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School voucher issue heats up, opponents head to court

By Jeff Schweers

TALLAHASSEE — A coalition of teacher unions and civil rights groups representing millions of public school children gets a second crack at persuading the courts they have the right to sue the state over a school voucher program that pays for children to go to religious private schools.

But before they walk through the courthouse door May 10 to argue the merits of their case, supporters of the program have launched a massive publicity campaign — with television ads, rallies at the state Capitol and social media accounts — to get them to drop the suit.

“The specter of this being declared unconstitutional has been there, but they are pushing this really hard to expand this,” said Joanne McCall, president of the Florida Education Association and the lead plaintiff in the suit. “That is why they are spending all this money on rallies and advertising and chants for me to drop the suit.”

Supporters claim thousands of low-income students across the state are at risk of having their education disrupted, and school districts already struggling to find room for thousands of new students will be forced to accommodate these students, as well.

The ads “are important to help the public understand the motivations of the plaintiffs and the human toll of what they want to do,” said John Kirtley, a Tampa venture capitalist and founder of Step Up For Students, the nonprofit organization that administers the Florida Tax Credit Scholarship program.

The Washington, D.C.-based Black Alliance for Educational Options and its Latino counterpart are responsible for placing the ads, Kirtley said. Step Up for Students and other groups, including the Black Ministerial Alliance, have set up a “Save Our Scholarships” Twitter account and Facebook page.

The Florida Tax Credit Scholarship Program provides scholarships for close to 80,000 low-income students to go to close to 1,500 private schools across the state — about 3 percent of the state K-12 public school enrollment. Enrollment is expected to hit 90,000, Kirtley said.

As of this week, 7,027 of them were receiving tax credit scholarships to attend 180 private schools in Tampa Bay.

Miami-Dade County has the highest concentration of students getting the scholarships at more than 20,000.

It will cost billions in taxpayer dollars to create room for those children and cause “operational chaos when the

kids show up one day to their assigned schools,” Kirtley said.

It would hurt the private schools, too. “There are some private schools that will close down because they have at least 40 percent of their kids on scholarship,” Kirtley said.

From a legal standpoint, if a law is unconstitutional it’s unconstitutional, said Lynn Hearn, a lawyer for the plaintiffs. “A law doesn’t become constitutional simply because it’s been around awhile and is widely used,” Hearn said.



Billions of dollars are at stake, too. Since its inception in 2001, the program has spent \$2.2 billion on scholarships to 480,000 students.

Step Up for Students has been involved in one form or another from the beginning.

Kirtley started the Children’s Scholarship Fund of Tampa Bay in 1998 to create scholarships for low-income children to go to private schools. He lobbied the Legislature in 2001 to create a statewide program along similar lines, and it launched what became the Florida Tax Credit Scholarship Program.

Around the same time, the Children’s Scholarship Fund became Florida PRIDE, which was approved by the state as a scholarship funding organization. It started doing business as Step Up For Students in 2003, and that became its official name in 2011, said Ron Matus, the nonprofit’s director for policy and public affairs.

“Over the years, Step Up has taken over scholarship operations from several scholarship funding organizations that decided to get out of what is a pretty labor intensive activity,” Matus said.

Since its inception in 2001, the program has grown dramatically, according to the group that filed the lawsuit.

The Florida Tax Credit Scholarship Program has gone from \$47 million in its first year to \$445 million this year.

The Legislature in 2014 raised the eligibility from 185 percent of the poverty level, or about \$42,000 a year for a family of four, to 260 percent, or \$62,000 a year for a family of four.

Lawmakers also lifted the scholarship cap so it can rise by 25 percent a year as long as it distributes at least 90 percent of the money donated the previous year, according to changes in state law made two years ago.

“This is the camel nose under the tent,” said McCall

with the Florida Education Association.

Next year's cap on tax credits available is \$559 million, said Cheryl Etters, deputy director of communications for the Florida Department of Education. "The amount of money they have available for scholarships is the amount raised from donations," Etters said.



The plaintiffs, which include the NAACP, The Florida League of Women Voters and the National Education Association, filed suit in August 2014 after the Legislature expanded the program's eligibility and lifted the spending cap.

They lost the first round when Leon Circuit Judge George Reynolds ruled in May that the plaintiffs lacked standing because they were challenging a tax credit program, and not a legislative appropriation. He also said they didn't prove they suffered a special injury, labeling as "speculative" their claim that students and school districts suffered.

"He stood at the threshold of the courthouse and said we can't come in," attorney Hearn said.

In their appeal filed in August, the plaintiffs said long-standing case law recognizes that taxpayers can sue the Legislature over its taxing and spending powers, Hearn said. The coalition represents 2.7 million public school students and their parents, and 140,000-plus teachers.

No court in Florida has addressed the issue before, she said, and it was inappropriate for Reynolds to do so at this stage of the case.

"We're saying let us have standing, let us have a trial and have a thoughtful legal discussion on the issue of the use of tax exemptions as vouchers for private schools," Hearn said. Nor is it speculation that the tax-credit program has "lured tens of thousands of students away from the public schools resulting in the diversion of hundreds of

millions of dollars in state funding from these schools to private schools," the brief stated.

When those students left the system, the school districts also lost millions in state public education funding — almost \$7,200 per student next year.

"I think it's shell game, if you want to be honest," McCall said. "They can say all day long they are not putting it into the treasury, but it should have gone into the treasury. That point of sale is when the obligation belongs to the state, and should have gone into the general revenue."



The state is not making an appropriation from the treasury, and even if the plaintiffs could make that claim, they haven't proven the public schools have suffered a financial hardship as a result of the program, the state Attorney General's Office and supporters of the program said in the briefs they filed after the appeal was filed.

They said the plaintiff's "simplistic argument" failed to account for the increase in education appropriations by the Legislature and cost savings by the program

"They're fighting against precedent," said Daniel Woodring, a Tallahassee attorney representing a group of parents whose children attend private schools through the tax-credit program.

Some lower courts have accepted standing in similar cases, but higher courts ultimately struck down those decisions, he said.

"We believe this case at this level is not about the ultimate argument," Woodring said. "They are bucking precedent as far as there being standing to challenge this program, and as far as rulings that the tax credit scholarship programs are unconstitutional. No court ultimately determined a tax credit program as unconstitutional."