

Bayou Backdown?

Obama administration retreats on vouchers

by JOSHUA DUNN and MARTHA DERTHICK

Insisting that it was not hostile to vouchers—or, by extension, to the children, parents, or private schools that could benefit from them—the Obama administration’s Department of Justice (DOJ) in August 2013 mounted an attack on Governor Bobby Jindal’s Louisiana voucher program that shocked

the editorial page of the *Washington Post* (“Voucher Madness,” September 2, 2013).

Resurrecting long-ignored school desegregation lawsuits of the 1970s, the DOJ petitioned a federal district court to permanently enjoin Louisiana from awarding any vouchers to students in districts operating under federal desegregation orders until the state had received authorization from a federal court. The department claimed that vouchers awarded in 2012–13 had impeded the process of desegregation in 34 schools in 13 of Louisiana’s school districts. But as the *Washington Post* noted, the evidence shows that the vouchers’ effects on segregation are at most trivial and often mitigate racial isolation (see “The Louisiana Scholarship Program,” *check the facts*, Winter 2014). Having its claims exposed as patently shameless forced the DOJ to make a strategic retreat, but one that might allow the agency to sabotage the program nonetheless.

Louisiana adopted the program in 2008 to allow students in low-income families to leave poorly ranked public schools for private schools with the aid of vouchers. Initially the program was available only in New Orleans, but it expanded statewide in 2012. In 2013, 12,000 students applied, and 6,700 were chosen by lottery to receive vouchers, of whom more than 85 percent were black.

That so many minority students could escape failing public schools did not deter Obama’s attorney general, Eric Holder, but it did engage the passions of black parents. Organized as the Louisiana Black Alliance for Educational Options, they asked to intervene in the case. In the language of political strategists, this created “bad optics” for the DOJ. In response, it asked the judge to deny the parents’ request, saying that their interest was remote. And in a move that would make Big Brother blush, it also said the parents could not have a direct interest in the case because DOJ was not seeking to end the program. The distinction between ending the program and asking for a permanent injunction that would apply to the 34 districts still under court order may have eluded parents whose children could have been made ineligible.

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balance. Professor Christine Rossell of Boston University, a leading student of desegregation, analyzed the data for the state and found that of the districts under court order, 4 saw a “miniscule” increase in segregation while 16 had measurable reductions. Even worse for the DOJ, its cherry-picked data proved to be incorrect. It had claimed that the racial composition of the Tangipahoa

Parish district was harmed because six white children received vouchers. But when all of the data were analyzed, the overall effect was to reduce segregation in the district. Of course, it is not clear that this should matter, since poor white children should be just as entitled to escape substandard schools as anyone else.

At an initial hearing in September, Judge Ivan Lemelle ordered the contestants to brief the questions of whether a court order was necessary for implementation of the voucher program and whether desegregation orders applied to it. The DOJ, seemingly putting aside its request for a fresh injunction, responded by moving toward a regulatory approach that would honor the desegregation orders.

At a subsequent hearing in November, the judge sought a compromise. Leaving the desegregation orders in place, he nevertheless acknowledged that the state’s data showed that vouchers were promoting racial balance and said he did not want to scuttle the program. He then gave the parties 60 days to agree on a process of implementation. In January, the DOJ demanded authority to review and deny any voucher awards and to certify all participating private schools. The state and Governor Jindal objected, arguing that DOJ was just trying to starve what it could not strangle. In April, Judge Lemelle ruled that Louisiana had to provide DOJ with a list of all voucher applicants and recipients. Crucially, he denied DOJ’s demand to be able to veto any vouchers, allowing Louisiana to declare victory.

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