

Gov. Rick Scott's school-voucher push faces legal hurdles

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Stung by court defeats in Florida and Arizona earlier this decade, school-voucher advocates set out to create a new system that would give students choices beyond public schools but still pass constitutional muster.

The proposed solution, devised in Phoenix by the conservative Goldwater Institute, was the education-savings account: a pot of state money parents could access, if they pulled their children from public school, to spend on a host of education options, from private schools to home-schooling supplies to college-savings plans.

The think-tank proposal was developed last year and has moved quickly into the political arena.

Florida Gov. Rick Scott and his education advisers have embraced the institute's savings-account idea and suggested they will push for such legislation this spring. Political leaders in Arizona and Montana are championing such plans, too, viewing them as a way to put parents, not a bureaucracy, in control of their children's education.

But critics have decried a "voucher-for-all" program as an attack on public education and an improper way to funnel public money to private schools.

The teachers union attorney who led the fight against Florida's first voucher program called the idea "dead on arrival" and predicted it would not survive a likely court challenge.

A savings-plan law, however, would offer such broad choices to parents that it could not be accused of sending money solely to private schools nor of creating a parallel school system in violation of Florida's constitutional requirement for "uniform" public schools, said Clint Bolick, the institute's litigation director.

Bolick was one of the attorneys who successfully argued for school vouchers — taxpayer-financed tuition payments — before the U.S. Supreme Court. In 2002, the nation's top court said it was constitutional for public money to pay for children to attend private schools, even religious ones.

But state courts in Arizona and Florida later struck down voucher programs, declaring them illegal under their stricter state constitutions. So in both places, advocates of programs that would spend public-school money outside public schools must tailor any new efforts to meet their state-court requirements.

"We believe that education-savings accounts will be found permissible," Bolick said. "This program was purposely designed to satisfy constitutional requirements."

But if the proposal becomes law in Florida — and that isn't certain — the Florida Education Association likely would challenge it in court, said Ron Meyer, the union attorney who led the successful fight against Florida's first voucher program.

Meyer called the new idea "dead on arrival" because of "serious constitutional hurdles" and said it would do just what the defeated Opportunity Scholarship Plan did: allow students to use state money to attend private schools.

Such a program wouldn't be allowed under the mandates of the 2006 Florida case, he argued, and a new lawsuit also could challenge Florida's two other voucher programs.

"If we go back to court now — and I think we would go back to court if there were this voucher-for-everybody concept — these other programs would be impacted," Meyer said.

The state's top court ruled in *Bush v. Holmes* that the voucher program "diverts public dollars into separate private systems" that are not "uniform, and "reduces money available" to public schools. Such a scheme, the court wrote, is "in direct violation of the mandate for a uniform system of free public schools."

The Opportunity Scholarship Program, championed by former Gov. Jeb Bush, was available to students at Florida's most-struggling schools and gave them tuition vouchers to use at private schools. It was serving about 730 students statewide when it was shut down.

The teachers union and other groups sued Bush over the program the day after he signed it into law in 1999. But the lawsuit did not involve two other voucher programs started later.

The McKay Scholarship Program is a voucher available to students with disabilities and now serves more than 21,000 youngsters in private schools. The Florida Tax Credit Scholarship Program — funded by corporate donations — pays tuition for more than 32,000 students from low-income families.

Both programs, like the original one, aim to serve students whose parents are unhappy with their public-school options.

Andrew Coulson, director of the Cato Institute's Center for Educational Freedom, is a staunch advocate of school vouchers and other programs that give parents "free and open education marketplaces."

But in an e-mail he shared with key Florida advocates, he wrote that he feared the education-savings-account idea, while "laudable," would be struck down in a case that could then also shut off the two other programs and "decimate school choice in Florida."

Though the makeup of Florida's Supreme Court has changed since 2006, with four new justices, Coulson and others said there was no reason to suspect it would overturn its earlier voucher ruling.

Maybe, he added, the new plan should be tried in "states with less hostile legal climates and no existing choice programs that would be jeopardized in the process."

Bolick said he hadn't seen Coulson's e-mail but that the three programs are so different that he did not think pursuing the new one would jeopardize the legal standing of the others.

Leslie Hiner, of The Foundation for Educational Choice in Indianapolis, agreed.

"If you take a look at the prior court ruling in Florida, that was a very narrow decision on a very narrow piece of legislation" that should have no bearing on the "cutting-edge" savings-account idea, said Hiner, vice president of programs and state relations.

The Indiana foundation was started by Milton Friedman, a Noble Prize-winning economist, who in 1955 outlined an idea to allow parents to choose where they would spend their share of school money.

That proposal was the spark for the nation's modern school-voucher movement, and the education-savings account represents the "heart" of Friedman's goal, "truly the ultimate in education freedom," she added.

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