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Colorado School District Wins Court Battle Over School Choice Innovation

By: [Kforti \(Diary\)](#) | February 28th, 2013 at 02:00 PM |

A Denver Court of Appeals has overturned every count of a local District Court's earlier ruling against the Douglas County School District's (DCSD) Choice Scholarship Program (CSP) this morning. While the court rejected the Plaintiff's standing to bring any statutory challenge, it did recognize the Plaintiff's standing to bring a constitutional challenge – which the court promptly found had no merit.

The initial lawsuit was brought by Cindra Barnard, the Taxpayers for Public Education, representation from the ACLU, and others against the CSP shortly after its initial launch. These groups argued that the Program was unconstitutional because it indirectly supported private or religious educational institutions with public school funding.

An injunction was placed on the Program after a local judge ruled in favor of the Plaintiffs in August of 2011.

Judge J. Jones, who drafted the appellate court's Opinion, authored a 55 page brief which outlined the reasons for the appeals court decision to overturn the lower court's ruling. The major decisions presented by Jones were that the **Plaintiffs did not have a proper legal standing to bring the statutory suit and that the Plaintiffs constitutional contentions were invalid.**

"Plaintiffs failed to carry their burden of proving the unconstitutionality of the CSP beyond a reasonable doubt, or by any other potentially applicable standard [emphasis added]. None of them have standing to assert a claim under the Act. Accordingly, the district court's judgment cannot stand."

With regard to the legal basis to bring the lawsuit, Jones wrote that "there is nothing in the language of the Act remotely suggesting that private citizens or groups have a right to seek judicial enforcement of its provisions. The Act expressly commits enforcement of its provisions to the State Board. § 22-54-120 (1), C.R.S. 2012 ("The state board shall make reasonable rules and regulations necessary for the administration and enforcement of this article.").

Judge Jones then made clear, that, "We need not address the merits of plaintiffs' claim under the Act because we conclude that plaintiffs lack standing to bring it ... the Act provides a number of mechanisms for ensuring compliance with its funding scheme, none of which contemplate private enforcement."

Jones expressed the many concerns and conflicts which would arise if the Plaintiffs were deemed to have standing, writing, "We are persuaded that allowing private citizens to act as substitute boards of education by challenging districts' actions in court would interfere with the state agencies' efforts to meet their statutory obligations. And, it would introduce uncertainty into a process where little can be tolerated. Local school districts, for example, would not be able to rely on decisions of the state agencies if those decisions were open to court challenge by any disgruntled citizen."

The court also found that there was no conflict between the the Colorado constitutional provision, which protect religious freedom, and the District's scholarship program.

"Perceiving no plain, palpable, and inevitable conflict between the CSP and article IX, section 3, we conclude that plaintiffs did not meet their burden of establishing the unconstitutionality of the program under that provision," Judge Jones wrote.

The CSP was created with a unanimous vote from the DCSD Board of Education in March 2011. The Program allocates scholarship monies to an initial 500 students to attend one of nearly two dozen private schools that have partnered with DCSD to enhance students' educational experience and meet specific needs.

The District also retains 25 percent of the Per-Pupil revenue on each awarded scholarship, providing financial benefits for both the student and the district. Because of that, school board members have expressly stated that they hope to see the CSP grow in the future to include a great number of students.

"Today's ruling is an important win for scholarship students and their families," said Education Policy Center director Pam Benigno in a [press release this morning](#). "This opens the door to providing students with more educational opportunities."

Benigno concluded that the "decision vindicates the courage of the Douglas County school board and their constitutional authority to act on behalf of all students and families in their community."

Those named in the suit and filing against the DCSD and the CSP have expressed intention to eventually take the case to the Colorado Supreme Court.

This story was originally featured at [Media Trackers Colorado](#).