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Florida Supreme Court Takes Up Vouchers

By Joe Follick

TALLAHASSEE -- Six years after Florida lawmakers approved the nation's first statewide voucher program, the legality of the plan was debated on Tuesday before the state's Supreme Court.

Two lower state courts have ruled that the voucher plan known as the Opportunity Scholarship Program violates a section of the State Constitution barring the use of public money "directly or indirectly in aid of any church, sect or religious denomination or in aid of any sectarian institution."

But on Tuesday the justices focused almost exclusively on another section of the State Constitution requiring that the state pay for only "the support and maintenance of free public schools."

In 2000, a state appeals court ruled that the state's voucher system did not violate that portion of the Constitution.

"Where I am having difficulty," said Justice Charles T. Wells, is that "this is money that is coming dollar for dollar out of the money that would otherwise be for the uniform system of public schools."

Barry Richard, a lawyer hired by the state to defend the vouchers, said the Constitution allowed the Legislature to spend money for vouchers if it maintained a quality public education system.

Some justices raised the specter of a new voucher school system that would be separate from the traditional public school system.

"That is the problem here," Justice Peggy A. Quince said. "Where does the Legislature get the authority to have other forms of education?"

John M. West was the only lawyer to speak on behalf of the antivoucher group, which includes the National Association for the Advancement of Colored People, the American Civil Liberties Union and the Florida Education Association, the state's largest teachers union.

He turned the discussion back to the topic of religion after Justice Raoul G. Cantero suggested that a voucher system was simply a "fee for services" arrangement.

"What the state is paying for," Mr. West said, "is religious indoctrination of young children."

More than 700 children receive vouchers through the Opportunity Scholarship Program. Almost all of them are African-American or Hispanic students who attended public schools that failed the state's grading system twice in a four-year period. Nearly 60 percent of the students use the vouchers to attend religion-based schools.

The state has other, much larger voucher programs that are not the subject of the lawsuit debated Tuesday. The McKay Scholarship provides tuition for more than 14,000 children with special needs or disabilities to choose a school with specific programs.

The Corporate Tax Credit Scholarship program gives tax breaks to businesses that donate money to private scholarship groups. Currently, about 10,000 children are involved in the program.

Voucher proponents have raised concerns that an adverse ruling could eliminate those programs, as well as a prekindergarten program that is to start in August. That plan gives \$2,500 in state money to mostly religion-based schools for each 4-year-old attending.

Tuesday's hearing will be the only public debate among justices. Generally, the Florida Supreme Court issues a formal ruling within a few months after oral arguments.