

Answers to Common Questions about the Ninth U.S. Circuit Court of Appeals' April 21, 2009 Ruling in Winn v. Garriott

Did the Court Declare Arizona's Individual Tax Credit Program Unconstitutional?

No. Arizona's individual scholarship tax credit program remains constitutional under the Establishment Clause of the U.S. Constitution. However, a three-judge panel of the court did say that allowing certain school tuition organizations to give scholarships to attend only religious schools, which is permitted by Arizona's program, may be unconstitutional if a trial court finds that parental choices are limited by this practice.

Can the program continue?

Yes. The court did not halt the program or strike it down, but instead said the case should go back to a federal trial court to determine whether, in fact, certain scholarship organizations are limiting scholarship awards in an unconstitutional way. This means that there will be further legal proceedings before there is any decision made that could possibly change the ways in which some school tuition organizations operate.

What is the next step in the case?

The Ninth Circuit's decision is certain to be appealed. An appeal could take two routes. The parties could ask that the case be reviewed by a larger, different panel of Ninth Circuit judges, followed by an appeal to the U.S. Supreme Court, if necessary. Or, the case could be appealed directly to the U.S. Supreme Court. If the decision is not overturned on appeal, the case will then go back to the trial court for further proceedings.

What happens if the trial court decides that the state violates the Establishment Clause by allowing some school tuition organizations to limit scholarships to attend only religious schools?

If the trial court concludes that some scholarship organizations unconstitutionally limit parental choice by offering scholarships to attend only religious schools, then those scholarship organizations may have to alter their practice and offer scholarships to attend any qualified private school in Arizona. Any adverse ruling in the trial court could of course be appealed.

Does this decision signal the end of tax credit-funded scholarships in Arizona?

No. Even if this decision ultimately stands, it is a very narrow ruling that at worst could result in limits being placed on the way in which some scholarship organizations may operate.

What do IJ and ADF think about the ruling?

The lawyers at the Institute for Justice and the Alliance Defense Fund believe the court is wrong to suggest that Arizona's program, as it currently operates, in any way limits parental choice and both organizations will continue to defend the program in court.