



TAX CREDIT SCHOLARSHIP CASE LAW **Courts have treated vouchers and scholarships differently**



Voucher vs. tax credit scholarship: Merriam-Webster defines a voucher as “a coupon issued by government to a parent or guardian to be used to fund a child's education in either a public or private school.” On the other hand, a tax credit scholarship comes from tax-credited contributions made by private companies to a private nonprofit organization that in turn provides the money to a parent to fund a child’s private school education.

Why this distinction matters: The lawsuit filed on Aug. 28, 2014 by the Florida Education Association claims the Florida Tax Credit Scholarship is unconstitutional. The FEA describes it as “voucher” because that feeds its legal strategy, not because the term is correct. In 2006, the Florida Supreme Court ruled against a government-issued voucher for students who attended public schools judged as failing. But the Tax Credit Scholarship is not a government-issued voucher, and that difference has special meaning in constitutional case law. To date, three state Supreme Courts and the U.S. Supreme Court have ruled in favor of tax credit scholarships, and none has ruled against.

What the courts have said about vouchers vs. scholarships

***Arizona Christian School Tuition Organization v. Winn*, U.S. Supreme Court, 2011:** In a landmark ruling on tax credit scholarships, the high court rejected a federal challenge to the Arizona Tax Credit Scholarship by determining that tax-credited contributions are not the same as government expenditures even if the tax credits are 100 percent. Wrote Justice Anthony Kennedy for the majority: “Like contributions that lead to charitable tax deductions, contributions yielding (scholarship organization) tax credits are not owed to the state and, in fact, pass directly from taxpayers to private organizations. ... When Arizona taxpayers choose to contribute to (scholarship organizations), they spend their own money, not money the State has collected from respondents or from other taxpayers.” The court therefore denied standing.

Source: <http://www.supremecourt.gov/opinions/10pdf/09-987.pdf>

***Kotterman v. Killian*, Arizona Supreme Court, 1999:** The Arizona court ruled in favor of a tax credit scholarship program for all students, arguing that the tax-credited contributions are not the same thing as government expenditures. “Deductions and credits are legitimate tools by which government can ameliorate the tax burden while implementing social and economic goals. We



conclude that the Arizona school tuition tax credit is one of an extensive assortment of tax-saving mechanisms available as part of a ‘genuine system of tax laws.’ ... This tax credit is not

an appropriation of public money.” ***Cain v. Horne, Arizona Supreme Court, 2009:*** The court ruled against a government-issued voucher for special needs students and foster children. In so doing, it explained why it reached different conclusions on tax credit scholarships and government vouchers: “Because the funds in *Kotterman* were credits against tax liability, not withdrawals from the state treasury, the funds were never in the state's treasury; therefore, the credits did not constitute

an appropriation. Unlike the funds in *Kotterman*, the funds at issue here are withdrawn from the public treasury and earmarked for an identified purpose.”

Source: <http://www.azcourts.gov/Portals/23/pdf1999/cv970412.pdf>

Source: <http://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2009/CV-08-0189-101300.PDF>

Duncan v. New Hampshire, New Hampshire Supreme Court, 2014: In a decision issued on Aug. 28, 2014, the same day the FEA filed suit in Florida, the New Hampshire court rejected a constitutional challenge to that state’s Education Tax Credit Program. The court said the plaintiffs lacked standing to sue because their claims of lost funding to public schools were merely “speculative” due in part to the fact that the money was not withdrawn from the treasury: “Even if the tax credits result in a decrease in the number of students attending local public schools, it is unclear whether, as the petitioners allege, local governments will experience ‘net fiscal losses.’ The prospect that this will occur requires speculation about whether a decrease in students will reduce public school costs and about how the legislature will respond to the decrease in students attending public schools, assuming that occurs.”

Source: <http://www.courts.state.nh.us/supreme/opinions/2014/2014074duncan.pdf>

Magee v. Boyd, Alabama Supreme Court, 2015: In a decision issued on March 2, 2015, the court rejected all 10 legal claims made against the Alabama Accountability Act, including specific charges that the tax credit scholarship violated the State Constitution. The court overturned a circuit judge’s decision: “We conclude that the circuit court’s construction of the term ‘appropriation’ to include the tax credits provided by (the Alabama Accountability Act) is contrary to the Alabama Constitution, existing case law, and the commonly accepted definition of the term appropriation. ... The tax credit ... merely allows the taxpayers to retain more of their earned income as an incentive to contributing to scholarship-granting organizations. When the taxpayers contribute to scholarship-granting organizations, they spend their own money and not public revenue actually collected by the state.”

Source: <https://acis.alabama.gov/displaydocs.cfm?no=642220&event=4AM11AJSP>

Bush v. Holmes, Florida Supreme Court, 2006: Opportunity Scholarships were government-issued vouchers offered to students who were assigned to public schools judged to be failing.



The court threw out the program by ruling that it “diverts public dollars into separate private systems parallel to and in competition with the free public schools” and those schools were not “uniform” with public schools. The court explicitly applied this standard: “The Constitution

prohibits the state from using public monies to fund a private alternative to the public school system, which is what the OSP does. Specifically, the OSP transfers tax money earmarked for public education to private schools that provide the same service.” It went further, noting the law required the Department of Education to “transfer from each school district’s appropriated funds the calculated amount from the Florida Education Finance Program.”

Source: http://www.floridasupremecourt.org/pub_info/summaries/briefs/04/04-2323/Filed_01-05-2006_Opinion.pdf

Bush v. Holmes, Florida First District Court of Appeal, 2004: Prior to the state Supreme Court ruling in 2006, the appeals court rejected Opportunity Scholarships by arguing the vouchers violated the no-aid-to-religion clause. Its ruling also drew a distinction between vouchers and tax credits: “In each of the above cases, state government provided or allowed a form of assistance to a religious institution through such mechanisms as tax exemptions, revenue bonds, and similar state involvement. These forms of assistance constitute substantially different forms of aid than the transfer of public funds expressly prohibited by the no-aid provision. ‘In the case of direct subsidy, the state forcibly diverts the income of both believers and nonbelievers to churches. In the case of an exemption, the state merely refrains from diverting to its own uses income independently generated by the churches through voluntary contributions.’”

Source: <http://opinions.1dca.org/opinions2004/11-12-04/02-3160rh.pdf>

Faasse v. Scott, Florida 2nd Judicial Circuit, 2014: On Dec. 30, 2014, 2nd Judicial Circuit Chief Judge Charles Francis denied standing in a case in which the Florida Education Association alleged that the 2014 Legislature violated proper procedure in enacting a law that included improvements to the Tax Credit Scholarship. The FEA alleged that public schools “have already lost considerable funding because of the implementation of the Tax Credit Scholarship” and “the significant expansion ... will result in additional funds being diverted from the public schools.” The state cited precedents in Arizona, New Hampshire and Florida in arguing that no harm was created because no tax money was taken from public education. Francis agreed, ruling that the FEA “fail(ed) to allege a legally sufficient basis to sustain a finding of special injury.” The FEA did not appeal the ruling.

Source: http://judicial.clerk.leon.fl.us/image_orders.asp?caseid=2640136&jiscaseid=&defseq=&chargeseq=&dktid=102858733&dktsource=CRTV

Zelman v. Simmons-Harris, U.S. Supreme Court 2002: In a landmark ruling on the Establishment Clause, the court determined that students in a Cleveland voucher program could use the vouchers to attend religious schools. The court found that parents could use public funds



to pay for religious schools, provided the parents are making a genuine and independent choice and that the primary purpose is education. Wrote the court: “The Ohio program is neutral in all

respects toward religion. It is part of a general and multifaceted undertaking by the State of Ohio to provide educational opportunities to the children of a failed school district.”

Source: http://www.oyez.org/cases/2000-2009/2001/2001_00_1751