

Supreme Court hears arguments over school tuition tax credit program

WASHINGTON - With the U.S. solicitor general arguing in support of Arizona's school tuition tax credit program, the Supreme Court justices Nov. 3 bounced back and forth between questions about the program's constitutionality and whether the taxpayers who sued even have the legal standing to challenge it.

In a lively exchange between the justices and attorneys representing the state and the Arizona taxpayers who sued to stop the program, discussion focused at length on whether the money that Arizonans contribute to scholarship tuition organizations - for which they receive \$500 in individual tax credit - can at any point be considered government money. Because most of the scholarships granted through the organizations go to students in religious schools, opponents of the program contend it is tantamount to the government funding religious schools.

Arguing on behalf of the state, acting U.S. Solicitor General Neal Katyal insisted that Kathleen M. Winn and other taxpayers who sued to stop the program are barred from suing the government over how it spends money. Previous Supreme Court rulings have barred such lawsuits, saying taxpayers lack standing to protest how taxes are spent.

"The key point is this: Not a cent of (Winn's) money goes to fund religion," said Katyal.

Justice Sonia Sotomayor raised the opposite side's argument with Katyal, saying "their point is that this tax money does belong to the state ... because ... (the state) says 'either you pay it to the state or you use it for this purpose, but it's the state's money and it's giving you by its largess, the right to redirect it.'"

Katyal explained what he said are problems with that explanation, for one, that the money taxpayers spend doesn't actually fund religious programs, but scholarships.

“Their complaint is not that the government is spending (taxpayers’) money. Their complaint is that someone else’s money is not being extracted and spent enough.”

Later in the oral argument, attorney Paul Bender, attorney for Winn and the others who sued, said their claim is not that state money is going to religious schools, but “that state money is going to beneficiaries of a state spending program on the basis of religion. It’s a claim about discrimination in the distribution of ... funds.”

Justice Antonin Scalia pointed out that the school receiving the most scholarship money through the program isn’t a religious school.

“It’s not even discrimination between religion and nonreligion,” said Scalia, “if you think that is invalid, which I don’t. But it doesn’t favor religion at all.”

Bender argued that because taxpayers have only two choices with regard to the credit – either pay their \$500 in state taxes or donate it to a scholarship organization – it is the equivalent of giving away state money, in most cases, to church-related organizations.

Arguing on behalf of the state, Paula Bickett, chief counsel for civil appeals, focused on the constitutional issue, saying the program does not violate the Establishment Clause of the First Amendment “because it’s a neutral law that results in scholarship programs of private choice.” Constitutionally, it’s the same as 26 other tax credits available to Arizonans, she said.

“The programs are programs of private choice,” she said. “Any aid that reaches religious schools does so only after at least four levels of private decision-making.”

The case, actually two cases being considered together: Arizona Christian School Tuition Organization v. Winn and the Arizona Department of Revenue v. Winn, will be decided before the court adjourns in the summer.