

FSBA Issue Brief: Amendment 7

Summary: This proposed amendment was enacted via [HJR 1471](#) during the 2011 legislative session. The proposed amendment would repeal a portion of Article I, Section 3 of the Florida Constitution, commonly referred to as the “No Aid” Provision or Blaine Amendment, that prohibits the use of public funds to subsidize religious groups and individuals and would replace it with a provision that would authorize, and in some cases require, public funding of such groups and individuals. This proposed amendment would revise Section 3 as follows:

SECTION 3. Religious freedom.—There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace, or safety. Except to the extent required by the First Amendment to the United States Constitution, neither the government nor any agent of the government may deny to any individual or entity the benefits of any program, funding, or other support on the basis of religious identity or belief. 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.

Discussion: Article I of the Florida constitution enumerates the basic rights of Florida’s citizens. In many respects, this “Declaration of Rights” mirrors those contained in the U.S. Constitution. The constitutions of all 50 states contain provisions to ensure religious freedom and ensure a separation of church and state. Florida’s constitutional provision is almost identical to the provision of the U.S. Constitution by stating “There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof.” In addition to this guarantee of freedom of religion, Florida’s constitution – as well as the constitutions of 39 other states – contains a “No Aid” provision that prohibits the state from subsidizing certain religious institutions and/or religious schools. Amendment 7 seeks to repeal this additional provision.

It is important to note that this proposed repeal of the “No Aid” provision is titled “Religious Freedom”, which may cause many voters to believe that the amendment creates a safeguard for religious freedom and religious expression. However, that safeguard already exists in the Florida Constitution and this proposed amendment DOES NOT alter it.

Instead, this proposal targets only the portion of Section 3 restricting the use of public funding. This restriction underpins court rulings that declared vouchers unconstitutional. In 2002, the Leon County Circuit Court ruled that Florida’s first voucher program, the Opportunity Scholarship Program, violated this “No Aid” provision. On appeal, both a three judge panel and the full 1st District Court of Appeal upheld the ruling of the Circuit Court. On further appeal, the Florida Supreme Court decided the program violated the state constitution’s guarantee of public education set forth in Article IX, Section 1. However, the Florida Supreme Court did not remand or overturn the decision of the lower courts, thus, the Circuit and Appeal Court decisions that the voucher program violated the “No Aid” provision remain intact. Repeal of the “No Aid” provision would, in effect, overturn those rulings and the result is likely to be the renewal and expansion of voucher programs.

Supporters of Amendment 7 contend that the “No Aid” provision threatens publicly funded programs and services provided by religiously affiliated organizations and institutions – such as Bright Futures Scholarships and Universal Prekindergarten Programs.. However, religiously affiliated programs and services have flourished in Florida despite the “No Aid” provision and existing case law and policies support their establishment and continuing existence so long as the programs and services are delivered in a secular and nondiscriminatory manner.

Supporters of Amendment 7 also contend that Florida's "No Aid" provision was adopted as a result of religious bigotry. However, in 1885, when Florida first adopted the provision, there was no evidence of religious bias in any publications at that time. Further, Florida's "No Aid" provision was reviewed by the Constitutional Revision Commission and subsequently re-adopted by voters in 1968, 1978, and 1998 without any evidence of religious intolerance. It is important to point out that, while the constitution protects the religious freedom and expression of even the most extreme and unpopular groups and individuals, the "No Aid" provision serves to safeguard against extreme or repugnant religious groups from having an unrestricted constitutional right to public taxpayer dollars. If Amendment 7 were to pass, this safeguard would be removed and Florida could not deny state funding to religious entities that espouse extremist beliefs.

Status: Amendment 7 is slated to appear on the November 2012 ballot. Suit was filed by a number of groups and individuals, including FSBA and religious leaders, seeking to remove Amendment 7 from the ballot on the basis that the title and ballot summary are misleading and that the Florida Attorney General does not have authority to make clarifying corrections to the title and summary. On December 13, 2011, the circuit court issued a ruling that agreed that the summary is misleading, but disagreed on the other complaints raised by the plaintiffs. It is expected that the Attorney General will make clarifying corrections to the summary and resubmit Amendment 7 for placement on the November 2012 ballot.