

Kentucky's High Court Can Empower Parental Choice in Education

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Akia McNeary, a Kentucky mother of four, was disappointed when the so-called Council for Better Education filed a lawsuit to block Kentucky's new Educational Opportunity Account (EOA) program. "Even within my own four children, I saw the need for multiple educational options," she said. "If this group really wants better education in Kentucky, it should support letting lower income families access opportunities beyond their district schools."

The EOA, the nation's first tax-credit funded education savings account, will allow eligible parents to receive scholarship accounts that can be used for approved educational expenses, such as private school tuition, tutoring, classes and extracurricular activities at public schools, and higher education courses.

The accounts will be funded by donations from individuals and businesses who will receive tax credits for their donations. Last fall, a circuit court judge sided with CBE and ruled the EOA unconstitutional. Kentucky's Supreme Court agreed to try the case and held a hearing in Shelby County in October. The Institute for Justice is defending the program on behalf of McNeary and another parent. The central issue in the case is whether the tax credit constitutes public funding of private school. If history is a guide, the answer to that question will be no. After all, there are nearly 30 tax credit scholarship programs throughout the country—as well as countless other tax credits and deductions at the state and federal levels.

A decade ago, there was a similar court case in Arizona with opponents claiming a tax-credit scholarship school choice program was unconstitutional. Like CBE, they argued that private scholarship donations—dollars that are never given to the state—are somehow still property of the state. In the majority opinion in favor of the Arizona program, Supreme Court Justice Anthony Kennedy wrote that the notion that funds not paid in taxes are nonetheless public funds "assumes that all income is government property, even if it has not come into the tax collector's hands. That premise finds no basis in standing jurisprudence."

If money that hasn't been given to the state is ruled to be state money, then the state's ability to restrict, direct, and regulate citizens' incomes would be effectively limitless. Applying that standard to other tax credits and deductions could result in America's churches and other charitable nonprofits suddenly being labeled "state funded." That conclusion would threaten all manner of tax credits and deductions currently taken for granted in Kentucky. McNeary attended the Supreme Court hearing and is hopeful the justices will allow the program to go into effect. "My own children

have all had different education experiences,” said McNeary. “We’ve used the local district school when it worked well. But we’ve also used a Christian school when my kids needed something else — whether it was due to bullying at the public school or different learning needs that the public school couldn’t meet. The tuition has been a financial hardship, but we’ve made it work so far. “The EOAs would be particularly helpful for my younger children.

My son Isaiah would use this program in public school for ACT prep,” she added. The program’s supporters aren’t alone. Polling in Kentucky by Morning Consult shows 67 percent of adults—and 78 percent of parents—support education savings accounts like the KY EOA program. This support makes sense given the growing awareness that kids are unique and have different educational needs. It’s unrealistic to think any school will be the best option for every child who happens to live near it. Wealthy Kentuckians have always had educational options.

The EOA program would help low- and middle-income families enjoy similar opportunities. When Akia McNeary explains her support for the program, she expresses the hopes of thousands of parents across Kentucky: “I want to make sure my kids are set up to have the best education possible because I know education will get them where they want to be.”

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