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*Published February 22, 2010*

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## Arizona court ruling against choice not seen as a threat in Florida



### Lloyd Brown

Special interests opposed to school choice finally found a court that would agree with their stance. As a result, 28,000 children in Arizona may be forced into failing public schools.

The ruling came from the 9th U.S. Circuit Court of Appeals, a court so far left that it is known in legal circles as “the Ninth circus.” Its zany rulings frequently are overturned by the U.S. Supreme Court.

The 13-year-old Arizona school choice program gives tax credits to individuals who help provide scholarships for low- and middle-income children. Parents choose the schools their children attend with the scholarships.

Because some parents choose private schools with religious affiliations, the ACLU alleged the scholarships constituted state aid to religion.

But, one said of Arizona’s School Tuition Organizations, “[T]he state’s involvement stops with authorizing the creation of STOs and making tax credits available. After that, the government takes its hands off the wheel. Anyone can create an STO. Anyone can contribute to any STO and receive identical tax benefits. Anyone can apply for any scholarship

offered by any STO.”

There were eight dissenting opinions in the Arizona case. One said that unless the U.S. Supreme Court intervenes, the decision “jeopardizes the educational opportunities of thousands of children who enjoy the benefits of [the Arizona program] and related programs across the nation.

The Arizona program had been upheld by the Arizona Supreme Court and a lower federal court, but the ACLU managed to get it to the 9th Circuit and won a ruling – albeit one that directly conflicts with Supreme Court rulings that have upheld similar programs in states such as Ohio.

The U.S. Supreme Court itself has noted that it has “repeatedly recognized that no reasonable observer would think a neutral program of private choice, where state aid reaches religious schools solely as a result of the numerous independent decisions of private individuals, carries with it the imprimatur of government endorsement.”

The Institute for Justice has asked the Supreme Court to reverse the decision. The Institute successfully defended Arizona’s Corporate Scholarship Tax Credit Program in state court.

Florida courts already have stricken one of the state’s three school

choice programs, also ruling that it constituted state aid to religion.

John Kirtley, the Tampa businessman who helped start school choice in Florida over special interests that have fought school choice from the beginning, said he is not concerned about the Arizona decision being applied in the Sunshine State,

“As it pertains to Florida, the case is irrelevant,” Kirtley said. “The Florida statute establishing the tax credit program prohibits a scholarship program from discriminating on the basis of religion (or race, or anything else for that matter). Scholarship funds cannot serve one or a group of schools, either. Any child who qualifies based on family income and school attendance is eligible, and by law they can take their scholarship to any qualified private school in the state.”

More than 27,000 children are helped by the Corporate Tax Credit Scholarship program and various studies have shown it to be a benefit for the children, taxpayers and the public schools. Currently there is a bill in the Legislature that would expand the program to more students. In supporting the bill, the *Tampa Tribune* said vouchers “give poor children the same opportunities as children from wealthier households.”