

Sweet Victory in the Peach State

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Great news from the Peach State, where a superior court judge dismissed a constitutional challenge to Georgia's scholarship tax credit (STC) law. The Institute for Justice intervened to defend the law on behalf of five tax-credit scholarship recipients. Currently, more than 13,000 Georgia students receive tax-credit scholarships to attend the schools of their choice.

School choice opponents alleged that the STC violated the state constitution's historically anti-Catholic Blaine Amendment, which prohibits the state from publicly funding religious schools, among other provisions. However, citing precedent from the U.S. Supreme Court and several state supreme courts, Judge Kimberly M. Esmond Adams held that tax-credit eligible donations constitute private funds, not public expenditures:

Courts that have already considered whether a tax credit is an expenditure of public revenue have answered this question in the negative. Of particular importance is *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011), where the United States Supreme Court found that taxpayers lacked standing to challenge a scholarship tax credit program under the Establishment Clause of the United States Constitution that was almost identical to the Program at issue here. Like Georgia's Program, the Arizona program provided that taxpayers could receive a credit for donations made to independent scholarship organizations which then provided scholarships for students to attend private schools. [...] Plaintiffs have not presented any arguments for why this Court should not follow this persuasive authority.

The fact that tax-credit eligible donations are private funds is the primary reason that STC laws have a perfect track record in the state courts thus far. It's also why tax credits are the most liberty-friendly means of financing educational choice, as the late, great Andrew J. Coulson never tired of reminding us (much to Greg's chagrin). In response to the U.S. Supreme Court's similar ruling five years ago, Andrew wrote:

The rationale underlying the Court's ruling highlights a unique advantage that tax credits have over other ways of funding education: they expand both freedom of choice for parents and freedom of conscience for taxpayers.

Plaintiffs had argued that cutting a person's taxes is equivalent to spending government money, and so taxpayers were being compelled to support religion when credits were used for donations to religious [scholarship organizations]. The Court said, "that is incorrect."

Unlike the funding of public schools, which is compulsory for all taxpayers, participation in [a] tax credit program is voluntary. If an individual chooses not to donate to [a scholarship organization], his taxes are collected just as they have always been, and those dollars cannot be used for any sectarian purpose. Furthermore, if a taxpayer does choose to make a donation, he is free to select the STO most consistent with his own values. [...]

There are other ways of funding universal choice in education, but only tax credits (either for parent's own education expenses or for donations to [scholarship organizations]) respect the freedom of conscience of taxpayers as well as the freedom of choice of parents. If we truly wish our schools to help build strong, harmonious communities, there is no better way than to adopt such programs at the state level on a grand scale.

The opponents of educational choice are likely to appeal the judge's decision. Let us hope their appeal meets the same fate as all of its predecessors.

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