you are likely aware, Equality North Carolina recently pressured a private, Christian school into refusing to participate in North Carolina's new Opportunity Scholarship Voucher Program. We write to inform you that you should not succumb to the same pressure. As we explain in more detail below, private Christian schools have a constitutional right to require their faculty, staff, and students to adhere to biblical standards of morality. Moreover, the First Amendment forbids the State from excluding religious schools from government programs and benefits based on how they exercise their faith. Yet this is *exactly* what Equality NC seeks to achieve. And in attempting to achieve this end, Equality NC also threatens to take away the right Opportunity Scholarships have provided low income families to send their children to the schools that respect and teach their values and beliefs.

While we certainly hope your school will not be Equality NC's next target, attorneys at Alliance Defending Freedom can help review your school's policies to make sure it is in the best possible position to repel the group's attacks and to protect its precious constitutional freedoms. We also have model Christian school admission policies available, which we will be happy to provide upon request. Of course, all our legal assistance is free of charge.

Factual Background

North Carolina recently established the Opportunity Scholarship Program, which provides vouchers for economically disadvantaged families to send their children to the private school of their choice. N.C.G.S.A. § 115C-562.2(a). Qualifying parents may use the voucher to send their child to any private school in the state that meets the Program's eligibility standards. N.C.G.S.A. § 115C-547. The State has wisely enacted a provision that sets out a policy of noninterference with eligible religious schools. N.C.G.S.A. § 115C-547 ("[I]t is the public policy of the State on matters of education that 'No human authority shall, in any case whatever, control or interfere with the rights of conscience,' or with religious liberty and that 'religion, morality and knowledge being necessary to good government and the happiness of mankind . . . the means of education shall forever be encouraged.'").

Equality NC, which exists to advance the homosexual legal and political agenda, objects to schools that adhere to biblical standards of morality participating in the Opportunity Scholarship Program. Disingenuously labeling these schools “anti-gay,” Equality NC has embarked on a campaign aimed at excluding such schools from the program. Its first target was Myrtle Grove Christian School. According to media reports, the Myrtle Grove policy that drew Equality NC’s ire states the following: “The school reserves the right, within its sole discretion, to refuse admission of an applicant or discontinue enrollment of a student if the atmosphere or conduct within a particular home or the activities of a student are counter to or are in opposition to the Biblical lifestyle the school teaches.” Similar policies likely exist at *every* private Christian school in the state, yet Equality NC waged a public relations campaign designed to pressure the school into backing out of the voucher program. Unfortunately, the school unnecessarily waived its right to participate in the voucher program, thus giving Equality NC the exact victory it hoped to achieve. Equality NC has vowed to continue its fight and to lobby the State Legislature to pass a law barring religious schools that adhere to biblical morality from participating in the Opportunity Scholarship Program.

Put simply, Equality NC is calling for the exclusion of religious schools from the Opportunity Scholarship Program unless they throw out the Bible, water down their faith, and agree to embrace its homosexual agenda. Private Christian schools should not surrender to these unreasonable demands. This is especially true when, as explained below, the Constitution forbids the government from punishing and excluding religious schools in the manner Equality NC seeks.

Religious Private Schools Have a Constitutional Right to Equal Participation in the Opportunity Scholarship Program

The U.S. Supreme Court has repeatedly affirmed the right of religious organizations to operate according to the dictates of their faith, free from government intrusion and interference. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694, 704 (2012) (recognizing “a spirit of freedom for religious organizations, an independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.”). Indeed, the very “text of the First Amendment itself . . . gives special solicitude to the rights of religious organizations.” *Id.* at 706. Given this freedom, the Court has unsurprisingly struck down governmental intrusions upon religious organizations’ internal affairs, finding that such actions violate the Establishment and Free Exercise Clauses of the First Amendment. *Id.* at 708-09 (attempt by EEOC to force Christian school to employ teacher it fired violated school’s free exercise right to select those responsible for “conveying [its] message and carrying out its mission”).

Simply put, Equality NC seeks an unlawful goal—State exclusion of religious schools that adhere to biblical standards of morality from the Opportunity Scholarship Program. Such blatant religious discrimination is prohibited by the Establishment and Free Exercise Clauses. As the Supreme Court has said, “religious people (or groups of religious people) cannot be denied the opportunity to exercise the rights of citizens simply because of their religious affiliations or commitments, for such a disability would violate the right to religious free exercise.” *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 698 (1994) (plurality opinion). Government entities are thus generally prohibited from “impos[ing] special disabilities on the basis of religious views or religious status,” *Employment Div., Dept. of Human Res. of Ore. v. Smith*, 494 U.S. 872, 877 (1990), and from exhibiting “hostility toward any [religion],” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984). Forbidden also are laws that “burden[] the Constitution’s enumerated rights by coercively withholding benefits from those who exercise them.” *Koontz v. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2595 (2013). Conditioning religious schools’ participation in the Program on their willingness to forgo the exercise of their free exercise rights would be a blatant violation of the First Amendment.

In sum, if the State submitted to Equality NC’s demands it would be placing unconstitutional restrictions on the participation of religious schools in the Opportunity Scholarship Program. It is thus incumbent upon private religious schools in the state to avoid giving Equality NC a political victory—by refusing to accept Opportunity Scholarship vouchers—that it cannot achieve legally. Now is the time to

stand up to anti-freedom groups like Equality NC, not yield to their demands by self-imposing limits on your religious liberty that the First Amendment would clearly bar.

Opportunity Scholarships Play a Critical Role in Enabling Low Income Families to Escape Failing Schools and Attend Schools that Teach Their Religious Beliefs

In the current debate of what to do about failing schools and how to ensure that students are not “left behind,” the important role of parents in guiding the education of their children is often lost. Sadly, too few families have a real choice available to them. In these difficult economic times, most families lack the financial resources needed to forego one parent’s salary and homeschool a child (an option that is also clearly unavailable to single parents). And under the current system, families that wish to send their children to private school are subject to a double burden: paying not only their children’s private school tuition but also the local taxes levied upon all citizens to support public schools.

For most lower and middle class families, public schools are the only feasible option. But in sending their children to public schools, many parents are forced to forego their fundamental right to have their child receive an education that reinforces their family’s values and beliefs. *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534-35 (1925) (recognizing “the liberty of parents and guardians to direct the upbringing and education of children under their control”); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (“This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”). The forced secularism thrust upon children in public schools is often inimical to the religious beliefs that parents desire to instill in their children.

In enacting the Opportunity Scholarship Program, the North Carolina legislature was acting in line with our best constitutional traditions. It was ensuring that low income families were given the power of educational choice—the choice to send their children to schools where they could attain their fullest educational potential and their families’ religious beliefs would be respected and affirmed. Private Christian schools should stand against Equality NC’s attempts to strip financially struggling parents of their fundamental right to direct the education and upbringing of their children.

Conclusion

North Carolina’s new Opportunity Scholarship Program is leading the way in providing school choice to families, allowing them to select the best school—whether secular or religious—to meet their child’s educational needs. Alliance Defending Freedom stands ready to defend private, Christian schools’ right to participate in the Program without abandoning their faith, and parents’ right to direct their children’s education through the Program. If you or your colleagues have any questions, please feel free to contact us at our Lawrenceville, Georgia offices at 770-339-0774.

Cordially,

ALLIANCE DEFENDING FREEDOM



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NC FAMILY POLICY COUNCIL



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