Stray attack on vouchers

Few public issues are as absorbing as the balance between religion and government, so a ballot initiative that aims to change the boundary is worthy of rigorous debate. Instead, Florida’s Amendment 8 is being treated to a proxy campaign on school vouchers.

A new radio ad by the Florida Education Association: “Amendment 8 allows the government to give our tax dollars to any group claiming to be a religious organization, so any religious group or sect can use our money to fund their own religious schools.”

FEA president Andy Ford: “This is designed to open the state treasury to voucher schools.”

Alachua School Board member Eileen Roy: “It’s the very death of public schools. That’s not overstating it, in my opinion.”

These are provocative arguments, to be sure, but they are basically irrelevant. The amendment was placed on the ballot by two legislators — Sen. Thad Altman, R-Viera, and Rep. Scott Plakon, R-Longwood — who have said repeatedly they want to protect religiously based social services. Their interest was piqued by a lawsuit, Council for Secular Humanism vs. McNeil, that challenges a prison ministries program, and by the fact that the New York-based council has called it “a springboard to mounting other challenges.”

In turn, the pro-Amendment 8 campaign is being led by a coalition of community-service providers and religious leaders who have raised less than $100,000 to date. They believe that if the secular humanists sue over prison ministries, they might one day challenge the Catholic Charities or Catholic hospitals or the YMCA. After all, the current constitutional language is explicit: “No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”

Now it is certainly true that voucher advocates have previously pushed to alter the no-aid clause. But it is just as clear that they played no role in getting this amendment on the ballot and, most telling, have raised not a penny for the campaign.

Their reasons are pragmatic, not philosophical: Federal and state court decisions in recent years have rendered the no-aid clause all but moot as it relates to school choice.

First, the no-aid clause has no bearing on Florida’s current judicial precedent on school vouchers. The state Supreme Court, in its 2006 Bush vs. Holness ruling, found Opportunity Scholarships unconstitutional because they violated Article IX provisions requiring a “uniform” system of “free public schools.”

The court, in fact, steered clear of a lower court ruling that invalidated the scholarships based on the no-aid amendment — a decision that may well have been influenced by the U.S. Supreme Court’s Zelman vs. Simmons-Harris decision, which was issued in 2002 after the initial lower court rulings in Holmes. In Zelman, the U.S. court ruled that public funds could pay for religious schools as long as the primary objective was education and parents were in no way coerced — a practice that is followed in Florida.

Second, the fastest-growing private learning option in the state — tax credit scholarships serving more than 48,500 low-income students this year — is constitutionally distinct from vouchers. In a landmark case last year, the U.S. Supreme Court rejected a challenge to tax credit scholarships in Arizona by ruling that they are not to be considered government expenditures. Consequently, most lawyers believe tax credit scholarships are safe from any legal challenge.

The curious backdrop to this stray attack on vouchers is that last year Florida provided private school options to 209,993 prekindergarten, disabled and poor students without challenge. And the one amendment that could remove a direct constitutional impediment to new vouchers — a revision to Article IX — is nowhere on the ballot. So go figure.

Voters get the chance to register a yes or no to Amendment 8 on Nov. 6, and there is plenty of room for reasonable disagreement. In fact, opponents have complained the ballot title, “Religious freedom,” is misleading, which seems a fair enough accusation. Unfortunately, those who also claim the amendment will open the door to vouchers are engaged in their own form of misdirection.

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