

Another legal win for tax credit scholarships — this time in Georgia

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Another court has rejected a lawsuit challenging tax credit scholarships after finding opponents of the program lacked standing to sue.

The latest ruling (flagged by Jason Bedrick of the Cato Institute) comes from Georgia, where on Friday, a Fulton County Superior Court judge issued a double whammy to school choice opponents when she tossed out the lawsuit after concluding the plaintiffs lacked legal standing and rejecting constitutional claims against the program.

In a ruling that echoes recent court decisions in other states, Judge Kimberly M. Esmond Adams held the plaintiffs lacked standing for two reasons — that taxpayer standing does not apply to privately funded programs, and that plaintiffs failed to show the program would harm them.

“Courts that have already considered whether a tax credit is an expenditure of public revenue have answered this question in the negative,” the judge wrote in her 19-page decision, referring to the 2010 U.S. Supreme Court ruling in *Arizona v. Winn*.

Adams also rejected the argument that plaintiffs, who include a parent and a grandparent of public-school students, would have had to shoulder a greater tax burden to pay for public education if the scholarship program were allowed to continue. “When these children leave public schools with a scholarship, the state no longer has to bear this expense,” she wrote.

Supporters of the lawsuit argued the program violated Georgia’s constitutional “Blaine Amendment” (Article I, Section II Paragraph VII) which prohibits state aid to any church or sect. The judge, however, held the constitutional provisions used to challenge the program restricted the use of public funds, not private ones.

The Blaine Amendment, for example, was a restriction on money “taken from the public treasury” being used to support private religious institutions. Similarly, Adams rejected arguments that the Georgia program violated constitutional restrictions on the use of public money.

“To find otherwise,” she wrote in her ruling, which could still be appealed, “would mean all taxpayer income could be viewed as belonging to the state because it is subject to taxation by the legislature.”

The U.S. Supreme Court, along with state supreme courts in Arizona, Alabama and New Hampshire, have all dismissed cases against tax credit scholarship programs. A Leon County Circuit Court judge dismissed a similar case in Florida last year. Florida's teachers union has filed an appeal and argues that none of those cases apply to Florida's program or its constitution. (Step Up For Students, which publishes this blog, helps administer tax credit scholarships in Florida).

Georgia's scholarship program allows students to receive scholarships to attend private schools, including religious schools. The state has no restrictions on household income, but does require students to attend a public school for at least six weeks prior to applying for a scholarship. Corporate donors receive a 75 percent tax credit for their contributions to scholarship funding organizations, while some individuals and businesses can receive a dollar-for-dollar tax credit for their donations.

Scholarship organizations received \$108.7 million in pledged donations on the first eligible day of 2016, exceeding the program cap by \$50.7 million. Supporters have argued unsuccessfully for raising the cap on funding for the program, despite exceeding it several years in a row.