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Florida's school vouchers constitutional, cost-effective

By Jason Bedrick

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Florida's school choice tax credit law benefits taxpayers and tens of thousands of low-income students. Both groups stand to lose if the state's largest teachers union wins its legal challenge.

In a Sept. 24 editorial, The Palm Beach Post cited the Florida Education Association's claims that the 13-year-old Florida Tax Credit Scholarship (FTCS) program is unconstitutional and "take[s] money away from public schools." However, the plain meaning of the Florida Constitution gives ample constitutional space for the FTCS and the government's own accounting shows that the law saves money overall.

The FTCS grants tax credits in return for corporate donations to nonprofit scholarship organizations that help low-income families afford the school that best meets their children's educational needs. This year, nearly 70,000 students are receiving scholarships worth nearly \$4,700, on average.

The FEA's legal challenge rests on two provisions of the state constitution. The first mandates that the state provide a "uniform, efficient, safe, secure, and high-quality system of free public schools." The FEA interprets "uniform" to mean "exclusive," barring the state from supporting any alternatives to that system. What the FEA fails to mention is that the end of that sentence explicitly authorizes the state to create "other public education programs that the needs of the people may require." While the state Supreme Court has narrowly interpreted that clause in the past, a plain reading of the provision clearly authorizes such laws.

The second constitutional provision the FEA invokes forbids "revenue of the state" from being "taken from the public treasury" to aid "any sectarian institution." However, no high court has ever accepted the FEA's legal argument.

In a case regarding a similar scholarship tax credit law in Arizona, the U.S. Supreme Court ruled that the tax credit funds were not public money because they had not "come into the tax collector's hands," noting that "[p]rivate bank accounts cannot be equated with the [...] State Treasury."

In that sense, tax credits are constitutionally no different than tax deductions for charitable contributions to religious organizations or property tax exemptions for houses of worship. In none of those cases are religious institutions funded by "revenue of the state."

The Arizona Supreme Court has also ruled that tax credits do not constitute public money. On the same day as the FEA announced its lawsuit, the New Hampshire Supreme Court rejected plaintiffs' standing to challenge a scholarship tax credit law because they could not demonstrate that they were harmed by it. While the Florida Supreme Court is not bound to follow the precedent of the U.S. Supreme Court or other states' high courts, the same logic should apply.

If the state Supreme Court errs by adopting the FEA's faulty logic, tens of thousands of low-income students would lose access to the schools that work for them. Moreover, taxpayers would have to pick up the tab.

The scholarships are much smaller than the amount spent per pupil in the public schools, so the decrease in revenue from the tax credits is more than offset by the corresponding decrease in expenditures. Last year, scholarships averaged about \$4,650, which is barely more than half of the statewide average of \$10,162 per pupil in Florida's public schools, according to the most recent NCES data. The state's portion of that spending is nearly \$7,000 per pupil, on average.

In a 2010 analysis, the Florida Legislature's nonpartisan Office of Program Policy Analysis and Government Accountability determined that the scholarship law saved the state \$36.2 million in just a single year. The program decreased state revenues by \$82.2 million while reducing expenditures by \$118.4 million. That's \$1.44 in savings for every \$1 in reduced tax revenue. The FEA seeks to transform those savings into costs.

Let's hope that the Florida Supreme Court follows the plain meaning of the state constitution and the logic and precedent of every other high court to consider similar challenges.

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