

# Jay P. Greene's Blog

## The Legal Battle for Choice in Georgia

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Georgia's tax-credit scholarship helps more than 12,000 students attend schools of their choice rather than their assigned district school. Predictably, defenders of the government education establishment sued to block parents from exercising educational choice. Thanks to the efforts of the state attorneys and the Institute for Justice, which intervened in the case on behalf of several parents of scholarship students, a lower court ruled against the challengers earlier this year. However, the challengers appealed and the case is now before the state supreme court.

Yesterday, the Cato Institute filed an amicus brief in the case urging the Georgia Supreme Court to uphold the constitutionality of the tax-credit scholarships. Cato's legal eagle, Ilya Shapiro, has more at the *Cato-at-Liberty* blog:

We urge the court to affirm the determination that the tax-credit program does not violate the state constitution, focusing on the fact that it does not involve spending public funds for any sectarian purpose. Because the program makes no expenditures from the public fisc, it cannot violate the No-Aid Clause. Taxpayers choose to donate voluntarily using their own private funds and receive a tax credit for the amount of the donation; no money ever enters or leaves the treasury.

The challengers attempt to get around this fact by claiming that the credits constitute an *indirect* public expenditure, but this argument relies on a budgetary theory known as "tax expenditure analysis" that finds no support as a legitimate means of constitutional interpretation under Georgia (or federal, or any other state) law. Indeed, the U.S. Supreme Court rejected this type of reasoning in *Arizona Christian School Tuition Organization v. Winn* (2011).

The argument that the program constitutes an unconstitutional gratuity is likewise incorrect because the tax credits are not public funds, and the government cannot give away that which it does not own. Even if Georgia were giving up something of value, it would not be a "gratuity" because the state receives a substantial benefit in return: increased educational attainment, plus the secondary effects that increased competition and a more educated citizenry create.

The Georgia Supreme Court should affirm the lower court's decision and uphold the state's Qualified Educational Tax Credit Program—ensuring educational choice for Georgia families, regardless of how much money they make.

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