Taxpayers for Public Education et al v. Douglas County School Board et al
Summary of Court of Appeals Opinions

The appeal was decided by a panel of three court of appeals judges. Two judges (the "Majority Opinion") ruled that the trial court's opinion should be reversed; one judge (the "Dissenting Opinion") argued that the trial court's opinion should be upheld.

Majority Opinion

Two judges of the three judge panel held as follows:

1. Plaintiffs lacked standing (the legal right to sue) under the Colorado Public School Finance Act because the right to enforce the provisions of that Act lies exclusively with the State Board of Education. Because the plaintiffs lacked standing to sue under the Public School Finance Act, the court did not address the claim that DCSD's use of public school funds to pay for private education violates the Act. [*The opinion did not address the irony and inequity of this conclusion: the only entity that has a right to sue under the Public School Finance Act – the State School Board -- is a defendant in this case and is being charged with violations of that Act.* So the opinion means that the Act is de facto unenforceable because its enforcement is exclusively entrusted to the very entity that is violating it.]
2. School Board actions are entitled to a presumption of constitutionality; Plaintiffs must therefore prove their claims of constitutional violations "beyond a reasonable doubt." [*This is a position that no Colorado court has taken*.]
3. The voucher program does not violate the requirement of "thorough and uniform free education" established by Art. IX sec. 2 of the Colorado Constitution because: (a) the voucher program doesn't prevent Douglas County schoolchildren from getting a free education; it simply provides "an educational opportunity in addition to the free system the Constitution requires; (b) the voucher program doesn't violate the "thorough and uniform" requirement because the Constitution "doesn't preclude a local school district from providing educational opportunities in addition to and different from the thorough and uniform system;" and (c) the school district is allowed to expend public funds to provide these not-free and not-uniform opportunities in addition to its free and uniform system. [*The court actually ruled that school districts can establish and fund a non-free, non-uniform system of education in addition to a free and uniform system of education. Welcome back, 'separate but equal.'*]
4. The voucher program does not violate Art IX sec. 3 of the Colorado Constitution (the Public School Fund) because (1) that provision does not apply to how local school boards spend money

given to them by the state and (2) the opinion "assumes" that the voucher money all come from the portion of the state funds that are not generated by constitutional Public School Fund.

5. The voucher program does not violate the "no compelled attendance" provision of the Colorado Constitution (Art. II sec. 4) because (a) the voucher program is facially neutral toward religion and the court is prohibited by the First Amendment from inquiring into "the degree to which religious tenets and beliefs are included in participating schools educational programs" and (b) no student is compelled to participate in the voucher program. [*The opinion holds that a court cannot make any factual inquiry to figure out whether an institution is a "ministry, place of worship, religious sect or denomination" under this constitutional provision. And since no court can inquire as to whether an institution is one of the types of religious institutions referred to under this provision, a court can never make a factual finding that it is such an institution – and therefore a court can never make a legal or factual finding that this provision has been violated*.]
6. The voucher program does not violate the "no aid to religious schools" provision of the Colorado Constitution (Art. IX sec 7) because (a) the voucher program is facially neutral toward religion and the court is prohibited by the First Amendment from inquiring into "the degree to which religious tenets and beliefs are included in participating schools educational programs," and (b) the voucher program aids parents and students directly, and any indirect benefit to the school is not "in aid of" a religious organization. [*This ruling ignores the plain meaning of the constitutional provision. The ruling is squarely challenged and thoroughly discredited by the dissenting opinion – see below*.]
7. The voucher program does not violate Art. IX sec. 8 of the Colorado Constitution (no religious tests for admission to public school) because the voucher charter school is for "administrative purposes only"; the voucher students are really attending private schools, and religious criteria for admission to private schools are legal. [*Being a sham school is apparently OK if it's just "for administrative purposes."*]
8. The voucher program does not violate Art. V sec. 34 of the Colorado Constitution (forbidding "appropriations" to sectarian institutions) because that provision applies only to the General Assembly and not to school boards.

Dissenting Opinion

The dissenting opinion argues that Art. IX sec. 7 of the Colorado Constitution unambiguously "prohibits public school districts from channeling private money to private religious schools." The DCSD voucher program "is a pipeline that violates this direct and clear constitutional command."