

THE NEW UNIFORM DEBATE: *MCCALL V. SCOTT* AND THE CONSTITUTIONAL STATUS OF THE FLORIDA TAX CREDIT SCHOLARSHIP PROGRAM

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I. INTRODUCTION

In *McCall v. Scott*, Florida's First District Court of Appeal (First District)¹ considered whether the plaintiffs had standing to sue Florida over the constitutionality of the "Florida Tax Credit Scholarship Program" (FTCSP).² However, the First District never addressed constitutionality, instead denying standing to the plaintiffs.³ The Florida Supreme Court denied certiorari to the

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1. For the purposes of this Article, when discussing the First District Court of Appeal, which decided *McCall v. Scott*, the court will be referenced as First District. For the Florida Supreme Court, either the full name or Court is used.

2. *McCall v. Scott*, 199 So. 3d 359, 361–62 (Fla. 1st Dist. Ct. App. 2016), *appeal denied*, No. SC16–1668, 2017 WL 192043 (Fla. 2017); *see* FLA. CONST. art. I, § 3 (describing rights involving religious freedom); FLA. CONST. art. IX, § 1 (describing rights involving public education).

3. *McCall*, 199 So. 3d at 364 (addressing standing and not addressing constitutionality); Waddell A. Wallace III, Maria F. Gibson & Michael S. Roscoe, *The 2017 Constitution Revision Commission: School Vouchers and Choice in Education to be Major Points of Interest*, 18 FLA. COASTAL L. REV. 63, 84 (2016).

case.⁴ As a result, *McCall* effectively left the FTCSP legally intact.⁵ However, under Florida precedent, the plaintiffs were correct that the FTCSP is unconstitutional,⁶ so if plaintiffs with proper standing object to the program in the future, Florida courts should find the FTCSP unconstitutional.⁷ The *McCall* case is important because it leaves the status of tax credit scholarship programs completely uncertain in the First District and in Florida generally. While Florida precedent suggests that the FTCSP may eventually be struck down, for now both proponents and opponents of the FTCSP may need to consider all strategies to pursue their objectives of either keeping the program intact or getting it struck down. Suggested strategies for both sides of the debate will be discussed throughout this Article. Hopefully, the legal status of the FTCSP will soon be decided so that all parties involved will have closure on its constitutional status.

A. Summary of the Facts and the Court's Holding

In *McCall v. Scott*, plaintiffs, including several Florida interest groups, challenged the state constitutionality of the “Florida Tax Credit Scholarship Program.”⁸ At the trial court, the plaintiffs suggested that the FTCSP violated the Florida Constitution in two respects.⁹ First, they argued that the FTCSP “violat[e] the no-aid provision” of the Florida Constitution because it used government money to give children private,

4. *McCall*, 2017 WL 192043, at *1; Anya Kamenetz, *Under DeVos, Here's How School Choice Might Work*, N.P.R. ED. (Jan. 31, 2017), <http://www.npr.org/sections/ed/2017/01/31/512507538/under-devos-heres-how-school-choice-might-work>; Leslie Postal, *State's Top Court Turns Down Voucher Case, A Win For School Choice Advocates*, ORLANDO SENT. (Jan. 18, 2017), <http://www.orlandosentinel.com/features/education/os-vouchers-florida-schools-tax-credits-20170118-story.html>.

5. See *McCall*, 199 So. 3d at 374 (affirming the complaint's dismissal); see, e.g., Wallace, Gibson & Roscoe, *supra* note 3, at 84 (explaining that holding).

6. See *infra* note 96 (citing arguments in support of this proposition).

7. See *infra* note 96 (citing arguments in support of this proposition); Postal, *supra* note 4 (explaining that there could be another lawsuit, with new plaintiffs, in the future).

8. *McCall*, 199 So. 3d at 361. The interest groups were the “Florida Education Association, the Florida Congress of Parents and Teachers, Inc., the League of Women Voters of Florida, Inc., [and] the Florida State Conference of Branches of the NAACP.” *Id.* Objecting to a voucher program under a state constitution is a common legal tactic. E.g., Nigel D. Graham, *Opponents of Private School Voucher Programs Litigate at State Level: Florida Supreme Court Decides Ford v. Browning*, 14 PUB. INT. L. REP. 46, 48 (2008); Nicole Stelle Garnett, *Sector Agnosticism and the Coming Transformation of Education Law*, 70 VAND. L. REV. 1, 63 (2017).

9. *McCall*, 199 So. 3d at 363 (arguing the violation of Article I, Section 3 and Article IX, Section 1(a)).

religious education.¹⁰ Second, the plaintiffs argued the law “violate[d] the mandate for the provision of a system of free and uniform public schools,” the uniform education provision, because it used government money to give children private education under different educational standards than those used by public schools.¹¹

In response, the defendants contended that, for three reasons, the plaintiffs should not have standing to bring their suit.¹² First, they argued there was no “special injury” to the plaintiffs.¹³ Second, the program did not spend any money that fell under the “Legislature’s spending authority.”¹⁴ Third, nothing in the program implicated “the Legislature’s taxing authority.”¹⁵ The plaintiffs then responded that they possessed standing “based on their allegation of special injury, and also as taxpayers under the limited exception to the special injury rule.”¹⁶ The trial court concurred with the defendants and dismissed the case,¹⁷ never actually addressed the case’s constitutional merits, and decided the case solely on standing grounds.¹⁸

The plaintiffs appealed to Florida’s First District Court of Appeal.¹⁹ The First District concurred with the trial court,²⁰ and it dismissed the complaint challenging the FTCSF on standing

10. *Id.* That provision states, “[n]o 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.” FLA. CONST. art. I, § 3.

11. *McCall*, 199 So. 3d at 363. Florida’s Article IX, Section 1(a) explains, “[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high-quality system of free public schools.” FLA. CONST. art. IX, § 1.

12. *McCall*, 199 So. 3d at 361, 363; *see* Defendants’ Motion to Dismiss and Incorporated Memorandum of Law at 2, *McCall v. Scott*, 199 So. 3d 359 (Fla. 1st Dist. Ct. App. 2016) (No. 2014 CA 002282) (laying out the defendants’ arguments on standing).

13. *McCall*, 199 So. 3d at 363; *see* *Miller v. Publicker Indus., Inc.*, 457 So. 2d 1374, 1375 (Fla. 1984), *cited in* *McCall*, 199 So. 3d at 364 (implicitly applying special injury standing); *Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112, 121 (Fla. 1st Dist. Ct. App. 2010), *cited in* *McCall*, 199 So. 3d at 364 (explaining special injury standing).

14. *McCall*, 199 So. 3d at 363.

15. *Id.*

16. *Id.* at 361 (citing *Dept. of Admin. v. Horne*, 269 So. 2d 659 (Fla. 1972); *Rickman v. Whitehurst*, 73 Fla. 152 (Fla. 1917)).

17. *McCall*, 199 So. 3d at 363–64.

18. *Id.* at 364 (“The sole issue before this Court is whether Appellants have standing to challenge the FTCSF.”); Brief of Intervenor–Respondents on Jurisdiction at 7, *McCall v. Scott*, 2016 WL 6922365 (Fla. Nov. 23, 2016) (No. SC16–1668) [hereinafter Br. of Intervenor–Resp’ts] (stating the *McCall* decision only addressed standing).

19. *McCall*, 199 So. 3d at 361 (hearing the case on appeal).

20. *Id.* at 362.

grounds.²¹ The First District, too, decided the case solely on the basis of standing, and it never actually addressed the constitutional merits.²² When the plaintiffs appealed that decision, the Florida Supreme Court denied certiorari.²³

B. Significance of *McCall v. Scott* and Scope of Analysis

Even though the Florida Supreme Court did not hear the appeal, the outcome of *McCall* at the First District is important for two reasons. First, it sheds light on the national climate toward voucher programs.²⁴ With the appointment of Betsy DeVos as Secretary of Education, a federal voucher program that is similar to the FTCSP could be introduced.²⁵ The FTCSP supposedly “unites three broad concepts that DeVos is friendly toward: (1)[p]rivatization (2) religious education and (3) a hands-off approach to accountability for private schools.”²⁶ The constitutional status of the FTCSP undoubtedly has implications not only for the program itself, but also for the ability of a national voucher program to survive constitutional objections. However, right now, the constitutional status of the FTCSP is unclear, so it is hard to know whether and how any future Florida law on the issue would affect national debates about vouchers. Given Florida’s lack of clarity on the issue, parties on both sides of the debate should consider all potential strategies to either support or oppose the FTCSP. Second, if, in the future, proper plaintiffs challenge the program, Florida courts will likely find the FTCSP

21. *Id.* at 374.

22. *Supra* note 18 and accompanying text.

23. *McCall v. Scott*, No. SC16–1668, 2017 WL 192043, at *1 (Fla. Jan. 18, 2017).

24. A program like the FTCSP advances educational autonomy and fiscal responsibility. Kamenetz, *supra* note 4. Additionally, plaintiff Joanne McCall stated, “[t]his decision has ramifications beyond this challenge to a voucher program.” Postal, *supra* note 4 (quoting Joanne McCall).

25. Kamenetz, *supra* note 4 (discussing DeVos’ previous appointment as Chair of the American Federation for Children (AFC), an organization that supports charter and private school choice and that ranked Florida’s tax credit scholarship as number one in its recent report on current private school choice programs); see Postal, *supra* note 4 (discussing DeVos’ support for “tax-credit scholarships and other choice programs”). *But see* Laura Meckler, *The Education of Betsy DeVos: Why Her School Choice Agenda Has Not Advanced*, WASH. POST (Sept. 4, 2018), https://www.washingtonpost.com/local/education/the-education-of-betsy-devos-why-her-school-choice-agenda-has-crashed/2018/09/04/c21119b8-9666-11e8-810c5fa705927d54_story.html?noredirect=on&utm_term=.3d0a0c4c7563 (discussing the lack of support DeVos has received for school choice from both political parties since her appointment).

26. Kamenetz, *supra* note 4.

unconstitutional.²⁷ Therefore, the best strategy for proponents of the program may be an extrajudicial one: passing an amendment to the Florida Constitution.

This Article analyzes whether the FTCSPP violates the uniform education provision of the Florida Constitution.²⁸ Part II addresses a short history of relevant Florida law leading up to *McCall*.²⁹ Part III reviews the First District's analysis of standing that prevented it from considering constitutionality in *McCall*.³⁰ Part IV is the Author's critical analysis,³¹ focusing on the plaintiffs' contention that the FTCSPP is unconstitutional under the uniform education provision,³² and addressing the potential for a specific constitutional amendment to make the FTCSPP constitutional.³³ Part V offers a summary of the Author's arguments about *McCall* and provides recommendations for parties on both sides of the debate as they move forward.³⁴

II. HISTORY OF THE FTCSPP

A. History of Florida Law on Uniform Education

The creation of the Florida school system stems from the 1868 amendment to the Florida Constitution.³⁵ One hundred years later, in 1968, the Legislature added the uniform education provision.³⁶ The uniform education provision states, in part:

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall

27. Postal, *supra* note 4 (explaining that there could be another lawsuit, with new plaintiffs, in the future); *see infra* notes 96, 99, 100 (citing arguments in support of and against this proposition).

28. *See* FLA. CONST. art. IX, § 1 (describing rights involving public education); *infra* pt. IV.

29. *Infra* pt. II.

30. *Infra* pt. III; *see* *McCall v. Scott*, 199 So. 3d 359, 364 (Fla. 1st Dist. Ct. App. 2016) ("The sole issue before this Court is whether Appellants have standing to challenge the FTCSPP."):

31. *Infra* pt. IV.

32. *Infra* pt. IV.A.

33. *Infra* pt. IV.B.

34. *Infra* pt. V.

35. FLA. CONST. of 1868, art. VIII; Wallace, Gibson & Roscoe, *supra* note 3, at 69.

36. Wallace, Gibson & Roscoe, *supra* note 3, at 69; *see* FLA. CONST. art. IX, § 1 (discussing the state's obligation to provide an adequate education to all children in Florida).

be made by law for a *uniform*, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.³⁷

In 1996, the Florida Supreme Court decided the *Chiles* case, interpreting the uniform education provision.³⁸ In *Chiles*, the Court held that it was not up to the judicial system to determine the Legislature's intent regarding the usage of the word "adequate" in the uniform education provision.³⁹ The *Chiles* Court also implied that while the court system did not have to define the word "adequate," it still recognized the Legislature's responsibility to pay for public schools adequately.⁴⁰ The Florida Legislature amended the state constitution in 1998 in response to the *Chiles* Court's ambiguous interpretation of "adequate."⁴¹

37. FLA. CONST. art. IX, § 1 (emphasis added).

38. *Coal. for Adequacy and Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996). *Chiles* was the next important legal development in this part of the law. See Wallace, Gibson & Roscoe, *supra* note 3, at 70 (explaining the *Chiles* case after explaining the 1968 amendments, implying that *Chiles* was the next important change).

39. *Chiles*, 680 So. 2d at 406–07; see FLA. CONST. art. IX, § 1 (using the word "adequate"); Wallace, Gibson & Roscoe, *supra* note 3, at 70. See also Lila Haughey, *Florida Constitutional Law: Closing the Door to Opportunity: The Florida Supreme Court's Analysis of Uniformity in the Context of Article IX, Section 1*, 58 FLA. L. REV. 945, 946–47 (2006) (explaining that "Florida courts have struggled to define the terms 'adequate' and 'uniform'"). Similarly, in 1993, the Florida Supreme Court declined to define the word "uniform" used in the uniform education provision. FLA. CONST. art. IX, § 1 (using the word "uniform"); Fla. Dept. of Educ. v. Glasser, 622 So. 2d 944, 947 (Fla. 1993), *cited in Chiles*, 680 So. 2d at 406; Haughey, *supra* note 39, at 950 n.37. However, the Court asserted that it might have to define uniformity at some point, and it is not necessarily the Legislature's job to do so. *Glasser*, 622 So. 2d at 947. *Contra* Haughey, *supra* note 39, at 947 (stating that "the court has vested the Florida Legislature with broad authority to provide for an adequate and uniform system").

40. *Chiles*, 68 So. 2d at 405–06, *cited in* *McCall v. Scott*, 199 So. 3d 359, 372 (Fla. 1st Dist. Ct. App. 2016). However, that holding was eventually overruled by amendment. *Haridopolos v. Citizens for Strong Sch., Inc.*, 81 So. 3d 465, 471 (Fla. 1st Dist. Ct. App. 2011); see Wallace, Gibson & Roscoe, *supra* note 3, at 70 (explaining that the 1998 constitutional amendments were a response to *Chiles*); Fla. Constitution Revision Commission, *Analysis of the Revisions for the November 1998 Ballot*, FSU, <http://fall.fsulawrc.com/crc/tabloid.html> (last visited Jan. 14, 2019) (listing the 1998 amendment revisions).

41. FLA. CONST. art. IX, § 1; Fla. Constitution Revision Commission, *supra* note 40 (describing the revision as "[p]rovid[ing] guidance and standards").

B. The Opportunity Scholarship Program

In 1999, Governor Jeb Bush started an initiative addressing the quality of education received by poor children in the State of Florida.⁴² The Florida Opportunity Scholarship Program (OSP), which the Legislature created in 1999, addressed those same issues.⁴³ The OSP was touted as providing a private option for children at underperforming public schools.⁴⁴ Under the OSP, when parents decided to send their children to private schools, the schools received money from the Florida Department of Education.⁴⁵

In *Bush v. Holmes*, plaintiffs challenged the constitutionality of the OSP under the Florida Constitution and the United States Constitution.⁴⁶ They challenged it for violation of: (1) Florida's public education provision; (2) Florida's public-school funding provision; (3) Florida's religious freedom provision (including the Blaine Amendment); and (4) the federal Establishment Clause.⁴⁷ The trial court held the OSP unconstitutional because it violated Florida's Blaine Amendment⁴⁸—the no-aid provision in Article I, Section 3 of the Florida Constitution—which prevents the government from funding religious institutions.⁴⁹ However, when the case reached the Florida Supreme Court, the Court did not decide whether it survived under the Blaine Amendment; instead, it held that the OSP violated the uniform education provision.⁵⁰

42. *E.g.*, *McCall*, 199 So. 3d at 362; Wallace, Gibson & Roscoe, *supra* note 3, at 73–74.

43. *E.g.*, *McCall*, 199 So. 3d at 362.

44. *Id.*; *see, e.g.*, FLA. STAT. § 229.0537 (1999) (original version of OSP); Graham, *supra* note 8, at 48 (detailing how the program allows children to go to private schools after attending public schools). The OSP later became FLA. STAT. § 1002.38 (2005), which was declared unconstitutional by *Bush v. Holmes*, 919 So. 2d 392, 405 (Fla. 2006).

45. *McCall*, 199 So. 3d at 362; *see Holmes*, 919 So. 2d at 397 (explaining how the OSP worked).

46. *Holmes*, 919 So. 2d at 398–99; *see, e.g.*, J. Scott Slater, Comment, *Florida's Blaine Amendment and Its Effect on Educational Opportunities*, 33 STETSON L. REV. 581, 595 (2004). The *Holmes* litigation had many stages. *See Holmes*, 919 So. 2d at 398–99 (explaining *Holmes*' long judicial history).

47. Slater, *supra* note 46, at 595.

48. *Holmes*, 919 So. 2d at 399 (explaining that “[t]he trial court found that the OSP violated the last sentence of [A]rticle I, [S]ection 3, referred to as the ‘no aid’ provision”).

49. *McCall*, 199 So. 2d at 369; FLA. CONST. art. I, § 3.

50. *Holmes*, 919 So. 2d at 412–13; *e.g.*, Stephen Messer, *School Vouchers and the Road to Academic Excellence After Bush v. Holmes*, 17 GEO. J. ON POVERTY L. & POL'Y 33, 37 (2010) (explaining the Florida Supreme Court's holding). *Contra Holmes*, 919 So. 2d at 425 (Bell, J., dissenting) (arguing that the OSP is constitutional under the uniform education provision); Jamie Dycus, *Lost Opportunity: Bush v. Holmes and the Application of State*

C. The Florida Tax Credit Scholarship Program

The Florida Legislature started the FTCSP in 2001, and it was supposed to build on the progress made by the OSP.⁵¹ The FTCSP is authorized under Florida Statutes, Section 1002.395.⁵² According to the statute, as described by the First District,

[i]ndividual and corporate taxpayers make voluntary contributions to Scholarship Funding Organizations (SFOs), including state universities, independent colleges and universities, and nonprofit organizations. After making a contribution to an SFO, the taxpayer may seek a credit against their liability for the following taxes: (1) oil, gas, and mineral severance tax, (2) alcoholic beverage tax, (3) corporate income tax, (4) insurance premium tax, and (5) self-accrued direct-pay sales tax. Parents and guardians apply to SFOs to secure a scholarship for their student at a school of their choice.⁵³

The FTCSP allows parents to seek scholarships for their children to obtain private education (including religious education), transportation to laboratory schools, or transportation to a different district's public institution.⁵⁴ According to *McCall*, the FTCSP addresses educational problems in a broader sense than the OSP does.⁵⁵ Rather than targeting "students attending 'failing' [public] schools," the FTCSP specifically targets students who receive "certain government assistance or students whose families have an annual income below 185% of the federal poverty level."⁵⁶

Plaintiffs challenged the FTCSP on constitutional grounds in the state court system in *McCall v. Scott*.⁵⁷ After the trial court and the First District denied standing to the plaintiffs,⁵⁸ the plaintiffs

Constitutional Uniformity Clauses to School Voucher Schemes, 35 J.L. & EDUC. 415, 458 (2006) (arguing that the Court made the wrong decision on uniformity in *Holmes*).

51. *McCall*, 199 So. 3d at 362; see FLA. STAT. § 1002.395 (2015) (the version of the FTCSP in effect at the time *McCall* was decided).

52. FLA. STAT. § 1002.395.

53. *McCall*, 199 So. 3d at 362–63 (citing FLA. STAT. § 1002.395(5)(b)).

54. *Id.* at 363. Interestingly, "[o]ver 70 percent of the scholarships are directed at religious, primarily Christian, schools." Kamenetz, *supra* note 4; Postal, *supra* note 4 (offering the same statistic).

55. *McCall*, 199 So. 3d at 362 (citing FLA. STAT. § 1002.395 (3)(c) (2015)).

56. *Id.* But see Kamenetz, *supra* note 4 (detailing that the program funds scholarships for "families with incomes of up to 200 percent of the federal poverty level").

57. *McCall*, 199 So. 3d at 363.

58. *Id.* at 363–64, 374.

brought the case to the Florida Supreme Court, but in January 2017, the Court denied certiorari due to lack of jurisdiction.⁵⁹ However, in the future, there is a possibility that other plaintiffs could try to litigate the same constitutional issues in order to get Florida courts, including the Florida Supreme Court, to reconsider.⁶⁰

III. COURT'S ANALYSIS

The First District in *McCall* explicitly analyzed whether the plaintiffs had standing and reviewed the issue de novo.⁶¹ The First District analyzed two methods of finding standing: special injury standing and taxpayer standing.⁶² The First District decided that the plaintiffs lacked both types of standing, and it never addressed the constitutional status of the FTCS.⁶³

A. Special Injury Standing

According to *McCall*, a plaintiff may have special injury standing if the plaintiff has a harm or damage that other people do not have.⁶⁴ The point of special injury standing is to prevent citizens from challenging laws just because they do not like paying for them, while allowing citizens to sue when those laws or programs have genuinely injured them.⁶⁵ The First District in *McCall* held that there was no standing based on special injury.⁶⁶ It based this holding on three distinct arguments.⁶⁷ First, the plaintiffs argued that the FTCS injured them because it used

59. *McCall v. Scott*, No. SC16-1668, 2017 WL 192043, at *1 (Fla. Jan. 18, 2017).

60. Postal, *supra* note 4. In *Holmes*, for example, the plaintiffs were parents and organizations. *Bush v. Holmes*, 919 So. 2d 392, 398-99 (Fla. 2006).

61. *McCall*, 199 So. 3d at 364.

62. *Id.* at 364-74.

63. *Id.* at 364 (“The sole issue before this Court is whether Appellants have standing to challenge the FTCS.”); Wallace, Gibson & Roscoe, *supra* note 3, at 84 (explaining *McCall*’s procedural posture).

64. *McCall*, 199 So. 3d at 364 (citing *Miller v. Publicker Indus., Inc.*, 457 So. 2d 1374, 1375 (Fla. 1984); *Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112, 121 (Fla. 1st Dist. Ct. App. 2010)).

65. *See id.* at 364-65 (explaining that “the special injury rule . . . requires courts to accord proper deference to legislative actions rather than opening the courthouse doors to disgruntled taxpayers”).

66. *Id.* at 368.

67. *Id.* at 365-68 (providing the First District’s analysis involving special injury standing).

public money to send children to private schools.⁶⁸ In reality, the First District stated, no public funds go from the state budget directly to private schools.⁶⁹ Rather, children start attending new schools, and then those organizations receive tuition money from donors.⁷⁰ Second, the First District found the plaintiffs' allegations of injury to be "conclusory and speculative."⁷¹ The First District based this argument on a prior United States Supreme Court decision involving a challenge to an Arizona "tax credit scholarship program."⁷² In that case, the plaintiffs did not have special injury standing because the evidence for special injury was speculative, rather than based on concrete proof.⁷³ In *McCall*, the First District decided that the same was true for the FTCSP.⁷⁴ Third, the First District asserted that the plaintiffs relied on distinguishable Florida case law that did not help them establish special injury standing.⁷⁵ As a result, the First District found that the plaintiffs did not have special injury standing.⁷⁶

68. *Id.* at 365. According to *McCall*, the plaintiffs argued:

As Florida citizens and taxpayers, and organizations whose members are Florida citizens and taxpayers, plaintiffs have been and will continue to be injured by the unconstitutional expenditure of public revenues under the Scholarship Program. In addition, many of the plaintiffs (and members of the plaintiff organizations) whose children attend public schools, or who are teachers or administrators in the public schools, have been and will continue to be injured by the Scholarship Program's diversion of resources from the public schools.

Id. (quoting Complaint ¶ 19, *McCall v. Scott*, 199 So. 3d 359 (Fla. 1st Dist. Ct. App. 2016) (No. 2014 CA 002282) [hereinafter Compl. in *McCall*]).

69. *Id.*

70. *Id.* at 365–66.

71. *Id.* at 366.

72. *Id.* at 366–67 (citing *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011)).

73. *Winn*, 563 U.S. at 137–38, quoted in *McCall*, 199 So. 3d at 366–67.

74. *McCall*, 199 So. 3d at 367.

75. *Id.* at 367–68 (explaining the flaws in the plaintiffs' reliance on *Coalition for Adequacy and Fairness in School Funding v. Chiles*, 680 So. 2d 400 (Fla. 1996) and *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006)). According to the First District in *McCall*, the *Chiles* case was distinguishable because in *Chiles*, the plaintiffs made "very specific allegations of harm." *Id.* at 367. Additionally, the *Holmes* case was distinguishable because in *Holmes*, "the court found the diversion of appropriated education funds from the public school system to private schools to be a tangible, concrete harm." *Id.* at 367–68.

76. *Id.* at 368.

B. Taxpayer Standing

Next, in *McCall*, the First District explained that a plaintiff can establish standing as a taxpayer.⁷⁷ Here, the First District stated, “to establish standing . . . Appellants [are] required to identify both (1) a specific exercise of the Legislature’s taxing and spending authority, and (2) a specific constitutional limitation upon the exercise of that authority.”⁷⁸ Taxpayer standing was important in the case because Florida law does not require a plaintiff to have a special injury if the plaintiff argues that the basis for the lawsuit is an objection to the manner in which the state Legislature exercised the spending power—a tax issue.⁷⁹ The Florida Supreme Court asserted, in the *Chiles* and *Holmes* cases, that the uniform education provision of the Florida Constitution limits the spending authority of the Legislature.⁸⁰ “In *Chiles*, the supreme court construed [the uniform education] provision to require the Legislature to appropriate sufficient public revenue to adequately fund Florida’s public school system,”⁸¹ and “[i]n *Holmes II*, the supreme court construed this provision to restrict the Legislature’s authority to use public revenues to fund private schools.”⁸² Therefore, while the uniform education provision does not prescribe a limit on the taxing power of the Florida Legislature, it does prescribe a limit on the spending power of the Florida Legislature.⁸³ Any standing in this case, consequently, must come from the State’s use of its spending power with regard to the FTCSF.⁸⁴

However, the First District denied taxpayer standing to the plaintiffs with regard to both Florida constitutional provisions at issue in the case.⁸⁵ Regarding the no-aid provision (Blaine Amendment), the First District denied the plaintiffs taxpayer standing because they could not identify “appropriation of state

77. *Id.* at 364, 368.

78. *Id.* at 369.

79. *Id.* at 364 (citing *Dept. of Admin. v. Horne*, 269 So. 2d 659, 663 (Fla. 1972); *Alachua Cty. v. Sharps*, 855 So. 2d 195, 198 (Fla. 1st Dist. Ct. App. 2003)).

80. *Id.* at 372–73 (citing *Bush v. Holmes*, 919 So. 2d 392, 408 (Fla. 2006); *Coal. for Adequacy and Fairness in Sch. Funding v. Chiles*, 680 So. 2d 400, 405–06 (Fla. 1996)).

81. *Id.* at 372 (citing *Chiles*, 680 So. 2d at 405–06).

82. *Id.* at 372–73 (citing *Holmes*, 919 So. 2d at 408).

83. *Id.* at 372.

84. *Id.*

85. *Id.* at 374.

revenues to aid any sectarian institution.”⁸⁶ Regarding the uniform education provision, the First District denied the plaintiffs taxpayer standing because they “failed to allege that the Legislature appropriated any public funds to private schools,” and they “failed to allege any inadequacy in the funding of the state’s system of education.”⁸⁷

The First District reasoned that unlike in *Chiles*, where the public school system had inadequate funding because of an action of the Legislature, here, the FTCSP did not result in inadequate funding for the existing public school system.⁸⁸ Additionally, unlike in *Holmes*, where the children received private education using public funds,⁸⁹ here, the plaintiffs failed to show that the government funded private education with government money.⁹⁰ The First District used these two cases to argue that in authorizing the FTCSP, the Legislature did not violate its constitutional spending power.⁹¹ On this basis, the First District did not find an unconstitutional use of the State’s spending power, which meant the plaintiffs did not have standing on that basis either.⁹² Because the plaintiffs did not have special injury or taxpayer standing, the First District dismissed the case and never considered the constitutional issues.⁹³

IV. THE CONSTITUTIONAL STATUS OF THE FTCSP UNDER FLORIDA’S UNIFORM EDUCATION PROVISION AFTER MCCALL V. SCOTT

The *McCall* case held that the plaintiffs did not have standing to sue,⁹⁴ so the case itself technically left the FTCSP legally intact.⁹⁵ However, Florida precedent suggests that the plaintiffs are correct in their belief that the FTCSP is actually

86. *Id.* at 370.

87. *Id.* at 373.

88. *Id.* at 373 (contrasting with the *Chiles* case).

89. *Id.* (citing *Bush v. Holmes*, 919 So. 2d 392, 412–13 (Fla. 2006)).

90. *Id.* (contrasting with the *Holmes* case).

91. *Id.* at 373–74.

92. *Id.*

93. *Id.* at 374 (dismissing the case for lack of standing, and never addressing the constitutionality of the program itself).

94. *Id.*

95. See Wallace, Gibson & Roscoe, *supra* note 3, at 85–86 (explaining the affirmance of the dismissal).

unconstitutional under the explicit wording in *Holmes*.⁹⁶ Therefore, if the FTCSF is challenged in the future, and if a Florida court addresses the merits of the issue, the court will likely find the FTCSF unconstitutional.⁹⁷ However, until such time, both proponents and opponents of the program should consider all possible avenues, both judicial and extrajudicial, to achieve their legal objectives for the program.

A. The FTCSF is Unconstitutional According to the Explicit Reasoning in *Holmes*

As the *Holmes* plaintiffs/petitioners suggest, the FTCSF is unconstitutional under the uniform education provision of the Florida Constitution for two reasons, based on the explicit reasoning in *Holmes*.⁹⁸ First, it is unconstitutional because it utilizes public money to place children in private schools.⁹⁹ Second, it is unconstitutional because it helps students attend private institutions not following the same educational restrictions as the public schools.¹⁰⁰

Notwithstanding *McCall*'s relative silence on the constitutional issues at hand, the FTCSF is unconstitutional under Florida's uniform education provision based on the explicit reasoning in *Holmes* because it publicly pays to fund "additional

96. Compl. in *McCall*, *supra* note 68, ¶¶ 59–61 (asserting that the FTCSF fails on the same grounds as the OSP at issue in *Holmes*); Messer, *supra* note 50, at 43 (suggesting that the FTCSF might be unconstitutional because its support for private schools violates uniformity and stating, "any time money that would otherwise be allotted directly to Florida's public schools is reallocated to a private school voucher, there may be a *Holmes*-style constitutional concern").

97. *Supra* note 96.

98. See *supra* note 96 (citing arguments in support of the proposition that the FTCSF is unconstitutional).

99. Petitioners' Brief on Jurisdiction at 6–7, *McCall v. Scott*, 2016 WL 5415723 (Fla. Sept. 26, 2016) (No. SC16—1668) [hereinafter Pet'rs' Br. on Jurisdiction in *McCall*]; Compl. in *McCall*, *supra* note 68, ¶¶ 60–61 (asserting that the FTCSF fails on the same grounds as the OSP); see *McCall v. Scott*, 199 So. 3d 359, 362–63 (Fla. 1st Dist. Ct. App. 2016) (explaining how the FTCSF works). *Contra, e.g.*, Slater, *supra* note 46, at 600–01 (suggesting that credits might not be public money for a number of reasons).

100. Pet'rs' Br. on Jurisdiction in *McCall*, *supra* note 99, at 6–7; Compl. in *McCall*, *supra* note 68, ¶¶ 60–61, (asserting that the FTCSF fails on the same grounds as the OSP). *Contra Recent Developments*, 33 FLA. ST. U. L. REV. 1227, 1238 (2006) (suggesting that the FTCSF does not violate uniformity); Stephen D. Sugarman, *Tax Credit Scholarship Plans*, 43 J.L. & EDUC. 1, 43 (2014) (arguing that Florida has "the thickest" standards for private schools that participate in the FTCSF).

equivalent alternatives” to state-funded education.¹⁰¹ Again, the First District in *McCall* denied taxpayer standing to the plaintiffs for two reasons: (1) the plaintiffs insufficiently alleged a misappropriation of “public funds to private schools,” and (2) they insufficiently alleged “any inadequacy in the funding of the state’s system of education.”¹⁰² The first reason, the insufficient allegation of misappropriating public funding, is based on the First District’s interpretation of the first holding in *Holmes*.¹⁰³ The First District correctly classifies *Holmes* as prescribing a limitation on the spending power of the Legislature.¹⁰⁴ The *Holmes* opinion did prevent the government from utilizing public money to give children private education.¹⁰⁵ However, *McCall* incorrectly ignored an important explanation that goes with *Holmes*’ holding.

McCall explains that in *Holmes*, “the supreme court’s analysis of whether the Legislature exceeded its spending authority under [the uniform education provision] was limited to determining if the Legislature appropriated public funds for use in private schools.”¹⁰⁶ However, *Holmes*’ assessment of the limitations on the spending authority was actually much more nuanced than the interpretation by the First District in *McCall*.¹⁰⁷ After asserting that the OSP failed by utilizing public funding to give children private education, the *Holmes* Court elaborated on the meaning of the holding and the reasoning behind it.¹⁰⁸ Namely, the Florida Supreme Court stated that under the uniform education provision, the Legislature may not employ “additional equivalent alternatives” to public education to educate “Florida’s children.”¹⁰⁹

101. *Bush v. Holmes*, 919 So. 2d 392, 408 (Fla. 2006) (prohibiting “additional equivalent alternatives”); *supra* note 96 and 99.

102. *McCall*, 199 So. 3d at 373.

103. *Id.* (citing *Holmes*, 919 So. 2d at 408–13).

104. *Id.* at 372–73 (citing *Holmes*, 919 So. 2d at 408).

105. *Id.*

106. *Id.* at 373.

107. The *Holmes* opinion characterized the limitation in this way: “Article IX, [S]ection 1(a) is a limitation on the Legislature’s [spending] power because it provides both a mandate to provide for children’s education and a restriction on the execution of that mandate.” *Holmes*, 919 So. 2d at 406. According to *Holmes*, that restriction comes from the third part of the uniform education provision—the part that requires a “uniform, efficient, safe, secure and high quality system of free public schools.” *Id.* at 407; see FLA. CONST. art. IX, § 1; see also David Wilhelmsen, *Orphans, Baby Blaines, and the Brave New World of State Funded Education: Why Nevada’s New Voucher Program Should Be Upheld Under Both State and Federal Law*, 42 J. LEGIS. 257, 273 (2016) (linking the prohibition on private education funding to the Florida Constitution).

108. *Infra* notes 109–12.

109. *Holmes*, 919 So. 2d at 408.

The Court then explained the meaning of “additional equivalent alternative”:

The Constitution prohibits the state from using public monies to fund a *private alternative* to the public school system, which is what the OSP does. Specifically, the OSP transfers tax money earmarked for public education to private schools that provide the same service—basic primary education. Thus, contrary to the defendants’ arguments, the OSP does not supplement the public education system. Instead, the OSP diverts funds that would otherwise be provided to the system of free public schools that is the exclusive means set out in the Constitution for the Legislature to make adequate provision for the education of children.¹¹⁰

The *Holmes* Court further explained, “[t]he systematic diversion of public funds to private schools on either a small or large scale is incompatible with [A]rticle IX, [S]ection 1(a).”¹¹¹ According to *Holmes*, in rerouting children to private schools, the OSP “undermine[d] the system of ‘high quality’ free public schools” that is constitutionally required.¹¹²

The FTCSPP is unconstitutional under this logic because it uses tax credits, a form of public money, to fund an “additional equivalent alternative” to public education: private school education.¹¹³ Like in the OSP, where the state money funded private school education, under the FTCSPP, state tax money indirectly funds private education.¹¹⁴ In the FTCSPP, taxpayers receive tax credits equal to “the amount of any contributions” they send to designated organizations.¹¹⁵ The OSP diverted “funds that would [have] otherwise be[en] provided to the system of free public schools.”¹¹⁶ Similarly, without the FTCSPP’s tax credit, the government would have acquired this money via the taxpayer’s tax return, therefore the money itself should be considered public

110. *Id.* at 408–09 (emphasis added).

111. *Id.* at 409.

112. *Id.*

113. *McCall v. Scott*, 199 So. 3d 359, 363 (Fla. 1st Dist. Ct. App. 2016) (explaining that the scholarships from the FTCSPP may be used at public or private schools); *supra* note 96 and 99.

114. *McCall*, 199 So. 3d at 363 (explaining how the FTCSPP works).

115. Wallace, Gibson & Roscoe, *supra* note 3, at 83.

116. *Holmes*, 919 So. 2d at 408–09.

money.¹¹⁷ In that light, granting credits to donors essentially funds an “additional equivalent alternative” to public schools—private education; and like the OSP, it violates the uniform education provision for that reason.¹¹⁸

Additionally, the FTCSP is unconstitutional under the explicit reasoning in *Holmes* because the private educational institutions participating in the program have substantially different rules and educational standards than the public schools do.¹¹⁹ According to the *Holmes* Court, the uniform education provision requires that Florida private education be uniform with Florida public education.¹²⁰ The Court held that the OSP violated the uniform education provision because it made “no provision to ensure that the private school alternative to the public school system meets the criterion of uniformity.”¹²¹ The FTCSP, like the OSP, funds relatively autonomous private schools that do not follow the same standards as public schools.¹²² According to Mark Pudlow, a representative of one of the *McCall* plaintiffs, Florida private education is not uniform with Florida public education because private institutions “don’t have to follow the state curriculum, don’t have to participate in testing, [and] don’t have to hire certified teachers. They don’t have to follow the same rules.”¹²³

Private schools can “hire teachers without bachelor’s degrees” under some conditions, whereas public schools can only hire teachers if they have bachelor’s degrees (or more advanced degrees).¹²⁴ Notably, under Florida law, public schools also must

117. *Id.*; see Slater, *supra* note 46, at 600 (“Because the money would otherwise enter the state treasury if the credit was not authorized, the State essentially has control and quasi-ownership over the money.”).

118. *Supra* note 96 and 99.

119. See Kamenetz, *supra* note 4 (explaining private schools’ educational standards); *supra* note 96 and 100.

120. *Holmes*, 919 So. 2d at 409.

121. *Id.*

122. *Id.* at 409–12.

123. Kamenetz, *supra* note 4 (quoting Mark Pudlow). Notably, however, there are some “accountability measures” under the FTCSP, such as requirements for annual financial reports, background checks for various people involved in the program, and independent evaluation. Sarah Katherine Johnson, *School Choice in South Carolina: An Analysis of Whether Private School Tax Credits are Right for South Carolina*, 64 S.C. L. REV. 903, 924 (2013).

124. *Holmes*, 919 So. 2d at 409–10; FLA. STAT. § 1002.421(2)(h) (2015) (allowing private schools participating in school choice programs to “[e]mploy or contract with teachers who hold baccalaureate or higher degrees, have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught”).

make each teacher “submit to a background screening,” whereas some private schools (not participating in school choice scholarship programs) do not have to do that.¹²⁵ Regarding curriculum, the *Holmes* Court explained:

Regarding curriculum, public education instruction is based on the “Sunshine State Standards” that have been “adopted by the State Board of Education and delineate the academic achievement of students, for which the state will hold schools accountable.” § 1003.41, Fla. Stat. (2005). Public schools are required to teach all basic subjects as well as a number of other diverse subjects, among them the contents of the Declaration of Independence, the essentials of the United States Constitution, the elements of civil government, Florida state history, African–American history, the history of the Holocaust, and the study of Hispanic and women’s contributions to the United States. *See* § 1003.42(2)(a), Fla. Stat. (2005). [Florida] private schools are not required to teach any of these subjects.¹²⁶

As illustrated by this quote from *Holmes*, Florida private schools are not required to educate children under the same standards and rules as Florida public schools—private education is simply not uniform with public education.¹²⁷ Therefore, under the *Holmes* precedent, the FTCSPP fails under the uniform education provision because it funds private schools that do not have to adhere to the same standards as Florida public schools.¹²⁸

In conclusion, the First District in *McCall* did not address constitutionality because it disposed of the case at the standing stage.¹²⁹ However, based on the *Holmes* precedent, had the First District found standing and moved on to address constitutionality, it should have found the FTCSPP unconstitutional under the same

125. *Holmes*, 919 So. 2d at 410 (citing FLA. STAT. § 1012.32(2)(a) (2005) (instructing public schools to require background checks of their teachers); FLA. STAT. § 1002.42(2)(c)(3) (making background checks for private school employees permissive rather than required)). However, private schools that participate in school choice scholarship programs are required to obtain background checks for their teachers. FLA. STAT. § 1002.421(2)(m) (2018).

126. *Holmes*, 919 So. 2d at 410. *See also* Compl. in *McCall*, *supra* note 68, ¶ 39 (discussing that the FTCSPP does not require private schools to alter their curriculum).

127. *See* Compl. in *McCall*, *supra* note 68, ¶¶ 59–61 (explaining uniformity in the context of *Holmes* and asserting that the FTCSPP fails on the same grounds as the OSP).

128. *Id.*; *supra* note 96 and 100.

129. *McCall v. Scott*, 199 So. 3d 359, 374 (Fla. 1st Dist. Ct. App. 2016) (dismissing the case for lack of standing, and never addressing the constitutionality of the program itself).

reasoning that doomed the OSP.¹³⁰ It seems likely that new plaintiffs could challenge the FTCSP in the future.¹³¹ If that does happen, and the court finds standing, based on Florida precedent, the court should find the FTCSP unconstitutional. If it decided otherwise, the court would be deviating from the case law currently in place in Florida.

B. Implications of *McCall* and Recommendations for Proponents and Opponents

The *McCall* case provides little in the way of constitutional analysis or legal clarity on the tax credit scholarship issue in Florida. The decision was limited—*McCall* did not protect the FTCSP from all future constitutional challenges, merely from one challenge in one instance because of the identity of the plaintiffs.¹³² The ambiguous nature of the FTCSP's legal status masks the importance of the issue and the merits of the arguments on both sides. The legal status of the FTCSP is important because many Florida students would be affected by a decision striking it down; “[i]n the 2015–2016 school year, 92,000 students received scholarships” under the program.¹³³ Those thousands of students provide reason enough for Florida to make a final decision on the legality of the issue, one way or the other.

Proponents of the FTCSP should consider two strategies to protect the FTCSP from being struck down: (1) using the arguments in *McCall* to deny standing to anyone who tries to challenge the FTCSP, and (2) pursuing an amendment to the Florida Constitution. The first strategy is fairly self-explanatory—*McCall* lays out the arguments proponents should make.¹³⁴ The second strategy should utilize the case of *Ford v. Browning*,¹³⁵ which provides an example of an amendment that proponents could use to ensure that the FTCSP is constitutional in the future.¹³⁶ In *Ford*, plaintiffs challenged two proposed Florida

130. See *supra* notes 113–21 and accompanying text (discussing arguments relevant to the proposition that the FTCSP and OSP are similarly unconstitutional).

131. Postal, *supra* note 4 (explaining that there could be another lawsuit, with new plaintiffs, in the future).

132. *McCall*, 199 So. 3d at 374 (dismissing the case for lack of standing).

133. Kamenetz, *supra* note 4.

134. *Supra* pt. III.A; *supra* pt. III.B.

135. 992 So. 2d 132 (Fla. 2008).

136. Answer Brief of Intervenors/Respondents, Florida Catholic Conference, Inc. at 38, *Ford v. Browning*, 992 So. 2d 132 (Fla. 2008) (No. SC08-1529) [hereinafter Answer Br.

amendments, arguing that the Taxation and Budget Reform Commission (TBRC) did “not have the authority to propose constitutional revisions” relating to the topics chosen by the Commission.¹³⁷ One of the proposed amendments in that case would have changed Article IX, Section 1(a) to read:

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing in its borders. This duty shall be fulfilled, at a minimum and not exclusively, through adequate ~~Adequate~~ ~~provision shall be made~~ by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. Nothing in this subsection creates an entitlement to a publicly-financed private program.¹³⁸

The Court quashed both amendments, holding that the TBRC was not authorized to propose the amendments at issue.¹³⁹ In other words, the amendments did not actually become law.¹⁴⁰

However, even though the Court effectively quashed the amendment by holding that the plaintiffs did not possess authority to propose it, the content of the amendment is still relevant to the destiny of the FTCSF. The proposed amendment was intended to make the OSP constitutional under the uniform education provision.¹⁴¹ Because the OSP and the FTCSF are arguably unconstitutional under the uniform education provision for the

for Intervenor/Resp'ts in *Ford*] (suggesting that the amendment would allow Florida to “expand and enact programs . . . previously forbidden or drawn into question by *Holmes I*,” such as the Corporate Income Tax Scholarship Program); Lenford C. Sutton & Patrick Thomas Spearman, *Tax Credit Scholarship Programs and the Law*, 23 IJER 168, 169–70 (2014) (stating that supporters of tax credit scholarship programs might pursue amendments to no-aid or uniform education clauses and explaining that a suggested amendment in *Ford* was such an attempt to amend the no-aid provision).

137. *Ford*, 992 So. 2d at 135; see Brett B. Pettigrew, *Recent Developments - Constitutional Law*, 38 STETSON L. REV. 651, 651 (2009) (explaining what the plaintiffs argued in *Ford*).

138. *Ford*, 922 So. 2d at 140 (quoting the proposed amendment where added provisions are underlined and removed language is crossed through).

139. *Id.* at 141; see Graham, *supra* note 8, at 47 (explaining that the Court “ruled against allowing the proposed amendments to appear on ballots”).

140. Pettigrew, *supra* note 137, at 651–52.

141. Answer Br. of Intervenor/Resp'ts in *Ford*, *supra* note 136, at 38 (explaining that the amendments would make the OSP constitutional).

same reasons,¹⁴² the *Ford* amendment would have made the FTCSP constitutional under the uniform education provision as well. Therefore, even in light of the *Holmes* precedent that will likely lead Florida courts to declare the FTCSP unconstitutional, supporters of the FTCSP still have a valid option. With a slight rewording of the uniform education provision geared toward the verbiage of the amendment in *Ford*, the FTCSP could be constitutional under the uniform education provision.

On the other hand, opponents of the FTCSP should emphasize the arguments made in Part IV.A of this Article.¹⁴³ Opponents' best strategy is to argue that the FTCSP is unconstitutional under the uniform education provision as written, as the plaintiffs in *McCall* did. As previously discussed in-depth, that argument is likely to be successful. Alternatively, opponents could lobby the Florida Legislature to eliminate or change the Florida Tax Credit Scholarship Program. Either way, Florida students and their parents will be affected by any changes to the Florida Tax Credit Scholarship Program. In the interest of giving Floridians closure, hopefully the constitutional status of the FTCSP will be decided sooner rather than later.

V. CONCLUSION: SUMMARY AND RECOMMENDATIONS

In *McCall v. Scott*, the First District disposed of the case by denying standing to the plaintiffs and never addressed the constitutional issue.¹⁴⁴ However, new plaintiffs could challenge the FTCSP in the future, and if they do, assuming those plaintiffs have standing, courts should find the FTCSP unconstitutional.¹⁴⁵ As the plaintiffs suggest, the FTCSP is unconstitutional based on the explicit reasoning in *Holmes* for two reasons: (1) it uses public money to give children private education; and (2) Florida private education funded under the program is not uniform with Florida

142. See *supra* notes 113–21 and accompanying text (discussing arguments relevant to this proposition).

143. See *supra* pt. IV.A.

144. *McCall v. Scott*, 199 So. 3d 359, 374 (Fla. 1st Dist. Ct. App. 2016) (dismissing the case for lack of standing).

145. Postal, *supra* note 4 (explaining that there could be another lawsuit, with new plaintiffs, in the future); see *supra* notes 96, 99, 100 (citing arguments in support of and against this proposition).

public education.¹⁴⁶ Therefore, under the current Florida Constitution and current Florida law, should this program be reconsidered in the Florida court system, Florida should find it unconstitutional under the uniform education provision. Consequently, if supporters of the FTCSPP want to protect the constitutional status of the FTCSPP, they should pursue a constitutional amendment similar to the amendment in *Ford v. Browning*.¹⁴⁷ Because the OSP would be constitutional under an amendment with the wording of the amendment in the *Ford* case, so would the FTCSPP. Should the uniform education provision be amended according to the constitutional amendment suggested in *Ford*, the FTCSPP would survive.

After *Holmes* and *Ford*, the constitutional fate of the FTCSPP depends heavily on whether the uniform education provision is amended. Proponents of the FTCSPP should also emphasize arguments made in *McCall* and try to deny standing to anyone who tries to challenge the FTCSPP. Opponents of the program, on the other hand, should make the arguments made by the *Holmes* court (and those made earlier in the Article) and maintain that the FTCSPP is unconstitutional.

146. See *supra* note 96 (citing the plaintiffs' arguments).

147. See *supra* note 136 (citing arguments relevant to this proposition).