



School Vouchers: Legal, Depending on Where You Live

Opponents successfully challenged Florida's first statewide voucher program in 2006.

By Allie Bidwell

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Even as a school voucher program survived a legal challenge in New Hampshire Thursday, a group of Florida teachers, parents and school board members filed a lawsuit the same day seeking to bring down the state's voucher program.

At least a dozen states and the District of Columbia have school voucher programs, which allow students to use scholarships often funded by the state or through corporate donations to attend private and religious schools. But the debate is playing out quite differently from state to state.

The Florida Education Association, the Florida School Boards Association and the state Parent Teacher Association claim in their lawsuit that the tax credit program that allows for vouchers is unconstitutional because it funnels taxpayer money into private and religious schools. Meanwhile, the New Hampshire Supreme Court upheld the state's tax credit scholarship program, saying the plaintiffs had no right to sue in the first place and that they could not prove they suffered personal injury as a result of the program.

"This is just a thinly veiled attempt to siphon taxpayer's dollars to private religious schools," said Rev. Barry Lynn, executive director of Americans United for Separation of Church and State, a group represented in the Florida lawsuit. "Public money should go to public schools. The courts should find this program unconstitutional, just as they did its predecessor."

In 2006, opponents used the courts to overturn the state's Opportunity Scholarship Program, through which students attending failing schools would receive vouchers directly from the state to attend private schools.

"The courts told the Legislature and the governor that the voucher program was illegal and provided them with two good reasons why vouchers didn't pass constitutional muster," said Joanne McCall, vice president of the Florida Education Association, in a statement. "But political leaders didn't listen and continue to expand voucher programs, like the tax credit vouchers, which are being challenged today."

The new lawsuit takes issue with the state's Tax Credit Scholarship Program, which gives businesses state tax credits for contributions to nonprofit scholarship organizations. Those organizations then give students tuition vouchers to attend private schools. The program is expected to award nearly 70,000 students with vouchers this year. Of the 1,414 private schools that were part of the program during the last school year, more than 70 percent were religious schools, and 82 percent of students who received vouchers attended those schools.

The program gives vouchers to children from low- and middle-income families, and will expand eligibility to families of higher income levels beginning in the 2016-17 school year. Currently, eligibility is limited to students from families who make below 185 percent of the federal poverty level – \$44,122 for a family of four – but will increase to include those who make below 260 percent of the federal poverty line – \$62,010 for a family of four – beginning in 2016, the lawsuit says.

"Florida's voucher programs are a risky experiment that gambles taxpayers' money and children's lives," McCall said. "Florida's voucher schools are largely unregulated, don't have to follow the state's academic standards, don't have to hire qualified teachers and don't have to prove to the state that they are using public money wisely. Our state's taxpayers and students would be better served by investing to improve our lowest performing schools and helping all of the students who attend them."

But Florida Senate President Don Gaetz, Republican, said the lawsuit is "ironically ill-timed and hypocritical" considering the accountability measures the Florida Legislature recently implemented, and the fact that the lawsuit comes after the program was extended to students from different income backgrounds.

"When Florida Tax Credit Scholarships were available only to the very poor, who disproportionately are minority families, and other students with unique needs, the School Boards Association didn't challenge their constitutionality," Gaetz said in a statement. "These students often bring more challenges to the classroom and require extra help, more individualized instruction and additional resources. It is only now, when the eligibility for scholarships has been expanded and when less-impoverished students can participate that the School Board Association has discovered its constitutional indignation."

Florida House Speaker Will Weatherford, also a Republican, lambasted the lawsuit and said blocking the program would harm disadvantaged students.

"It is appalling that the Florida School Boards Association, unions and others would use their power to try to block low-income parents from giving their children the education of their choice," Weatherford said in a statement. "This is a tactic completely motivated by the worst kind of bureaucratic politics that places the fears of an organization over the needs of our children."

Jeb Bush, who served as governor of Florida when the program was established in 2001, blasted the lawsuit and said it limits educational choice.

"For many of Florida's poorest families, zoned for some of the lowest-performing schools in the state, the Florida Tax Credit Scholarship Program offers hope for parents and a life-changing education for children," Bush, a Republican, said in a statement. "This lawsuit is just the latest attack on parental choice by an entrenched education establishment more concerned about protecting the status quo than providing families the opportunities afforded by great education."

Despite strong backing from reformers and many Republicans nationwide who see school choice as a way to frame a debate about educational inequality, many Americans remain unconvinced of the merits voucher programs. According to a national survey from PDK/Gallup, released last week, two-thirds of Americans said they oppose public school vouchers.

Several other states are also currently embroiled in lawsuits surrounding school voucher programs.

Just last week, a judge in North Carolina ruled the state's school voucher program unconstitutional, saying it illegally funneled public money to private schools. The voucher system in North Carolina differs from the scholarship program in Florida in that the money goes directly to families, rather than through scholarship funding organizations that receive corporate donations.

Opponents have also launched lawsuits against school choice programs in Alabama, Oklahoma, Arizona, Colorado and notably in Louisiana, where the Justice Department attempted to block a portion of the state's voucher program, saying it "impeded the desegregation process." The department has since backed off from seeking an injunction, but is asking the state to provide regular reports on which students participate in the voucher program.

Jason Bedrick, a policy analyst with the Cato Institute's Center for Educational Freedom, says it's unlikely the Florida lawsuit will prevail. Precedents set forth in the recent New Hampshire case, as well as a 2011 Supreme Court ruling, could lead the Florida courts to rule against the plaintiffs.

"The court ruled the plaintiffs did not have standing to sue because the funds did not enter tax collectors' hands, therefore they never became public funds," Bedrick says. "Constitutionally, a tax credit is no different than a tax deduction, which someone might make when they make a contribution to their church, or the church itself gets a property tax exemption. Yet we don't say those churches are publicly funded ... Likewise, the tax credit is indistinguishable, and therefore not public funds."