



## **The struggle to protect the New Hampshire school choice scholarship program**

**By Steve Mac Donald**

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Three years ago, New Hampshire embarked on a mission to expand school choice for low-income families. During School Choice Week 2012, Susan Olsen, then with Smart Girl Politics New Hampshire, wrote that “we are fortunate to have state legislators who believe and support these ideas [school choice]. House Bill 1607, and its Senate companion, SB 372, will be introduced on Jan. 23 into the House Ways and Means, and Jan. 24 into the Senate Education committees,..”

Both bills proposed giving business owners a tax credit for donations to non-profits issuing scholarships under the program. Caps were placed on the amount of credit a business could claim and the total amount in credits allowed state wide per year.

Democrats immediately came out against both bills, claiming they would hurt public school districts by reducing state education funding. But private school students were already reducing that funding by not attending public schools; arguing against the program argued, directly or indirectly, against equal opportunity for lower income students.

In April 2012, NH Watchdog posted an article on the most recent progress report from the NH Department of education, writing “71 percent of New Hampshire schools failed to meet improvement benchmarks in the latest annual progress reports released today by the New Hampshire Department of Education. Over 66 percent of New Hampshire school districts failed to make the Adequate Yearly Progress (AYP) in either reading or math.”

Low and middle income families trapped in these schools needed the Republican legislature to provide a way out. Both HB1607 and SB372 passed, but Democrat Governor John Lynch vetoed both. The legislature was able to override the veto on SB372 in June of 2012, and the scholarship program became law. The fight to preserve it, however, had just begun.

Democrats, for one, wanted to repeal the scholarship program. New Democratic Governor Maggie Hassan promised repeal based on the same recycled claims; that the scholarship program would cost the state millions.

Jason Bedrick, writing a counterpoint for the CATO Institute noted that “If the governor’s goal is saving money, as she claims, then she should oppose the repeal. The fiscal note prepared by the governor’s own Department of Education states that repealing the OSA would actually cost the state half a million dollars over the next biennium.”

In January 2013, the newly Democratic state house introduced HB 370 to repeal the scholarship program. The ACLU and Americans for Separation of Church and State filed suit against the law on the grounds that it would compel taxpayers to fund religious schools.

During School Choice Week 2013 The Institute For Justice joined the fight, writing in a press release that” IJ seeks to defend New Hampshire’s Education Tax Credit Program against a state court legal challenge filed on Jan. 9, 2013, by New Hampshire taxpayers represented by Americans United for Separation of Church and State, and the American Civil Liberties Union and its state affiliate.”

The ACLU and Americans for Separation of Church and State, having gone judge shopping, found their man. Superior Court Judge John Lewis, Strafford County (now retired) ruled in *Duncan v. State of New Hampshire* that while the program could continue it could not be used for scholarships to religious schools. The Institute for Justice and a small army of interested parties would follow the case to the NH State Supreme Court.

The Democratic effort in the state House to repeal had long since stalled in the state’s Republican Senate, where the bill was tabled and left for dead. The scholarship program was in the hands of the New Hampshire State Supreme Court (NHSC).

On August 28th 2014, the New Hampshire Supreme Court announced their ruling.

The trial court ruled that the petitioners had standing under RSA 491:22, I (Supp. 2013). The ruling stated “We do not reach the merits of the petitioners’ declaratory judgment petition because we conclude that: (1) the 2012 amendment to RSA 491:22, I, which allows taxpayers to establish standing without showing that their personal rights have been impaired or prejudiced, is unconstitutional; and (2) absent that amendment, the petitioners have no standing to bring their constitutional claim. Accordingly, we vacate and remand with instructions to dismiss the petition.”

School Choice Week 2015 has arrived, and low and middle-income families have more choice in New Hampshire. Activists continue the fight to defend and expand those opportunities for everyone.