LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: HB 333 **52nd Legislature, 1st Session, 2015**

Tracking Number: .198150.1

Short Title: Equal Opportunity Scholarship & Tax Credits

Sponsor(s): Representatives James R.J. Strickler, David E. Adkins and Others

Analyst: Ian Kleats **Date: February 16, 2015**

Bill Summary:

HB 333 creates new sections of law and amends the *Public School Finance Act* to:

- create the *Equal Opportunity Scholarship Act*;
- provide for tuition scholarship organizations to grant educational scholarships to low-income students to attend certain public and nonpublic schools;
- create income tax and corporate income tax credits for contributions to tuition scholarship organizations; and
- require that the Public Education Department (PED) deduct all or a portion of the program cost for a public school student who participates in the scholarship program from the State Equalization Guarantee (SEG, or the Public School Funding Formula) payment to the public school the student had previously attended; and
- require that local school boards and governing bodies of state-chartered charter schools adjust membership projections for the following school year submitted to PED for deductions due to student participation in the scholarship program.

A section-by-section summary of HB 333 follows.

Section 1 cites Section 1 through Section 5 as the *Equal Opportunity Scholarship Act* (effective July 1, 2015).

Section 2 defines certain terms used in the act, including:

- "eligible student" as:
  - qualifying for the federal reduced-price lunch program;
  - attending a New Mexico public school for the semester prior to first receiving a scholarship under the act or starting school in New Mexico for the first time; and
  - residing in New Mexico while receiving a scholarship under the act;
- "qualified school" as a public or nonpublic elementary, middle, or secondary school located in New Mexico that a parent has chosen; and
- "tuition scholarship organization" as an organization that provides educational scholarships to students attending qualified schools of their parents' choice that meet the criteria established in the act.

Section 3 prescribes the requirements for certification as a tuition scholarship organization, including documentation to PED to verify that:

- the organization is exempt from federal income tax under Section 501(c)(3) of the *Internal Revenue Code of 1986*;
- the scholarships are funded from contributions received by the organization in or prior to the current calendar year;
- at least 90 percent of contributions is awarded as educational scholarships; and a scholarship award does not exceed 80 percent of the three-year rolling average of the SEG for an eligible student;
- the organization distributes scholarship payments as checks issued to the parent of an eligible student but mailed to the qualified school in which a qualified student is enrolled;
- a scholarship award can be used at any qualified school during the school year and prorated between schools based on the number of days attended at each school;
- criminal background checks of the organization's employees and board members have been conducted;
- the organization has systems in place that provide financial accountability; and
- the organization is likely to have received donations of $50,000 or more during a school year.

Section 4 outlines the duties of a tuition scholarship organization (TSO), among them:

- providing PED with the name and previous school district or charter school attended of students awarded a scholarship;
- assuring that a school participating in the program complies with certain requirements, including:

    - health and safety laws or rules;
    - a valid occupancy permit;
    - nondiscrimination in admissions on the basis of race, color, or national origin; and
    - school employee background checks; and

- reporting certain information, including student academic developmental information and information for tax purposes.

Section 5 includes the administrative duties of PED, including:

- calculating the program cost associated for a student receiving an educational scholarship pursuant to this act; and
- reducing the SEG of the student's previous school by all or a portion of that amount.

Section 6 adds a new section to the *Income Tax Act* that, pursuant to Section 9 of HB 333, applies to taxable years beginning on or after January 1, 2016 but before January 1, 2020 (effective January 1, 2016) to:

- allow taxpayers to take an income tax credit for contributions to a tuition scholarship organization for up to 90 percent of total contributions, but not exceeding 50 percent of a taxpayer's total income tax liability for a taxable year;
- require that the Taxation and Revenue Department (TRD) develop contribution receipts and determine what may be included in reported tax credits;

- allow contributions of 50 percent or more of a taxpayer's total income tax liability to be carried over for three consecutive years;
- limit married individual who file separate returns for a taxable year (in which they could have filed jointly) to claim only one-half of the scholarship income tax credit;
- prohibit a taxpayer from claiming the same credit both as an individual contribution credit and a corporate contribution credit;
- limit the maximum annual aggregate amount of equal opportunity scholarship income and corporate income tax credits to $5.0 million, and to require that any amount over that limit shall be placed in a queue, by date of receipt, to be paid first in the subsequent tax year before any new tax credits are applied; and
- require TRD to report on the approved equal opportunity scholarship tax credits and their effectiveness to the Revenue Stabilization and Tax Policy Committee (RSTPC) of the Legislature and the Legislative Finance Committee (LFC).

Section 7 creates a new section of the *Corporate Income and Franchise Tax Act*, pursuant to Section 9 of HB 333, that applies to taxable years beginning on or after January 1, 2016 but before January 1, 2020 (effective January 1, 2016) to:

- allow a corporate taxpayer to take an income tax credit for contributions to a tuition scholarship organization for up to 90 percent of its total contributions but not exceeding 50 percent of a taxpayer's total tax liability for a taxable year;
- require the TRD to develop contribution receipts and determine what may be included in reported tax credits;
- allow contributions totaling more than 50 percent of a corporate taxpayer's total income tax liability to be carried over for three consecutive years;
- direct the TRD to determine, every three years, whether the corporate tax credit is fulfilling its purpose;
- prohibit a corporate taxpayer from claiming the same credit both as a corporation contribution and as an individual contribution credit;
- limit the maximum annual aggregate amount of equal opportunity scholarship income and corporate income tax credits to $5.0 million, and to require that any amount over that limit shall be placed in a queue, by date of receipt, to be paid first in the subsequent tax year before any new tax credits are applied; and
- require TRD to report on the approved equal opportunity scholarship tax credits and their effectiveness to RSTPC and the LFC.

Section 8 amends the *Public School Finance Act* in the *Public School Code* to require that local school boards and governing bodies of state-chartered charter schools to adjust membership projections for the following school year submitted to PED for deductions due to student participation in the scholarship programs of the *Equal Opportunity Scholarship Act*, effective July 1, 2015, pursuant to Section 10 of HB 333.

Fiscal Impact:

HB 333 does not contain an appropriation.

Fiscal Issues:

- Based on the assumption that:

  - the unit value for all future years were equal to the FY 15 final unit value set by PED at $4,007.75;
  - each public school student generates an average of 1.9 program units, according to PED's FY 15 preliminary funded run;
  - the maximum educational scholarship is 80 percent of the three-year rolling average of the SEG for an eligible student; and
  - the program cost of an eligible student shall be deducted from that student's previous school district's or charter school's SEG allocation prior to distribution; and

- HB 333 could have the effect of:

  - allowing a TSO to grant a scholarship to an eligible student up to $6,091.78; and
  - reducing a school district's or charter school's SEG distribution by as much as $7,614.73 per eligible student receiving a scholarship.

According to data on school year 2013-2014 free and reduced-price lunch eligibility through the federal school lunch program obtained from the Student Nutrition Bureau of PED, 215,135 public school students qualify for either free or reduced-price lunch. If every eligible student in the state were to receive the maximum scholarship through a TSO, the aggregate effect could:

- require more than $1.31 billion in contributions to TSOs to fund scholarships; and
- reduce public school funding through the SEG by more than $1.64 billion.

Previous Analyses of Fiscal Issues

At the time this analysis was prepared, no bill analyses of HB 333 were yet available from state agencies or the LFC. As such, this analysis relies heavily upon analyses submitted by various entities for substantially similar or identical legislation introduced in previous legislative sessions, including:

- SB 88 (2012), *Equal Opportunity Scholarship Act*;
- HB 166 (2012), *Equal Opportunity Scholarship Act*;
- HB 427 (2011), *Equal Opportunity Scholarship Act*;
- SB 198 (2010), *Scholarship Donation Tax Credit*; and
- SB 355 (2009), *Nonpublic School Scholarship Tax Credit*.

The LFC Fiscal Impact Report (FIR) of HB 166 (2012), which is virtually identical to HB 333, notes a recurring loss of $5.0 million to the General Fund.

Further, the FIR of HB 427 (2011) notes that, while purporting to subsidize the cost of low-income students to attend schools that would have been too expensive in the absence of the scholarships, thus expanding parents' choices and, in theory, improving all schools, tax credits like those proposed in these bills shrink the tax base and introduce more complexity into the New Mexico tax system. These characteristics run contrary to the tax policy principles of efficiency and simplicity.

According to the TRD bill analysis for SB 88 (2012), based on the experiences of Ohio and Arizona relating to similar programs, and factoring in the differences between those two states' populations and the population of New Mexico, the fiscal impact of the bill would include recurring losses to the General Fund, estimated to be $500,000 in the first year of implementation, increasing to an average of approximately $3.3 million across the following three years but never reaching the aggregate annual cap of $5.0 million.

That TRD analysis further reported that the administration of the program would cost the department between $40,000 and $44,000 per year.

According to the PED analysis of HB 166 (2012):

- the tax credits provided in the bill may provide greater options for students to attend nongovernmental schools;
- this bill would immediately reduce taxes for New Mexicans who choose to donate to a TSO;
- under this bill parents are offered opportunities and incentives to enroll their children in private schools that they may not have had otherwise;
- PED must deduct participating students' program costs from the students' previous school district or charter schools prior to distributing SEG funds;
- PED must adjust school district and charter school SEG allocations and not distribute funds generated by students participating in the scholarship program;
- the SEG funds generated by participating students would revert to the General Fund at the end of the year resulting in additional SEG appropriations being reverted to the General Fund; and
- depending on the number of students involved per district, the amounts deducted from a school district's SEG may impact the amount of supplemental emergency funding requested by the district.

Additionally, that PED bill analysis had expected that the bill's provisions would impact its budget negatively by requiring new staff and program oversight for implementation and reporting.

Technical Issues:

In Section 3, HB 333 appears to use the term "state equalization guarantee distribution" when "program cost" would be more appropriate, as these terms have different meanings and apply to different contexts. Based on statute:

- "program cost" represents the sufficient level of funding for the programs of public schools, which is obtained by multiplying the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the Legislature; and
- "state equalization guarantee distribution" is defined in statute as being a school district's or charter school's program cost less requisite deductions for certain federal revenue, local revenue, or administrative fees.

Accordingly, on page 5, lines 14-15, the sponsor may wish to consider an amendment changing that instance of "state equalization guarantee distribution" to "program cost."

Furthermore, page 5, lines 12-16, establish a maximum scholarship award. Because program units attributable to a student may vary across school years, it is unclear whether the "three-year rolling average" is meant to reflect a three-year average of:

- unit values from the three-year period;
- potentially different program units across those years;
- a combination of both of the above factors; or
- certain time periods intended for the three year average, for instance whether it is an average of the preceding three years or whether it is an average of the current school year and the two preceding years.

Page 10, lines 6-9, require PED to "calculate the associated program units for an eligible student receiving an educational scholarship that would have been generated under the funding formula *using the current year unit value*" (emphasis added). Program cost is calculated using a unit value; however program units are not. The sponsor may wish to consider an amendment that:

- removes "using the current year unit value" from line 9, and places it on line 10 after "student's program cost;" and
- specifies whether the sponsor intends PED to use the initial or final unit value in that calculation.

Previous Analyses of Technical Issues

The following issues raised by the PED bill analysis for SB 88 (2012) still appear to apply to the provisions of HB 333:

- it is not clear whether a school operated by an Indian tribe, nation, or pueblo could be considered an eligible school under the bill;
- the reference to "generally accepted accounting procedures" should be changed to "generally accepted accounting principles," which is the standard applicable to any audits by which PED must determine whether a TSO should be certified;
- the requirement that PED verify that "criminal background checks" have been performed on employees and board members of TSOs is ambiguous, as is language "with the understanding," which is not a standard and raises the question of whose understanding is implied;
- it is not clear who is financially responsible for such background checks;
- the background checks required by the *Public School Code* referred to in the bill are required only for persons seeking initial licensure from PED or initial employment from a school district;
- the requirement that PED deny, suspend, or revoke a TSO's certification does not consider any due process if the TSO alleges any abuse of discretion on the part of the department; and
- it is not clear if undistributed funds resulting from a student's withdrawal from public school prior to the start of the school year revert to the General Fund.

The following issues raised by the TRD bill analysis for SB 88 (2012) still appear to apply to the provisions of HB 333:

- Under this scholarship program, the TRD may impose a fee for each numbered "contribution receipt" it issues to a tuition scholarship organization, yet the bill makes no

provision for the distribution of this fee. Thus, it is unclear how the fee should be used or deposited, and the department recommends that a reference to the provision of the fee be included in the title of the bill.

- It is unclear to what extent students would qualify for scholarships to public schools for which tuition is not required.
- The definition of "educational scholarship" may require additional clarification, because the current definition:

  - suggests that public school students may be eligible for scholarships for transportation costs not covered by a qualified public school; and
  - does not specify whether an "educational scholarship" is for costs *paid by* the student for attendance at a qualified school, but includes "costs *of* the student" at a qualified school [emphasis added].

Substantive Issues:

As noted under "Bill Summary," above, Section 4 of HB 333 enumerates the criteria that a school participating in a TSO's scholarship program must meet. Missing from this list, however, is an assurance that the school does not promote religion. Nor does that point appear in the definition of the term "qualified school." As explained in detail under "US Supreme Court Decisions" and "New Mexico Constitution" in "Background," below, such an assurance is a central issue in the legal review of scholarship programs such as those proposed in HB 333. Of particular significance is the ruling of the US Supreme Court in *Lemon v. Kurtz* (cited below), in which the court's nearly unanimous decision established a three-part test for laws dealing with religious establishment. This decision determined that, to be constitutional, a statute must:

- have a "secular legislative purpose";
- have principal effects that neither advance nor inhibit religion; and
- must not foster "an excessive entanglement with religion."

With respect to potential program participation and eligibility, as mentioned above:

- according to PED Student Nutrition Bureau data, 215,135 public school students qualify for either free or reduced-price lunch; and
- it would require approximately $1.31 billion to fully fund maximum scholarships for all of those students.

It might be considered implausible for that amount to be reached by donations alone. Assuming, instead, that only donations for which tax credits were available would be made, it would:

- reduce the estimated aggregate amount of scholarships to approximately $5.6 million per year statewide; and
- only 912 of the 215,135 eligible students, or 0.4 percent, could be supported with the maximum scholarship amount.

Although HB 333 requires qualified schools to grant enrollment preference for siblings of eligible students and use a lottery mechanism when enrollment demand by eligible students exceeds capacity, HB 333 is silent as to the process whereby a TSO chooses eligible students who will receive a scholarship. Because the statewide population of eligible students currently exceeds to a large degree the number of scholarships that could be reasonably supported through TSOs, concerns over the equitable distribution of scholarships may arise.

Previous Analyses of Substantive Issues

- According to the PED analysis of SB 88 (2012), defining an "eligible student" as one who "is starting school in New Mexico for the first time" might have the unintended consequence of encouraging out-of-state parents to move to New Mexico in order to enroll their child in a private school for which they would receive a tax credit. The PED analysis further states:

  - the language suggests that these parents would not have to enroll their child in public school for any length of time in order to be eligible for the tax credit; and
  - it is unclear how PED can verify that an eligible student is enrolled in a qualified school, as indicated by the endorsement of the parent on the scholarship check, because the definition of the term "parent" includes caretakers and custodians.

- According to the PED analyses of SB 355 (2009), *Nonpublic School Scholarship Tax Credit*, and SB 198 (2010), *Scholarship Donation Tax Credit*, (both bills substantially similar to HB 333):

  - there was a potential conflict between the bill's provisions and the Establishment Clause of the US Constitution and the anti-donation clause of the Constitution of New Mexico;
  - because the bill allows a taxpayer to take a tax credit even if the taxpayer's contribution is to a 501(c)(3) charitable organization that primarily supports private religious schools, "the state may find itself indirectly supporting private religious schools," thus coming into conflict with the Establishment Clause of the First Amendment to the US Constitution, which states, "Congress shall make no law respecting an establishment of religion";
  - for many years, the standard in deciding so-called "establishment" cases was *Lemon v. Kurtz*, 403 US 602 (1971), where the Supreme Court's nearly unanimous decision established a three-part test for laws dealing with religious establishment. To be constitutional, a statute must:

    - have a "secular legislative purpose";
    - have principal effects that neither advance nor inhibit religion; and
    - must not foster "an excessive entanglement with religion";

  - the language in these bills does not reflect all three prongs of the "*Lemon* test"; and
  - since the *Lemon* decision, the Supreme Court has announced a string of opinions on the constitutionality of state assistance to nonpublic schools, leaving the law in this area less settled.

- Although the PED analyses of similar bills in sessions prior to 2011 raised those issues, the PED analysis of HB 427 (2011) merely noted that:

  - HB 166 (2012) may allow more school choices for students, especially to attend nonpublic schools; and
  - the bill does not prohibit schools from discriminating on the basis of religion.

New Mexico Constitution

- Article 12, Section 3 of the Constitution of New Mexico states in part, "…no part of the proceeds arising from the sale or disposal of any land granted to the state by congress, or any other funds appropriated, levied, or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college, or university." According to the Legislative Finance Committee, proceeds from state income taxes are the second largest source (after gross receipts taxes) of General Fund revenues, and General Fund dollars are the source of an average of 90 percent of funding for public schools in New Mexico.

- The New Mexico constitution's so-called "Anti-Donation Clause" (Article 9, Section 14):

  - states in part, "Neither the state nor any county, school district or municipality…shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation…"); and
  - is often interpreted as a prohibition against public support of private interests.

- Article 4, Section 31 of the Constitution of New Mexico:

  - states in part, "No appropriation shall be made for charitable, educational, or other benevolent purposes to any person, corporation, association, institution, or community, not under the absolute control of the state."; and
  - has been interpreted possibly to prohibit tuition assistance in the form of vouchers. It is arguable, therefore, that subsidies to parents in the form of tax credits might also violate this section.

- The New Mexico Attorney General (AG) has considered the question of the constitutionality of state assistance to private school students on several occasions:

  - In Opinion Number 99-01, dated January 29, 1999, the AG:

    - cited the federal decisions in *Nyquist* and *Mueller* (citations below) and stated that the prohibition in Article 12, Section 3 is not limited to direct payments from the state to private schools, but prohibited payments provided to private school students or their parents;
    - stated that the anti-donation clause in Article 9, Section 14 appears to prohibit the state from providing tuition assistance in the form of vouchers to private school students, stating, "Whether the beneficiary of the assistance is the parents or the schools, the use of public money to subsidize the education of private school students, without more, is a donation to private persons or entities in violation of the state Constitution";
    - suggested that a voucher program might run afoul of Article 12, Section 1, which states that a "uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained." If it diverted funds from the public schools to the extent that it compromised the state's ability to meet its obligation to establish and maintain a public school system sufficient to educate all school-age children in the state, such a program might be found to be unconstitutional; and
    - noted that a school voucher program would violate Article 4, Section 31 if the Legislature appropriated money directly to parents or private schools. While

admitting that the issue of vouchers had not been specifically addressed, the AG stated that it was arguable that such a program might result in a more than incidental benefit to private organizations, and thus might be prohibited.[1]

- More recently, the AG affirmed those 1999 findings in Opinion No. 10-06 (*State funds for private school text books*), dated December 28, 2010. When considering the constitutionality of PED paying a publisher or depository to "reimburse it for the lending of textbooks to sectarian, denominational, or private schools for the use of their students," the AG reaffirmed that:

  - Article 12, Section 3 prohibits "direct state aid or *subsidies to private schools or to aid provided to students or parents that effectively subsidize private schools*. [emphasis added]; and
  - the anti-donation clause in Article 9, Section 14 probably prohibited a proposed school voucher program under which state money would be used to provide tuition assistance to parents of private school students.

US Supreme Court Decisions

- In *Hibbs v. Winn*, 542 U.S. 88 (2004), despite a provision in the federal *Tax Injunction Act* prohibiting federal courts from restraining the implementation of state tax laws, the Supreme Court asserted the jurisdiction of the federal courts in such cases. At issue was a claim of violation of the Establishment Clause in a suit seeking to enjoin the operation of an Arizona tax law that authorizes an income tax credit for payments to nonprofit "state tuition organizations" that award scholarships to students in private elementary and secondary schools, including those attending religious-based schools. The case did not resolve the main question regarding the constitutionality of the tax credit.

  - In April 2009, in *Winn v. Arizona Christian School Tuition Organization*, the Ninth Circuit Court of Appeals ruled that a group of taxpayers had stated a valid legal claim that an Arizona tuition tax credit law similar to that proposed violates the US Constitution's Establishment Clause. In that case, the statute allowed for contributions to "state tuition organizations (STOs)" that "allow them to attend *any* [emphasis added] qualified school of their parents' choice."

  - In April 2011, in a five-to-four decision, the US Supreme Court reversed the Ninth Circuit Court of Appeals' decision in *Winn*, for want of jurisdiction. According to the majority opinion:

    - Plaintiffs lacked standing to bring suit under the doctrine of taxpayer standing, which holds that the mere fact that a plaintiff is a taxpayer is insufficient to seek relief in federal court.

    - Unless the plaintiff falls within a narrow exception to this doctrine, articulated in *Flast v. Cohen* (392 U.S. 83, 1968), they must show an injury in fact in order to bring suit alleging that a government action violates the Establishment Clause.

[1] (See *State ex. Rel. Interstate Stream Commission v. Reynolds*, 71 N.M 389, 1963)

- According to *Flast*:

  - ✓ There must be a "logical link" between the plaintiff's taxpayer status and the "type of legislative action attacked."
  - ✓ A "nexus" must exist between the plaintiff's taxpayer status and "the precise nature of the constitutional infringement alleged."
  - ✓ Thus, individuals suffer a particular injury for standing purposes when, in violation of the Establishment Clause, and by means of "the taxing and spending power," their property is transferred through the Government's Treasury to a sectarian entity.

- The Court stated that the plaintiffs in *Winn* failed to meet the conditions imposed by *Flast*, and thus did not fall within this narrow exception.

- Further, according to the majority opinion, tax *credits* do not enter the public treasury, and as the money involved is never within government control, the actions alleged to be in violation of the Establishment Clause were not accomplished by means of the taxing and spending power, thus making *Flast* inapplicable in this case.

➢ However, according to Justice Kagan, who wrote the dissenting opinion:

- The majority's distinction between appropriations and tax credits has little basis, both in fact and Court precedent.

- Cash grants and target tax breaks are means of accomplishing the same government objective: that of providing financial support to select individuals or groups.

- The Court's distinction between tax credits and appropriations threatens to eliminate *all* occasions for a taxpayer to contest the government's monetary support of religion [emphasis in original].

- Because appropriations and tax breaks can achieve identical objectives, the government can easily substitute one for the other.

- The Court's decision enables the government to avoid the access to the judiciary guaranteed in *Flast* by subsidizing religious activity through the tax system, and thus precluding taxpayer standing to challenge state funding of religion.

- Plaintiffs have shown that they have standing under the *Flast* exception because:

  - ✓ by challenging legislative action taken under the taxing and spending power, they showed the required "logical link between their taxpayer status and the enactment attacked"; and
  - ✓ by invoking the Establishment Clause, a specific limit on the Legislature's taxing and spending power, they demonstrated the necessary "nexus between their taxpayer status and the precise nature of the constitutional infringement alleged."

- With this decision, the Court has contradicted decades of its own jurisprudence. Since the *Flast* decision, the Court has on many occasions accepted that ordinary taxpayers have standing to challenge tax advantages that benefit religious organizations. While plaintiffs did not always succeed on the *merits*, in no instance had the court dismissed the claims for want of jurisdiction. For example, see:

  - ✓ *Walz v. Tax Commission of City of New York*, 397 U.S. 664 (1970), where the Court upheld the constitutionality of a property tax exemption for religious organizations;
  - ✓ *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756 (1973), where the Court struck down a tax deduction for parents who paid tuition at religious and other private schools; and
  - ✓ the Court's decision on a preliminary issue *in the instant case*, where the Court ruled that the *Tax Injunction Act* posed no barrier to plaintiff's litigation, but did *not* dispute the litigants' standing. (See, above, *Hibbs v. Winn*, 542 U.S. 88 (2004)).

- ➢ It is important to note that by overturning the Ninth Circuit's decision on jurisdictional grounds, the Court has still not addressed the main issue of the constitutionality of the tax credit scholarship legislation.

- In *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), the Supreme Court held that an Ohio pilot scholarship program did *not* violate the Establishment Clause in giving aid primarily to families below the poverty line with children at a failing school district so they could choose to attend either another public school or private school, receive tutorial assistance, enroll in a magnet school, or receive a scholarship.

- In *Mueller v. Allen*, 463 U.S. 388 (1983), on a five-to-four vote, the Supreme Court *upheld* a Minnesota law, challenged on the basis that it violated the Establishment Clause, that allowed state taxpayers, in computing their state income tax, to deduct expenses incurred in providing "tuition, textbooks and transportation" for their children attending a private elementary or secondary school.

- Earlier, in *Byrne v. Public Funds for Public Schools of New Jersey*, 442 U.S. 907 (1979), the Supreme Court summarily affirmed a lower federal court holding that a state tax deduction for taxpayers with children attending nonpublic school *violated* the Establishment Clause.

- In *Franchise Tax Board of California v. United Americans for Public Schools*, 419 U.S. 890 (1974), the Court summarily affirmed a lower federal court judgment that *struck down* a state statute providing income-tax reduction for taxpayers sending children to nonpublic schools.

- In *Nyquist*, the court stated, "The system of providing income tax benefits to parents of children attending New York's nonpublic schools also *violates* [emphasis added] the Establishment Clause because, like the tuition reimbursement program, it is not sufficiently restricted to assure that it will not have the impermissible effect of advancing the sectarian activities of religious schools."

Committee Referrals:

HEC/HWMC

Related Bills:

None as of February 16, 2015.