



## **Citing Catholic ties, plaintiffs want judge off FL school choice, funding lawsuit**

By Travis Pillow  
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The plaintiffs in a wide-ranging lawsuit that challenges multiple aspects of Florida's education system argue that the current judge should be disqualified from hearing the case because of her involvement with Catholic organizations.

The lawsuit, which we've written about before, attacks school choice programs and other policies while making a sweeping argument that the state has not lived up to its constitutional obligation to support public schools. (Its targets include the state's tax credit scholarship program, which this blog's co-host, Step Up For Students, is authorized to administer.)

Kathleen Oropeza, of the group Fund Education Now, is now among the most outspoken plaintiffs. She points out in court papers filed last week that the judge, Angela Dempsey, is on the board of a Northwest Florida arm of Catholic Charities and has spoken at a Catholic school in Tallahassee.

The first version of Oropeza's motion to disqualify Dempsey drew a strongly worded response from the state's lawyers, and has been criticized on other blogs, which argued the judge was being singled out because of her religious affiliations.

That criticism was making the rounds when Oropeza filed an updated motion on Tuesday. The new filing is stripped of references to a "Catholic strategy" to support voucher programs around the county, and no longer mentions comments a member of the Catholic clergy made during a television appearance.

Oropeza has maintained all along that she is not asking for the judge's recusal based on the Dempsey's religious beliefs. But Jason Bedrick of the Cato Institute summed up her original argument this way:

The judge belongs to a Catholic charity and has spoken at a Catholic school, the local Catholic Conference took a position in the original lawsuit, and a cardinal in another state said nice things about school choice on TV, therefore the anti-school choice

activists want her to recuse herself. In other words, they want her to recuse herself because she's Catholic.

The updated filing notes Dempsey's involvement with local Catholic Charities, and says the president of the national Catholic Charities organization is also involved with a separate group that put out a policy paper supporting school choice programs in 2011. It notes the judge spoke at a recent event hosted by a Tallahassee Catholic school. Some students at the school participate in school choice programs.

Based on those relationships, "Plaintiff does not believe the Judge can be impartial in determining whether Florida's private voucher programs are unconstitutional," the updated court papers state.

Part of the response by the state's lawyers to her original motion is still worth quoting at length, with some emphasis added.

10. Plaintiffs' claim, as articulated in Ms. Oropeza's affidavit, is legally insufficient. Of the five reasons articulated by Ms. Oropeza, only two—Judge Dempsey's membership in and board service for Catholic Charities of Northwest Florida, and her role as a speaker at a Leon County parochial school—actually relate to the judge's own activities. But neither of these affiliations indicate that Judge Dempsey is biased on the question of so-called voucher programs. **According to its website, Catholic Charities of Northwest Florida focuses its charitable efforts on immigration, crisis pregnancy and adoption, and emergency assistance—not vouchers or other education issues.** And a speaking engagement by Judge Dempsey at a parochial school that receives voucher funds—at an unspecified time, on an unspecified topic and in an unspecified capacity—provides no basis to impute any bias to Judge Dempsey on the question of vouchers or any other topic at issue in this lawsuit.

11. The remaining three "facts" alleged in Ms. Oropeza's affidavit show nothing more than some individuals and organizations, with some degree of affiliation to the Catholic Church, support the enrollment of students at parochial schools through voucher programs. **Unless Plaintiffs were to assert that all Catholics, by reason of their faith, support voucher programs to such a degree that they are unable to render an unbiased opinion on the issue—a position that Ms. Oropeza expressly disclaims—there is nothing about these third party positions that could shed any light on Judge Dempsey's own ability to fairly and impartially preside over this case.**

12. There are no judges in this state who have no involvement with the schools of this state. They either have or had children in school, studied in Florida schools themselves, or have close relatives involved in Florida's schools. There is even a judge in the Second Judicial Circuit who was once a Florida public school teacher. **It is not an objectively reasonable fear for a Plaintiff to be concerned about fairness because a judge has some personal opinion or involvement with some aspect of Florida's education system.**

The state goes on to add that information cited in Oropeza's court papers "can be discovered with a 1 second Google search" — meaning they were not recently discovered, and the filing was not "timely." The lawyers go on to suggest there is another reason for the plaintiffs' attempt to get a new judge on the case: Dempsey recently agreed with the state's argument that claims dealing with the state's pre-K system should not be added to the case.