

Opportunity Scholarship Program Litigation

1999 Legislation established the Opportunity Scholarship Program (OSP). Suit was filed shortly thereafter challenging the constitutionality of the OSP.

Among other things, this suit alleged that the OSP violated Article IX, Section 1 of the Florida Constitution which states, in part, that “Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools.” This is referred to as the Education Provision. In addition, the suit alleged that the OSP violated Article I, Section 3 of the Florida Constitution which states, in part, that “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.” This is referred to as the No-Aid Provision.

2000-2003 With regard to Article IX, Section 1: The trial court ruled that the OSP did violate Florida’s Education Provision. However, the First District Court of Appeal (1st DCA) subsequently reversed the trial court’s ruling.

With regard to Article I, Section 3: The trial court ruled that the OSP did violate Florida’s No-Aid Provision. The trial court ruling was appealed to the 1st DCA.

2004 A three judge panel of the 1st DCA upheld the trial court ruling that the OSP violated Florida’s No-Aid Provision. In response, the defendants moved for a rehearing of the case by the full 15 member court. The full 1st DCA upheld the ruling of their three judge panel that the OSP violated Florida’s No-Aid Provision. The 1st DCA certified the question to the Florida Supreme Court.

2005 The Florida Supreme Court heard arguments on the case. Justices questioned the attorneys on issues relating to both the No-Aid Provision (Article I, Section 3) and the Education Provision (Article IX, Section 1).

2006 In a 5-2 ruling, the Florida Supreme Court found that the OSP violated Article IX, Section 1 of the Florida Constitution. Because the Court determined that the OSP was unconstitutional on this count, the Court declined to address whether the OSP also violated the No-Aid provision in Article I, Section 3. It is important to note that, absent a ruling to the contrary by the Florida Supreme Court, the ruling of the trial court, as upheld by the 1st DCA, declaring the OSP in violation of No-Aid Provision remains intact.

The summary of Supreme Court decision reads, in part:

“We find that the OSP . . . diverts public dollars into separate private systems parallel to and in competition with the free public schools . . . This diversion not only reduces money available to the free schools, but also funds private schools that are not “uniform” when compared with each other or the public system.” (*See Florida Supreme Court Opinion for full text*)