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New Hampshire judge rules education tax credits unconstitutional

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A New Hampshire judge has ruled that the state's scholarship program is unconstitutional, but he said it could continue if the program's funds did not benefit religious schools.

In the state's tax credit program, which started last year, businesses receive tax credits for donating to a private organization that provides students with scholarships to attend private or public schools.

In his June 17 ruling, Strafford County Superior Court Judge John Lewis said while students and their parents have the right to choose a religious education, "the government is under no obligation to fund 'religious' education."

"Indeed, the government is expressly forbidden from doing so by the very language of the New Hampshire Constitution," he wrote.

A footnote in the judge's 45-page ruling said the court considers a religious school generally to be "one run by, or affiliated with, a religious sect or denomination, where an important mission is religious instruction and where teaching is generally imbued with a religious dimension."

Kate Baker, executive director of the Network for Educational Opportunity, said her group would appeal the ruling with the state Supreme Court.

"It's disappointing, because clearly it limits the choices parents can make, and my entire purpose has been to create options for families," she told The Associated Press. "This says to them, they can't make a choice. Parents know best, right? They should be able to choose the education they think is best for their children. This ruling is almost discrimination."

She said the "intent of the law was to empower parents, and create choices so they can choose the best option -- home schooling, or a public school, or any private school. That makes sense, because then you're opening all those doors," she said. "This is closing one of those doors."

Various forms of tax-credit programs for private school tuition have become popular in some states in recent years as an alternative to private school vouchers.

In 2011, in *Arizona Christian School Tuition Organization* v. *Winn*, the U.S. Supreme Court said taxpayers who opposed a similar tax-credit program could not challenge it in federal court because any financial benefit to religion under the program was not the result of government spending choices.

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