ALABAMA POLICY INSTITUTE

GUIDE TO THE ISSUES

Repealing the Anti-Religious Blaine Amendment in Alabama

Background

Blaine Amendments are provisions in state constitutions that prohibit the use of state funds at "sectarian" schools.[1] Such amendments are named for the failed amendment to the United States Constitution championed by U.S. Representative James G. Blaine (R-Maine) in 1875 that would have forbidden states from funding religious schools.[2] There are currently thirty-eight states, including Alabama that have Blaine Amendments in their state constitutions.[3] The amendments originated during a strong anti-Catholic sentiment that swept the nation in the late nineteenth century.[4] As Blaine Amendment expert Joseph Viteritti explains, "Taken as a whole, these measures reflect the confluence of political forces that erupted when strong nativist sentiment was joined with the common-school movement at the turn of the century to stem the growth of religious schools and their support with state funds."[5]

Alabama's Blaine Amendment reads: "No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school."[6]

Policy Considerations

The term "sectarian" had a very different meaning when the Blaine Amendments were codified during the nineteenth century. It was used to differentiate between the "common religion," Protestantism, then being taught in the "common schools." In other words, state constitutional amendments that prohibit "sectarian" groups had less to do with the separation of church and state, and were more concerned with creating a disadvantage for the faiths of immigrants, particularly Catholicism.[7]

ISSUE SNAPSHOT

Alabama's Blaine Amendment was passed as part of the 1901 Constitution.

There are currently 38 states with Blaine Amendments.

The U.S. Supreme Court has already ruled in two separate cases that it is appropriate for taxpayer funding to support religious schools under certain circumstances.

Two Supreme Court decisions, *Mitchell v. Helms* and *Zelman v. Simmons-Harris*, have found that it is permissible for taxpayer funds to be used for educational purposes by religious organizations, providing that, in *Zelman*, the parents decide which religious or non-religious school their child attends, or in *Mitchell*, that the funds were used for a secular purpose.[8] Many proponents of Blaine Amendments cite the Establishment Clause of the First Amendment of the U.S. Constitution. However, the Court stated in *Zelman*, "Because the program was enacted for the valid secular purpose of providing educational assistance…this Court's jurisprudence makes clear that a government aid program is not readily subject to challenge under the Establishment Clause if it is neutral with respect to religion and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine

and independent private choice."[9] Similarly in *Mitchell*, the majority held, "…We conclude that [Chapter 2] neither results in religious indoctrination by the government nor defines its recipients by reference to religion."[10]

Conclusion

During the current effort to reform and modernize Alabama's Constitution, state lawmakers should give the citizens of Alabama an opportunity to repeal this egregious assault on religion. Allowing state programs to cooperate with parochial and other private schools can illuminate a whole world of educational options for Alabama's children.

[1] Becket Fund for Religious Liberty, *What are Blaine Amendments?* (2008), www.blaineamendments.org/Intro/whatis.html (last viewed Jan. 28, 2013).
[2] School Choice Foundation, *Blaine Amendments in Other States (2012),* http://schoolchoicefoundation.org/other-states/litigation-in-other-states/ (last viewed Dec. 13, 2012).
[3] *Id.*
[4] *Supra* note 1.
[5] *Supra* note 2.
[6] Ala. Const. art. 1 §263.
[7] Anthony Picarello, U.S. Commission on Civil Rights, School Choice: The Blaine Amendments & Anti-Catholicism (Jan. 13, 2011), *available at* www.usccr.gov/pubs/BlaineReport.pdf.
[8] Mitchell v. Helms 530 U.S. 793 (2000); and Zelman v. Simmons-Harris, 536 U.S. 639 (2002).
[9] Zelman v. Simmons-Harris et al. 536 U.S. 639 (2002).
[10] *Supra* note 8.