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Tax credit scholarship lawsuit a ‘dead bang loser’

By Bob Sparks



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Bill Clinton is known to use the term “dead bang loser” to deride the policies or actions of political opponents. One of his more recent targets was Wisconsin Gov. Scott Walker for the latter’s epic fights with the state teachers’ union. Clinton described Walker’s success in those fights as a dead bang loser for Wisconsin. With Walker’s survival of a recall election and subsequent re-election, the voters

clearly felt otherwise.

Florida is having a pitched battle of its own with the teachers’ union. While Walker picked the fight to end collective bargaining for teachers, the Florida Education Association and other plaintiffs took Gov. Rick Scott and the Cabinet to court.

The plaintiffs seek to stop a 13-year-old program that has provided more than 400,000 K-12 scholarships to low-income families seeking alternatives to their assigned public schools. Participating families may choose either a scholarship to help cover private school tuition and fees, or assistance with transportation costs to attend a public school in a different county.

The Tax Credit Scholarship program is funded through corporate contributions, which in turn provide contributors with state tax credits. FEA and the other plaintiffs argue these scholarships reduce funding for public schools.

Arguing against needy families, mostly minorities, having choices for their child’s education is, to put it plainly, a dead bang loser.

Plaintiffs try to make the public money argument and declare the program is just an attempt to get around a 2006 Florida Supreme Court ruling against Opportunity Scholarships. This argument doesn’t withstand scrutiny.

Bush v. Holmes, the 2006 case, involved the direct infusion of public tax dollars into the scholarships. The current case involves the contribution of private funds.

“This is a distinction with a difference,” wrote former Florida Supreme Court Justice Raoul Cantero, who is representing some of the intervening parents in this case.

A few things have happened since 2006 providing the plaintiffs a high legal mountain to climb. In Arizona, a similar tax credit scholarship program came under fire, but was approved by a court of appeals. The Arizona Supreme Court refused to take the case.

Another Arizona lawsuit went back and forth through the federal courts. After the Ninth Circuit Court of Appeal overturned the trial court’s approval, the U.S. Supreme Court reversed the Ninth Circuit.

In a 5-4 decision delivered on April 4, 2011, the court held the plaintiffs lacked standing. With Arizona funding the program through voluntary contributions, not state tax dollars, plaintiffs could not demonstrate they suffered any harm.

Granted, the current case is in Florida state court before Leon County Circuit Judge George Reynolds III. At a hearing on February 9, he heard arguments over the plaintiffs’ standing, or lack thereof. Both sides are to present Reynolds with their recommended orders this week.

The numbers provide clear proof for lack of standing. According to studies from state auditors, taxpayers save nearly \$1.50 for every dollar loss in corporate income tax revenue.

The list of plaintiffs contains no real surprises, but certainly a disappointment. Joining the FEA, some individuals, the Florida School Boards Association and the Florida Association of School Administrators is the Florida State Conference of Branches of the NAACP.

How does the most recognizable civil rights organization join a lawsuit against a program that primarily benefits thousands of minority children while saving the taxpayers money? A large portion of those children are African Americans.

Are they not listening to parents who desperately seek options for their kids? Perhaps the NAACP can justify joining a lawsuit designed to take away opportunities for children who otherwise have precious few. Some of these parents and their membership deserve to hear it.

“Will these scholarship parents of little means prevail against those trying to take away their right to choose?” wrote the Rev. H.K. Mathews, a long-time Florida civil rights leader and 1965 Selma marcher. “Let’s pray that it be so.”

There is also division among some school board members. Earlier this week, individual board members from Collier, Escambia, Indian River and Sarasota County launched the Florida Coalition of School Board Members.

The new group opposes the lawsuit, is a proponent of school choice and feels the School Boards Association has lost clout in Tallahassee. They expect their membership to quickly grow to 40-50 members.

We shouldn’t be surprised if Reynolds dismisses the case if the Supreme Court majority’s definition of standing prevails and the cost savings are factored in. But judges read dissenting opinions, too, so who knows?

Hopefully this case will earn the dismissal it deserves, but if it goes forward, there is every reason to expect the scholarships to ultimately survive. Arguing against the ruling of the U.S. Supreme Court is the epitome of a dead bang loser.

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