

09-991 GARRIOTT V. WINN

DECISION BELOW: 562 F.3d 1002

LOWER COURT CASE NUMBER: 05-15754

QUESTION PRESENTED:

Under Arizona Revised Statutes (A.R.S.) Section 43-1089, individuals who contribute money to school tuition organizations (STOs) that provide scholarships to students wishing to attend private schools are entitled to an income tax credit.

Respondents alleged that Section 1089's neutral language and the Legislature's stated secular purpose for enacting it were a pretense and that the tuition tax credit program had the primary effect of advancing religion because a majority of taxpayers who contributed to STOs chose to contribute to STOs that awarded scholarships to students attending religious schools. The question presented is the following:

Did the court of appeals err in holding that if most taxpayers who contribute to STOs contribute to STOs that award scholarships to students attending religious schools, Section 1089 has the purpose and effect of advancing religion in violation of the Establishment Clause even though Section 1089 is a neutral program of private choice on its face and the State does nothing to influence the taxpayers or the STOs' choice?

CONSOLIDATED WITH 09-987 FOR ONE HOUR ORAL ARGUMENT

CERT. GRANTED 5/24/2010