

Council for American Private Education

CAPE outlook

Voice of America's private schools

New Mexico Supreme Court Hears Textbook Case...Again

On June 27 of last year, the Supreme Court of the United States (SCOTUS) vacated a 2015 decision by the New Mexico Supreme Court that disallowed the provision of textbooks by the state to students in private schools, including religious schools. It did so the day after it ruled in *Trinity Lutheran Church of Columbia, Inc.*

v. Comer that another state, Missouri, could not exclude a religious school from a grant program to enhance playground safety merely because the school was religious.

SCOTUS returned the textbook case to the New Mexico court “for further consideration in light of *Trinity Lutheran*.”

Fast forward to May 7, 2018, when New Mexico’s highest court revisited its 2015 decision and considered once again the question of whether the state’s *Instructional Materials Law* (IML) is constitutional. The case involves the New Mexico Association of Nonpublic Schools, a state affiliate of CAPE.

Not Just Blaine

First to argue before the court at the May hearing was Frank Susman, a Santa Fe attorney representing parties who oppose the textbook loan program. Susman tried to distinguish the New Mexico court’s 2015 ruling from *Trinity Lutheran* by arguing that in the Missouri matter, religious identity was the sole criterion for denying the grant. Susman reasoned that the New Mexico law is more inclusive and neutral in that it applies to all private schools, not just religious. He also argued that in addition to the state’s Blaine language, which in Article XII, Section 3 of

the New Mexico Constitution prohibits the use of state funds “for the support of any sectarian, denominational or private school,” two other provisions of the constitution effectively ban the state from lending textbooks to students in private schools. Article IV, Section 31 prohibits appropriations “for charitable, educational

or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state.” And Article IX, Section 14 says

the state shall not “lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation.”

These provisions, said Susman, are “clear as day.” They “say what they mean and they mean what they say.” But one justice quipped, “If that were true, we wouldn’t be here today.”

NMANS

Eric Baxter, from the Becket Fund for Religious Liberty, argued on behalf of the New Mexico Association of Nonpublic Schools. He was quick to recount the anti-Catholic animus that prompted enactment of the state’s Blaine Amendment.

Addressing Susman’s argument that religious schools were not the sole target of a constitutional provision that encompasses all private schools, Becket’s response brief detailed the historical record demonstrating the anti-religious purpose of the provision, which puts it at odds with U.S. Supreme Court precedent. As the brief put it, “*Trinity Lutheran* underscored that laws that ‘single out the religious for disfa-

vored treatment’ violate the Free Exercise Clause.” Adding “private” to “sectarian” and “denominational” in the state’s Blaine provision does not shield it from *Trinity Lutheran* in that the Supreme Court “affirmed that even a ‘facially neutral’ law is invalid if it has ‘a discriminatory purpose’ aimed at ‘some or all religious beliefs’ and imposes a ‘special disabilit[y]’ for religious observers.”

Becket’s brief also addressed plaintiff’s claim that the IML violated two other provisions of the state’s constitution, stating that “neither of these provisions apply to the IML because the state retains both control and ownership of the textbooks and merely utilizes the schools as agents to facilitate its efforts to lend textbooks for the benefit of students.”

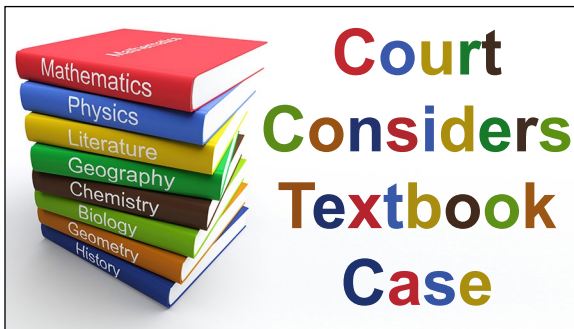
What is Support?

One thread of discussion during the oral arguments focused on what constitutes support for an institution. Questioning Mr. Susman’s assertion that the lending of state-owned textbooks to students attending private schools constitutes support for those schools, one justice asked whether the state’s temporary back-to-school sales tax moratorium on school supplies should also be considered aid to private schools.

Elephant in the Room

Another recurring theme was the religious bigotry that prompted the state’s Blaine language. Justice Charles Daniels decided to address “the elephant in the room” by recalling that the prohibition on aid to religious schools was added to the state constitution because New Mexico was required to do so as a condition of statehood. He said the ban was “dressed up a little bit” by being extended to all private schools, but that the underlying motivation at the time was anti-religious animus. “Can we ignore that?” he asked.

[photo: balein/Shutterstock.com]



CAPE

CAPE member organizations:

Agudath Israel of America
American Montessori Society
Association Montessori International—USA
Association of Christian Schools International
Association of Christian Teachers and Schools
Association of Waldorf Schools of N.A.
Christian Schools International
Council of Islamic Schools in North America
Council on Educational Standards and Accountability
Evangelical Lutheran Church in America
Friends Council on Education
Islamic Schools League of America
Jesuit Schools Network
Lutheran Church—Missouri Synod
National Association of Episcopal Schools
National Association of Independent Schools
National Catholic Educational Association
National Christian School Association
Oral Roberts University Educational Fellowship
Seventh-day Adventist Board of Education
United States Conference of Catholic Bishops
Wisconsin Evangelical Lutheran Synod Schools
Affiliated State Organizations

a coalition of national associations serving private schools K-12
Executive Director: Joe McTighe

Outlook is published monthly (September to June) by CAPE. An annual subscription is \$35. ISSN 0271-1451

13017 Wisteria Drive #457
Germantown, MD 20874
(tel) 301-916-8460
(fax) 301-916-8485
(email) cape@capenet.org

www.capenet.org



DeVos Devotes Two Days to Private Education in NYC

U.S. Secretary of Education Betsy DeVos last month spent two days in New York City on a whirlwind tour dedicated to private education. Her trip included historic visits to two Jewish schools and a speech on education at a breakfast hosted by two Catholic organizations that help with the education of children in need.

On Tuesday, May 15, Secretary DeVos spent over three hours at Manhattan High School for Girls, an Orthodox Jewish school on the Upper East Side. She sat in on classes and took part in discussions with students, faculty, and board members. The visit concluded

with an informal lunch with students, who presented the secretary with “several gifts, including a framed illuminated teacher’s prayer written in both Hebrew and English,” according to a report by Agudath Israel of America, which organized the visit.

Key to Jewish Continuity

“What Secretary DeVos saw today at Manhattan High School for Girls—a deep commitment to Jewish education as the key to Jewish continuity—will surely give her greater insight into the trend-bucking phenomenon of Jewish school growth,” said Rabbi David Zwiebel, executive vice president of Agudath Israel and a member of CAPE’s board of directors. “Clearly, the Secretary was delighted with what she saw, and just as clearly, the prestige of our Jewish schools received a significant boost,” he added.

Agudath said the event was believed to be the first visit to a Jewish school by a sitting secretary of education.

Journalists and Photographers

If indeed it was historic, then the following day, Secretary DeVos doubled down on history by visiting Yeshiva Darchei Torah Boys School in Far Rockaway, Queens. The visit was quite the media event. According to *The New York Times*, journalists and photographers “trailed Ms. DeVos as she toured classrooms” at the school.

Besides offering “nine Advanced Placement classes and Regents exams, the school has a policy of inclusion for some special-needs chil-

dren, as well as a vocational program for students who are struggling in a traditional academic program,” *The Times* reported, based on information provided by the school’s founding head, Rabbi Yaakov Bender.



Secretary of Education Betsy DeVos is greeted by Rabbi David Zwiebel and Manhattan High School Principals Mrs. Tsvia Yanofsky and Mrs. Estee Friedman-Stefansky. (Photo: Moshe Gershbaum, Agudath Israel of America)

The Jewish newspaper *Hamodia* reported that Secretary DeVos watched a student solder a copper pipe, witnessed a physics lesson involving a zinc solution, listened to a rabbi explain the reasons behind a Jewish prayer of blessing and thanksgiving, observed a poetry class, and walked in on a study hall where groups of students were discussing Talmudic texts.

A summary of the visit by the Department of Education said the secretary also “held a roundtable discussion with teachers and staff.”

The Times noted that the secretary’s visits to both Jewish schools were the result of extensive planning by Agudath Israel (a member organization of CAPE).

Before her stop at Yeshiva Darchei Torah, the secretary spoke at a breakfast hosted by the Alfred E. Smith Memorial Foundation and Champions for Quality Education, two organizations that assist underserved Catholic schools in the Archdiocese of New York.

Sights Set on Blaine

At that gathering, which included Cardinal Timothy Dolan, Secretary DeVos set her sights on Blaine Amendments, provisions in the constitutions of the majority of states that prohibit the use of government funds for religious schools.

“Our country has an ugly history of unjust laws that force families to violate their consciences or that disrespect their preferences,” she said. “In the late 1800s, anti-Catholics tried to amend the U.S. Constitution. They failed at the federal level, but they maneuvered to enact the amendment in state constitutions throughout the country,” she added.

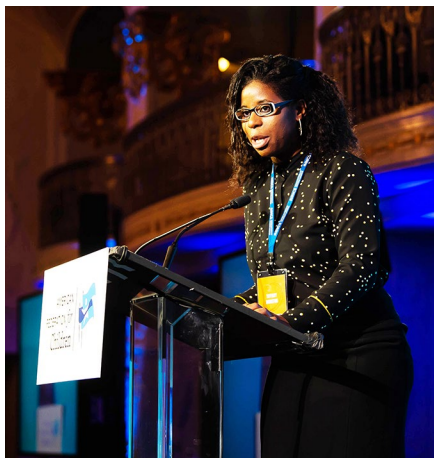
“These amendments are still on the books in 37 states....They were bigoted then, and they still are today....These amendments should be assigned to the ash heap of history, and this ‘last acceptable prejudice’ should be stamped out once and for all.”

Opportunity Scholarship Scholar Wows AFC Audience

Some investments are short-term and others long. In education reform, the tendency is to evaluate a particular initiative based on its immediate payback, and more precisely, by a quick measurable uptick in math or reading scores.

But some reforms reveal their best results over time: a college entry, a career choice, a changed life, a changed world.

Attendees at the ninth annual summit of the American Federation for Children last month had the eye-opening opportunity to hear about a remarkable long-term return on investment when Dr. Tiffany Dunston described the dramatic impact the D.C. Opportunity Scholarship Program had on her life.



Dr. Tiffany Dunston speaks at AFC's National Policy Summit May 3 in Washington, D.C. (AFC photo)

need to preserve the critically important educational alternatives for underserved students"—alternatives that “despite their educational successes” were “disappearing at an alarming rate.” During the summit, Tiffany was invited

backstage to meet President George W. Bush, who had signed the DCOSP into law four years earlier. She talked with the president about her plans to attend college.

First in Family

From high school it was off to Syracuse University, becoming “the first in [her] family to attend college.” While at Syracuse, Dunston qualified for the McNair Scholars Program, a federally funded TRIO program that, according to the university, “prepares high-achieving undergraduate students for

graduate/doctoral studies with hands-on research, academic services and financial support.” The program covered her application fees to graduate school, helped her prepare for the Graduate Record Examination, and provided a summer research stipend.

Modified Alumina Membranes

In 2011, Dunston successfully applied to the National Nanotechnology Infrastructure Network, through which she was given an opportunity to conduct summer research at Howard University and eventually present her work at Georgia Tech on the topic “Morphological Characterizations of Collagen-Modified Alumina Membranes.”

IGERT Grant

The opportunities kept coming. From 2013-15 she benefited from a grant from the National Science Foundation through its IGERT (Integrative Graduate Education and Research Traineeship) program, through which, as she put it, she was able to “freely conduct research to obtain my Ph.D.,” which she received from the Chemistry Department at Syracuse University.

Today, Dr. Dunston is a postdoctoral research fellow at Johns Hopkins University, where she is currently engaged in cancer research.

And what does this remarkable story of success have to do with the D.C. Opportunity Scholarship Program? Dunston summed it up in a single sentence: “Without the Opportunity Scholarship, none of this would be possible.”

Choice Expanding

Two states, Georgia and Iowa, enacted legislation that expands educational opportunity and advances the national march toward educational freedom. As a consequence, more students will get the chance to attend schools that meet their needs.

In Georgia last month, Governor Nathan Deal signed House Bill 217, which increases the statewide cap on tax credit scholarships from \$58 million to \$100 million, significantly expanding the pool of students who will be able to benefit from the state's school choice program.

Jamie Lord, who advises the American Federation for Children on government affairs in Georgia, had this to say about the new law: “More Georgia families will finally be able to access the school of their choice thanks to these laws. More than 13,000 students are currently receiving privately funded scholarships thanks to the successful Georgia Tax Credit Scholarship program, and we expect thousands more to now have the benefit of receiving the education of their choice.... We stand with Georgia families and thank Governor Deal and the bill sponsors for their leadership in pushing for more educational freedom across the state.”

Meanwhile in Iowa, lawmakers last month approved a state budget that, according to the AFC, “increases the scholarship tax credit program cap from \$12 million to \$13 million per year” and also “increases program eligibility to include families making no more than 400 percent of the federal poverty guideline.”

AFC President John Schilling, responding to the Iowa budget, said, “Today, more than 10,000 students are receiving scholarships thanks to the successful Iowa scholarship tax credit program. Now even more Iowa students will have the benefit of receiving the education of their parents’ choice.”

First and Only

AFC President John Schilling introduced Dr. Dunston to the gathering and offered a brief overview of the DCOSP, “the nation's first and only federally funded voucher program,” which began in 2004. The program is part of a three-part model that provides special federal funding for traditional public schools, charter schools, and private school scholarships. Schilling reported that since the program's inception Congress has invested more than \$735 million in the three-sector approach. Nearly 1,700 children are currently receiving scholarships.

Is the program working? Schilling reported that over the last six years an average of 93 percent of OSP 12th graders graduate from high school, and 90 percent of those graduates go on to college. Dr. Dunston was one of those college-bound graduates back in 2008.

Cherish Forever

As Dunston tells it, she grew up in Washington, D.C., living with her mother, grandmother, and two siblings. She first attended a public elementary school; then moved to a charter school, and ultimately attended Archbishop Carroll High School thanks to an Opportunity Scholarship. She graduated with a 4.3 GPA as the class valedictorian, which she described as a “major blessing” that she will “forever cherish.”

In senior year Dunston attended the 2008 White House Summit on Inner-City Children and Faith-Based Schools. According to organizers, the event was designed to “highlight the

CAPE notes

★ The U.S. Department of Education last month released the names of the 2018 Green Ribbon Schools. There were several private schools on the list.

Extensive descriptions of each school's award-worthy programs may be found at <https://www2.ed.gov/programs/green-ribbon-schools/highlights-2018.pdf>. Here are some necessarily short excerpts.

Maple Village Waldorf School in Long Beach, CA, "opened in 2007 with these aims: little to zero waste; low energy and water usage; whole foods; farm-to-table education; copious outdoor time; physical activity, rain or shine; students and teachers with a balance of heart, mind, body, and spirit; and a reverence for others and the environment...Each family is instructed in packing zero waste lunches, and there is 100 percent compliance."

Wolcott School in Chicago "is a leader among Illinois private independent schools pursuing sustainability...In 2013, Wolcott received a LEED Gold Certification for its 90-year-old facility...The award-winning architectural design, and recently added community garden and solar panels, create the perfect learning environment for this community of young adults committed to sustainability, wellness, and hands-on curriculum."

St. Columbkille Elementary in Dubuque, IA, is committed "not only to educating students on environmental topics, but maintaining an atmosphere that encourages respect and knowledge of the Earth...This long-term commitment has

created an atmosphere of respect for the environment, and instilled the mindset that the small things individuals do can make a difference in the world."

At **Magnificat High School** in Rocky River, OH, students "secured funding to construct an onsite Gothic arch hoop house in 2014 to grow vegetables. Students' gardening efforts have resulted in the donation of over 670 pounds of organically grown vegetables to the local Meals on Wheels program."

★ After 22 years as executive director of CAPE and 220 issues of *Outlook*, I am about to hand over the keyboard and move on to other pursuits. But before I do, allow me to pound out a few final thoughts.

In an age where discord can arise at the drop of a hat, the CAPE community is committed to a counter-cultural quest: the search for shared space and common ground. Division is easy; unity is not. Yet, the hard work of unpacking unifying principles is what the CAPE community is all about.

Our board meetings and state CAPE gatherings are marked by some powerful properties: collective wisdom, mutual regard, shared purpose, and respectful discourse. Our members bring to the dialog a multitude of experiences and deeply divergent beliefs (even a cursory look at the membership roster on page 2 will confirm that). But while we respect each other's right to hold those sometimes conflicting beliefs, we remain steadfastly committed

to discovering and promoting rock-solid shared principles. Among them:

- that parents, who know and love their children better than anyone else, should be free to choose the schools that suit their children best;
- that pluralism in education is good for students, families, and America;
- that private schools should be free to fulfill their own missions and thereby provide parents real choice in education.

Within this principled framework, we regularly arrive at, and advance in the practical sphere, policies, practices, and projects that promote educational freedom and pluralism.

It has been my honor to work with our community in forging consensus from diversity. But I have no illusion that the success of that work rests with any single individual. For among the great strengths of our community are its shared wisdom, its rich reservoir of leadership, and its abundant good will.

With that wisdom, leadership, and determination, the CAPE community, under the guidance of Michael Schuttloffel, its very talented and capable next director, will continue to move forward and prosper for many years to come.

With profound gratitude for the opportunities and friendships with which CAPE has enriched my life, I remain,

Sincerely,
