

THE ORANGE COUNTY BETA REGISTER

Editorial: School choice to high court

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Education reform advocates should have been encouraged Monday as the Supreme Court announced its intention to decide a case where the 9th U.S. Circuit Court of Appeals called into question the constitutionality of a Arizona school-choice tax credit program that provides mostly disadvantaged students with scholarships to private schools.

Arizona's 13-year-old program is pretty straightforward. Private donors are given a dollar-for-dollar state income tax credit for contributions made to school-tuition organizations. These private, not-for-profit STOs distribute the money as scholarships to students interested in attending private schools, some of them secular and

some religious.

Opponents of the program contend scholarship dollars are skewed too heavily to faith-based schools, and, thus, the program violates constitutional standards for such programs upheld by the Supreme Court, namely a 2002 decision that supported an Ohio-based education voucher program for needy families.

The usual suspects, including the American Civil Liberties Union, oppose the Arizona scholarship program. Paul Bender, a former dean of Arizona State University law school, is leading the charge for the ACLU, contending the scholarship program is unconstitutional because it redirects taxpayer funds to religious organizations.

The San Francisco-based 9th Circuit, generally considered the most liberal federal appellate court in the country, agreed, ruling that the Arizona school-choice program may not be constitutional because it provides public dollars to nonsecular institutions. The 9th Circuit, which ordered the case back to the trial court for a full hearing, missed the mark, as usual, and now the Supreme Court has stepped in. A ruling should come during the court's 2010-11 term, which starts in October.

The Institute for Justice, a libertarian public-interest law firm, argues that the program is constitutional and that arguments against it should be rejected because an identical challenge against the program failed before the Arizona Supreme Court in 1999. Like the current challenge, the Institute for Justice argued during the previous case that Arizona residents are free to contribute money to any number of STOs, including many which are nonreligious.

What the 9th Circuit, the ACLU and opponents of this program miss or choose to overlook is that the scholarship program is funded with private dollars, not public funds. Donations to the STOs in Arizona are much like tax-deductible contributions made to any charity, church or school. The Cato Institute's Andrew Coulson put it best: "No government money is spent under the tax credit program, and the tax credits are, themselves, available on an entirely religiously neutral basis."

Educational reformers should be energized by the Supreme Court's choice to step in and hear this case. The justices have a tremendous opportunity to rule again on the side of educational freedom.

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