

Tax credit scholarships survive challenge in New Hampshire

BY PATRICK R. GIBBONS ON AUGUST 28, 2014



As the Florida teachers union and school boards association announced [a lawsuit this morning against the Florida tax credit scholarship](#), the New Hampshire Supreme Court [unanimously upheld that state's tax-credit scholarship program](#), arguing the plaintiffs had no standing.

In 2013, the American Civil Liberties Union (ACLU) and Americans United for Separation of Church and State (AU) sued to terminate the New Hampshire program. They argued the program violated the state's Blaine Amendment, prohibiting aid to sectarian schools and institutions.

Since the scholarships are paid for by donations backed by an 85 percent tax credit, rather than direct state appropriations, the plaintiffs had to argue that tax credits were akin to a tax expenditure. It must be noted that the loss in revenue due to the tax credit is also offset by an equivalent reduction in expenditures toward K-12 education as students enroll in private schools.

Citing the U.S. Supreme Court decision in [Arizona Christian School Tuition Organization v. Winn](#) (2011), defendants in New Hampshire argued the tax credits are not tax expenditures and, as such, the plaintiffs had no standing to file suit. They also argued the plaintiffs lacked standing since they could not demonstrate that any individual suffered any harm.

Although the New Hampshire Supreme Court did not touch on the *Winn* decision, it did agree the plaintiffs did not have standing.

The court could not find that the plaintiff's rights had been "prejudiced or impaired as a result of the program's implementation." The court further held that "petitioners fail to identify any personal injury suffered" and that "there is no evidence that by granting tax credits to other businesses, the program alters the amount of taxes [a business] is or will be required to pay."

Not even potential reductions in revenue to the state or to individual schools as a result of tax credit scholarships was enough to establish standing.

The court found,

“The prospect that [net fiscal losses] will occur requires speculation about whether a decrease in students will reduce public school costs and about how the legislature will respond to the decrease in students attending public schools, assuming that occurs.”

This finding may be useful for defenders of Florida’s scholarship program since its rapid growth **isn’t projected to make a dent in the even larger growth of the general student population.**

The New Hampshire decision isn’t a complete victory for the scholarship program as the plaintiffs could return to challenge the program again in the future. However, the decision may offer an additional defense to Florida’s tax-credit scholarship program since the plaintiffs may have a harder time proving they’ve been harmed.

- See more at: <http://www.redefinedonline.org/2014/08/tax-credit-scholarships-survive-challenge-in-new-hampshire/#sthash.gcumC1UZ.dpuf>

Florida School Boards Association urged to drop school choice suit

BY RON MATUS AND TRAVIS PILLOW ON AUGUST 27, 2014

A chorus of Florida lawmakers, education leaders and others began urging the Florida School Boards Association Wednesday **to drop a lawsuit it plans to file** against the state's tax credit scholarship program for low-income students.



Chartrand

The suit, which sources said could be filed as early as Thursday, could potentially limit school choice options for nearly 70,000 low-income parents, saddle school districts and taxpayers with hefty financial costs and entangle the nation's largest school choice program in litigation for years.

"I believe in choice and in freedom especially for those children that have limited mobility and limited financial resources," said Florida Board of Education Chairman Gary Chartrand in a written statement. "The Florida tax credit scholarships provide this freedom for our most underserved population to choose a school that best serves their needs."

The FSBA "is acting without consideration for this population by filing a law suit against this program," Chartrand continued. "This is surprising and disheartening, and I call on them to rethink their position and withdraw the lawsuit."

Added Florida House Speaker-Designate Steve Crisafulli: "This proven, popular program is essential for preparing children for success in college and the workforce. I hope School Board members will reconsider their actions and put the needs of children first."

The FSBA board of directors voted June 11 to move forward with a suit challenging the constitutionality of the scholarship program, which the Legislature created in 2001.

FSBA Executive Director Wayne Blanton could not be reached for comment Wednesday. But Juhan Mixon, executive director of the Florida Association of School Administrators, which is supporting the suit, said it was in part spurred by the program's rapid growth.

Nearly 70,000 low-income children will be served this year, up from 34,550 in 2010-11. More than 120,000 applications were started this year before Step Up For Students, which co-hosts this blog, closed the application process July 15.

“A constitutional challenge is not something you take lightly,” Mixon said. “When (the program) was fairly small, I think people were willing to ignore it. But every year you keep expanding it and expanding it and there’s very little oversight.”

Mixon cited the [2006 Florida Supreme Court ruling](#) that upended the state’s first private school voucher program.

“Our concern is that the Supreme Court in *Bush v. Holmes* said that you couldn’t have a dual school system funded by state government,” Mixon said, adding that he believes tax credit scholarships do “indirectly what the court said you couldn’t do directly.”

Details of the FSBA’s legal arguments have yet to emerge. But the coalition of groups supporting the suit will likely spread beyond the associations that represent school districts and their employees in Tallahassee.

Pat Drago, a board member of the League of Women Voters of Florida, said the group would likely join the case. It [already asked to join](#) a separate, more wide-ranging lawsuit that challenges multiple aspects of the state’s education system, including funding for public schools.

“One is comprehensive. One is more focused. But they certainly are complementary, not in conflict,” she said of the ongoing and forthcoming lawsuits, which both include arguments against tax credit scholarships.

Drago noted that the national League of Women voters opposes private school vouchers, and said the group’s Florida members are becoming increasingly concerned about education. The group wants more funding for public schools and opposes “committing more and more resources to this parallel system, this parallel universe” of school choice programs. While she acknowledged the programs may save taxpayers money, she said the [state constitution places the onus on lawmakers](#) to focus on improving public schools.

In the meantime, news that the suit was imminent prompted key lawmakers to pan the move.

“Parents deserve better than this,” said Sen. Kelli Stargel, R-Lakeland, a member of the Senate Education Committee. “They want what’s best for their kids and are lining up for this program. It is unconscionable that the FSBA would go this far to keep low-income families from accessing a better education.”

“I don’t think the FSBA’s actions represent the views of its entire membership but it doesn’t make this any less appalling,” said Rep. Manny Diaz, R-Hialeah, a member of three education committees in the House. “As a former public school leader, I know there are many people in the public school system fighting for students, but it is clear the FSBA is not one of them.”

A handful of local school board members have also chimed in.

“It’s all about the money,” said Escambia County School Board member Jeff Bergosh, offering his take on the FSBA’s motivation. “There are so many other things we should be focused on other than this. This is people just trying to maintain an empire.”

“These families have found something that works for their child,” said Duval County School Board member Jason Fischer. “Why on earth would we disrupt that?”

- See more at: <http://www.redefinedonline.org/2014/08/florida-school-boards-association-urged-to-drop-school-choice-suit/#sthash.qCiQLBvs.dpuf>

Florida roundup: Lawsuits, testing, school choice and more

BY TRAVIS PILLOW ON AUGUST 28, 2014

Lawsuits. The statewide teachers union, school boards association and other groups are preparing to announce the first direct constitutional challenge to Florida's tax credit scholarship program.



Times/Herald. Sentinel School Zone. redefinED.

Testing. In clear violation of state law, the Lee County school board votes to “opt out” of all state standardized testing. *Fort Myers News-Press. Naples Daily News.* Collier schools roll out new end of course exams. *Naples Daily News.*

School choice. A Palm Beach school board member pushes for more choice options within the district, but meets resistance. *Palm Beach Post.*

Charter schools. The *Northwest Florida Daily News* visits a new, collegiate-themed charter high school.

English Language Learners. Gov. Rick Scott criticizes federal accountability rules for students learning English at an event in Miami. *Miami Herald. Gradebook.* He appears ready to challenge the standards for federal accountability waivers. *StateImpact.*

Common Core. The standards were not the election driver some expected. *Sarasota Herald-Tribune.*

Prayer. The Orange County school district's decision not to allow chaplains at football games draws heat from a local pastor. *Orlando Sentinel.*

Elections. Recounts are coming in Hillsborough and Palm Beach school board races. *Palm Beach Post. Tampa Tribune.* A winning Indian River candidate faces residency allegations. *Indian River Press Journal.*

- See more at: <http://www.redefinedonline.org/2014/08/florida-roundup-testing/#sthash.HLf1WV8J.dpuf>