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Court To Examine Whether Arizona Tax-Credit Scholarship Program Violates Establishment Clause

Arizona Christian School Tuition Organization v. Winn (09-987 & 09-991) is an Establishment Clause challenge to Arizona's tax-credit scholarship program. Under that program, the state funds scholarships to private schools through the use of school tuition organizations (STOs), which are state-certified and -supervised entities created for the purpose of awarding scholarships funded by state income-tax revenues. The plaintiffs in the case, several Arizona taxpayers, allege that the program violates the Establishment Clause because the STOs that award most of the program scholarships are religious organizations that openly discriminate on the basis of religion in choosing scholarship recipients, and that require students to enroll in religious schools in order to get the scholarships. The petitioners in the Supreme Court argue that the Arizona scholarship program is no different from a Cleveland school voucher program upheld by the Supreme Court in 2002. One of the petitioners and the United States as amicus separately contend that the taxpayer plaintiffs lack standing to bring the case.

Background

Under the challenged program, Arizona scholarships are awarded by STOs – entities that are established solely for the purposes of the state program, certified and closely supervised by the state, and financed exclusively by state income-tax revenues. The scholarships are funded through a system of state income-tax credits that are given for so-called “contributions” that taxpayers make to STOs. The Arizona credits are not tax deductions for charitable contributions of the taxpayers' own funds. Instead, they are dollar-for-dollar credits that taxpayers use to satisfy up to \$1000 of a married couples' annual state income-tax liability. The credits cost the taxpayers who use them nothing; the cost is borne entirely by the state's general fund.

Since the program's inception, Arizona has allowed STOs to distribute most of the program's scholarships through religious favoritism and discrimination. More than half of over \$50 million awarded by STOs in 2009, for example, was awarded by religious STOs that chose scholarship recipients on the basis of their religion and that required that students attend religious schools in order to receive them.

Prior Court Proceedings

Plaintiffs' suit was filed in 2000. The state moved to dismiss under the Tax Injunction Act, which bars lower federal courts from interfering with state tax collections. The U.S. Supreme Court rejected that argument in 2004.

On remand, the district court granted motions to intervene by two STOs, including petitioner Arizona Christian School Tuition Organization (ACSTO). The district court then dismissed the plaintiffs' complaint for failure to state a claim upon which relief could be granted. The U.S. Court of Appeals for the Ninth Circuit reversed, holding that the taxpayer plaintiffs had standing to challenge the program and that the plaintiffs' allegations, if proven, would demonstrate that the program had an impermissible religious purpose and effect in violation of the Establishment Clause.

Respondents' Arguments in the Supreme Court

The Arizona taxpayers argue that the controlling issue in the case is whether the Arizona program is a program of private taxpayer charity, as the state and ACSTO contend, or a government spending program, as the Ninth Circuit held. They argue that the program is clearly a government spending program, because it uses state tax revenues for a state purpose, and involves no private charity because all the cost is borne by the state's general fund.

Because the program is a government spending program, taxpayer plaintiffs have standing to challenge it in federal court. Since the late 1960s, the Supreme Court, on the basis of its decision in *Flast v. Cohen*, has consistently entertained taxpayer Establishment Clause challenges to a variety of similar "tax expenditure" programs – including programs of tax deductions, tax credits, tax exclusions, and tax exemptions – without questioning the plaintiffs' standing. For standing purposes, this case is indistinguishable from those cases.

On the merits, the program violates the Establishment Clause because it distributes its benefits to beneficiaries on the basis of religion. It is completely different in this respect from the voucher program upheld by the Supreme Court in 2002, where state-funded vouchers were distributed to parents on a completely religiously neutral basis, giving parents completely free choice about where to use the vouchers.