



New Hampshire School Choice Case Assumes Government Owns Your Income

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December 17, 2013

Opponents of school choice are [once again](#) seeking to restrict the ability of parents to select the best education for their child. New Hampshire's Education Tax Credit program, enacted in 2012, permits businesses who donate to a state-approved scholarship organization to deduct 85 percent of that donation from their annual taxes. These nonprofit organizations then offer students that meet specific criteria scholarships to attend nonpublic schools, schools outside the students' district, or to homeschool.

Because a large number of New Hampshire's nonpublic schools are religious, opponents of school choice have challenged the program under, among other things, an 1877 amendment to the state constitution frequently referred to as a Blaine Amendment. Blaine Amendments, which were passed during that period in many states for the sole purpose of preventing Catholic schools from receiving government funding, prohibits "money raised by taxation" from being "granted or applied for the use of the schools or institutions of any religious sect or denomination."

A New Hampshire trial court found that the Education Tax Credit program violated this discriminatory amendment and that scholarship funds could therefore not be granted to students attending religious schools. But the court incorrectly reasoned that money exempted from taxation under the tax-credit program was the equivalent of a government expenditure of public funds and therefore "money raised by taxation." This type of reasoning—often referred to as "tax expenditure analysis"—has been explicitly rejected by other state supreme courts and the U.S. Supreme Court.

All Income Is Not the Government's

Indeed, as the Supreme Court held in [Arizona Christian School Tuition Organization v. Winn](#) (2011), such an approach "assumes that income should be treated as if it were government property even if it has not come into the tax collector's hands... Private bank accounts cannot be equated with the... State Treasury." The trial court's holding is similarly at odds with the

original understanding of the Blaine Amendment and is unsupported by New Hampshire case law.

The State of New Hampshire and the Network for Educational Opportunity, represented by the [Institute for Justice](#), have taken the case to the New Hampshire Supreme Court. Cato has filed an [amicus brief](#) supporting them, arguing that the educational tax credits are not “money raised by taxation” according to the original understanding of the 1877 amendment, New Hampshire case law, and U.S. Supreme Court precedent. The New Hampshire Supreme Court should reverse the trial court and restore a vital source of educational freedom and opportunity.

The case is *Duncan v. New Hampshire*.