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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-002986

06/13/2007

HONORABLE BETHANY G. HICKS

CLERK OF THE COURT
W. Yank
Deputy

VIRGEL CAIN, et al.

DONALD M PETERS

v.

TOM HORNE

WILLIAM A RICHARDS

TIMOTHY DAVID KELLER
RICHARD KOMERS
901 N GLEBE RD
STE 900
ARLINGTON VA 22203
WILLIAM H MELLORS
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ARLINGTON VA 22203
CLARK M NEILY III
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MINUTE ENTRY

On June 4, 2007, the Court heard argument on plaintiffs' Motion for Summary Judgment, filed with the Court on April 2, 2007, and defendant's Motion for Judgment on the Pleadings, filed with the Court on April 19, 2007.

Plaintiffs assert that Arizona's school voucher programs [set forth in Sections 15-817 through 15-817.07 and Sections 15-891 through 15-891.06 of the Arizona Revised Statutes]

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violate Article 2, Section 12, Article 9, Section 10, Article 20, Section 7 and Article 11, Section 1 of the Arizona Constitution and are therefore unconstitutional, such that the Superintendent of Public Instruction should be enjoined from disbursing funds pursuant to those statutes.

Defendants contend that the State's school voucher programs are not unconstitutional based on the rulings in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Roosevelt Elementary School District No. 66 v. State of Arizona*, 205 Ariz. 584, 74 P.3d 258 (App. 2003), *Kotterman v. Killian*, 193 Ariz. 273, 972 P.2d 606 (1999) and *Roosevelt Elementary School District No. 66 v. State of Arizona*, 179 Ariz. 233, 877 P.2d 806 (1994).

Having read and considered the parties' motions, supporting memoranda and statements of facts, the Court has determined (i) that there are no issues of fact material to this proceeding in dispute and this matter is a matter of law for the Court and (ii) that the defendants' reasoning and authorities are correct and applicable. As enacted, the State's school voucher programs do not result in an appropriation of public money for, or an application of public money to, any religious worship, exercise or instruction or to the support of any religious establishment in violation of Article 2, Section 12 of the Arizona Constitution. Similarly, no appropriation of public money is being made in aid of any church, or private or sectarian school in violation of Article 9, Section 10 of the Arizona Constitution. Finally, the Court is of the opinion, based on the facts and the authorities cited, that Arizona's school voucher programs do not prevent the establishment and maintenance of a "general and uniform public school system" which is "open to all the children of the State and ... free from sectarian control" which are required by Article 20, Section 7 and Article 11, Section 1 of the Arizona Constitution.

On the bases set forth above,

IT IS ORDERED denying the plaintiffs' Motion for Summary Judgment and granting the defendants' Motion for Judgment on the Pleadings.