



Issue Brief

September 2012

## **Amendment 8 Could Drain Billions of Dollars from Public Schools**

### **Summary**

Amendment 8, the so called “Religious Freedom” constitutional amendment on the November general election ballot, could drain billions of dollars from Florida’s public schools. It would rewrite the Constitution in a way that makes it easier to create a voucher program directing the use of state tax dollars to pay tuition to private schools.

Neither the ballot summary that voters will see when they go to the polls, nor the language of the amendment itself, mentions public schools. But if approved by voters, Amendment 8 would have a huge negative impact on public education, reducing funding further after years of previous education budget cuts.

K-12 budget cuts resulting from a universal voucher program pursuant to Amendment 8 could cost between \$3.7 billion to \$6.5 billion over five years, depending on how the voucher program is designed.

### **Amendment 8 Is Confusing and Unclear**

Amendment 8 is one of 11 proposed amendments<sup>1</sup> to the state constitution placed on the November 6 general election ballot by the Florida Legislature. If approved, several of the complicated amendments would have a host of far-reaching consequences, including limiting the amount of money available for services such as education, and, in fact, taking state tax dollars directly away from public education.

Amendment 8 would change a provision that has been in the Florida Constitution since 1885<sup>2</sup> as a guarantee of the separation of church and state. That point is not obvious from the language that will appear on Floridians’ ballots, however:

#### **CONSTITUTIONAL AMENDMENT ARTICLE I, SECTION 3**

RELIGIOUS FREEDOM. Proposing an amendment to the State Constitution providing that no individual or entity may be denied, on the basis of religious identity or belief,

governmental benefits, funding, or other support, except as required by the First Amendment to the United States Constitution, and deleting the prohibition against using revenues from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.<sup>3</sup>

The full prohibition that would be deleted from the current Constitution says: “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.”<sup>4</sup>

In addition, Amendment 8 adds this sentence: “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.”<sup>5</sup>

In effect, the new language strips away protections guaranteeing the separation of church and state and shifts the constitutional language to forced funding of church-affiliated organizations.

As confusing as it is, the ballot language is a rewrite and supposedly an improvement from the summary originally proposed by the legislature, which a state court found “ambiguous and misleading in violation of Florida law.”<sup>6</sup>

## **Amendment 8 Would Open the Way for Universal Private School Vouchers in Florida**

The “no aid” language in the state constitution is one of the provisions that has been cited by Florida courts to limit the use of public tax dollars to pay tuition to private schools – including religious schools – most recently in 2004 to block a school voucher law.<sup>7</sup> The constitutional principle is well-established: Legislative staff analyzing a voucher bill proposed in 2011 recognized the obstacle posed by the current “no aid” provision, noting that “the provisions of this bill may be constitutionally challenged.”<sup>8</sup>

The legislative vote placing Amendment 8 on the ballot can be seen as an attempt by proponents to eliminate this constitutional obstacle to the use of public tax dollars for private and religious school vouchers.<sup>9</sup> The “no aid” provision in Florida’s constitution is, in fact, a stronger prohibition against private school vouchers than the U.S. Constitution since a 2002 U.S. Supreme Court case allowed voucher programs under certain circumstances,<sup>10</sup> namely for valid purposes that only incidentally benefit religious schools.<sup>11</sup>

## **Amendment 8 Would Drain Billions of Dollars of Tax Funds from Public Schools and Send Them to Private Schools**

The Florida Supreme Court, in its 2006 decision stopping a school voucher program, recognized the direct danger such a program poses to public schools: It diverts public dollars into “separate private systems parallel to and in competition with the free public schools” and “reduces money available to the free schools,” the court said.<sup>12</sup>

The beneficiaries from the passage of Amendment 8 and a universal private school voucher program would be “private religious institutions,” according to the legislative analysis of the resolution creating Amendment 8.<sup>13</sup> Other beneficiaries would be well-to-do parents who can afford to pay private school tuition, or who are in fact already paying tuition for their children in private schools, who would be subsidized with public tax dollars.

### **Calculating the Costs: Universal Vouchers Through Amendment 8 Would Cost Public Schools \$3.7 to \$6.5 Billion Over Five Years**

A universal private school voucher program – allowing any student to use public tax dollars to pay private school tuition, as Governor Rick Scott and legislative leaders have advocated<sup>14</sup> – would divert billions of dollars from public education. Instead of being spent for teachers, staff, and other instructional purposes at public schools, these tax dollars would be used to pay private school tuition for hundreds of thousands of students.

The exact cost of a universal voucher program constitutionally furthered by Amendment 8 would depend on the specifics of the program created by the legislature. But it is obvious that in just a few years billions of dollars would be taken from public schools.

In the 2011-12 school year, more than 270,000 Florida children were enrolled in private schools in kindergarten through 12<sup>th</sup> grade.<sup>15</sup> (That total has been even larger in the past – as many as 50,000 greater in 2003-04 – before the recession squeezed parents’ income and led to many enrolling their children in public school to save on tuition.<sup>16</sup>)

Some of those private school students already receive some public tax funding under the McKay program<sup>17</sup> for children with disabilities and the Florida Tax Credit Scholarship program.<sup>18</sup> But more than 200,000 current K-12 private school students not currently receiving public education dollars could be entitled to public tax dollars to pay for their tuition under a universal voucher program.

- If the amount of public funding per student were set at the base student allocation of \$3,583 used for public school students (not including transportation and other supplemental instructional costs), the cost to taxpayers would be \$738 million in the first year.

- If a voucher program were devised that directed the total amount of money per public school student appropriated by the legislature for the Florida Education Finance Program (\$6,375), the first-year cost would be \$1.3 billion.
- **Over five years, therefore, a voucher program facilitated by passage of Amendment 8 would drain from \$3.7 billion to \$6.5 billion from public schools.** If private school enrollment increased as parents take advantage of vouchers, each 10,000 new voucher students would cost public schools another \$36 million to \$64 million, depending on the specifics of the voucher program.

## **K-12 Cuts From Vouchers Would Subtract Even More Funds After Years of Budget Cuts**

The loss to public schools from Amendment 8 and vouchers would come on top of K-12 budget cuts made during the recession. The most recent reduction, \$1.3 billion in 2011, was only partially restored in 2012, leaving state funding per student \$145 below the 2007-08 level.<sup>19</sup> Furthermore, while all states have faced funding challenges during the recession, Florida has hit its public schools harder: Per-student spending as a percentage of the national average dropped to 83 percent in the most recent year for which data is available, from 88 percent in 2006-07.<sup>20</sup>

## **Religious Schools Would Receive the Bulk of Voucher Tax Money Under Amendment 8 Without the Accountability of Public Schools**

A voucher program would provide private and religious schools with a large new market of students – paid for not by parents, but by taxpayers. Evidence from current programs providing some aid to private school students indicates that the vast majority of students under a new voucher program through Amendment 8 would be enrolled in religious schools.

Private schools in Florida are a mixture of parochial, religious, denominational, for-profit, and nonprofit. Those participating in the two programs that provide some state aid – the McKay program for students with disabilities and the Florida Tax Credit program – are predominantly religious schools.

Of the 1,086 private schools participating in the McKay program, 699 are religious schools. Of students in the program, 57 percent attend religious schools.<sup>21</sup> In the tax credit program, 77 percent of the private schools participating are religious schools and 84 percent of students receiving state aid from the program attend religious schools.<sup>22</sup>

Florida law imposes very limited requirements on private schools (although some private schools fear participation in a voucher program could lead to new state-imposed accountability requirements in exchange for public tax dollars). Currently, private schools are not required to administer to their students the FCAT or other exams required by the state. In addition, private schools are not required to

hire certified teachers<sup>23</sup> or to have an approved curriculum. Unlike public schools, private schools can choose the students they accept.

Already hard hit by budget cuts, Florida public schools would suffer deep additional reductions if a universal private school voucher program were created due to the passage of Amendment 8.

## Endnotes

<sup>1</sup> Florida Department of State, Division of Elections Initiatives/Amendments/Revisions.

<http://election.dos.state.fl.us/initiatives/initiativelist.asp?year=2012&initstatus=ALL&MadeBallot=Y&ElecType=GEN>

<sup>2</sup> Final Bill Analysis, CS/HJR 1471, Florida House of Representatives.

<http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h1471z.JDC.DOCX&DocumentType=Analysis&BillNumber=1471&Session=2011>

<sup>3</sup> Florida Department of State, Division of Elections, Religious Freedom Summary.

<http://election.dos.state.fl.us/initiatives/initdetail.asp?account=10&seqnum=86>

<sup>4</sup> Committee Substitute/House Joint Resolution 1471, Florida House of Representatives, July 1, 2011.

<http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=46677&SessionIndex=1&SessionId=66&BillText=&BillNumber=1471&BillSponsorIndex=0&BillListIndex=0&BillStatuteText=&BillTypeIndex=0&BillReferredIndex=0&HouseChamber=H&BillSearchIndex=0>

<sup>5</sup> Ibid.

<sup>6</sup> “Shapiro v. Browning,” Second Judicial Circuit Court, Leon County, Case No. 2011-CA-1892, December 13, 2011.

[http://au.org/files/pdf\\_documents/summary\\_final\\_judgment.pdf](http://au.org/files/pdf_documents/summary_final_judgment.pdf)

<sup>7</sup> “Bush v. Holmes,” Florida Supreme Court, No. SC04-2323, January 5, 2006.

<http://www.floridasupremecourt.org/decisions/2006/sc04-2323.pdf>

<sup>8</sup> Bill Analysis, Florida Senate, Senate Bill 1550, April 11, 2011.

<http://www.flsenate.gov/Session/Bill/2011/1550/Analyses/=5C/Xy=PL=yg9YZE18PNC46Pc5=PL=85nWu0=|7/Public/Bills/1500-1599/1550/Analysis/2011s1550.ed.PDF>

<sup>9</sup> “Legislature Expands Risky Experiment of Education Privatization as Traditional Schools Suffer,” Florida Center for Fiscal and Economic Policy, August 2011. <http://www.fcfe.org/attachments/20110830--Legislature%20Expands%20Risky%20Experiment%20of%20Privatizing%20Education.pdf>

<sup>10</sup> National Conference of State Legislatures, “Publicly Funded School Voucher Programs.”

<http://www.ncsl.org/issues-research/educ/school-choice-vouchers.aspx>

<sup>11</sup> ZELMAN, SUPERINTENDENT OF PUBLIC INSTRUCTION OF OHIO, *et al.* v. SIMMONS-HARRIS *et al.* certiorari to the united states court of appeals for the sixth circuit No. 00-1751. Argued February 20, 2002--Decided June 27, 2002\*

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=00-1751>

<sup>12</sup> Supreme Court of Florida, No. SC04-2323.

[http://www.floridasupremecourt.org/pub\\_info/summaries/briefs/04/04-2323/Filed\\_01-05-2006\\_Opinion.pdf](http://www.floridasupremecourt.org/pub_info/summaries/briefs/04/04-2323/Filed_01-05-2006_Opinion.pdf)

<sup>13</sup> Final Bill Analysis, CS/HJR 1471, Florida House of Representatives.

[www.myfloridahouse.gov/sections/Documents/loaddoc.aspx?FileName=h1471z.JDC.DOCX&DocumentType=Analysis&BillNumber=1471&Session=2011](http://www.myfloridahouse.gov/sections/Documents/loaddoc.aspx?FileName=h1471z.JDC.DOCX&DocumentType=Analysis&BillNumber=1471&Session=2011)

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<sup>14</sup> “Gov.-elect Rick Scott hints at school vouchers for all at St. Petersburg rally,” Tampa Bay Times, December 10, 2010. <http://www.tampabay.com/news/education/at-st-petersburg-rally-gov-elect-rick-scott-hints-at-school-vouchers-for/1139033>

<sup>15</sup> “Florida’s Private Schools Annual Report 2011-12, Office of Independent Education and Parental Choice, Florida Department of Education, June 2012.

[http://www.floridaschoolchoice.org/information/private\\_schools/annual\\_reports/1112\\_Annual\\_Report.pdf](http://www.floridaschoolchoice.org/information/private_schools/annual_reports/1112_Annual_Report.pdf)

<sup>16</sup> “Florida’s Nonpublic Schools 2003-04,” Statistical Brief, Bureau of Education Information and Accountability Services, Florida Department of Education, May 2004.

[http://www.floridaschoolchoice.org/information/private\\_schools/annual\\_reports/03-04.pdf](http://www.floridaschoolchoice.org/information/private_schools/annual_reports/03-04.pdf).

<sup>17</sup> McKay Scholarship Program, School Choice, Florida Department of Education, August 2011.

[http://www.floridaschoolchoice.org/Information/McKay/files/Fast\\_Facts\\_McKay.pdf](http://www.floridaschoolchoice.org/Information/McKay/files/Fast_Facts_McKay.pdf)

<sup>18</sup> Florida Tax Credit Scholarship Program, June Quarterly Report 2012, School Choice, Florida Department of Education. [http://www.floridaschoolchoice.org/Information/CTC/quarterly\\_reports/ftc\\_report\\_june2012.pdf](http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_june2012.pdf)

<sup>19</sup> State Board of Education workshop, July 17, 2012.

[http://www.fldoe.org/board/meetings/2012\\_07\\_16/workshop.pdf](http://www.fldoe.org/board/meetings/2012_07_16/workshop.pdf)

<sup>20</sup> Ibid. (National Center for Education Statistics, Common Core of Data, State Board of Education workshop, July 16, 2012.)

<sup>21</sup> John M. McKay Scholarship Program, June Quarterly Report 2012, School Choice, Florida Department of Education.

[http://www.floridaschoolchoice.org/Information/McKay/quarterly\\_reports/mckay\\_report\\_june2012.pdf](http://www.floridaschoolchoice.org/Information/McKay/quarterly_reports/mckay_report_june2012.pdf)

<sup>22</sup> Florida Tax Credit Scholarship Program, June Quarterly Report 2012, School Choice, Florida Department of Education. [http://www.floridaschoolchoice.org/Information/CTC/quarterly\\_reports/ftc\\_report\\_june2012.pdf](http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_june2012.pdf)

<sup>23</sup> “Legislature Expands Risky Experiment of Education Privatization As Traditional Public Schools Suffer,” Florida Center for Fiscal and Economic Policy, August 2011. <http://www.fcfe.org/attachments/20110830--Legislature%20Expands%20Risky%20Experiment%20of%20Privatizing%20Education.pdf>