

Justices rely on standing in church-state disputes

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WASHINGTON (RNS)—As the U.S. Supreme Court ends its 2010-2011 term, legal scholars say one decision is likely to resonate within church-state debates for years to come.

The justices rejected a challenge to an Arizona school tuition credit program that largely benefits religious schools, saying taxpayers did not have legal grounds to challenge a tax credit as government spending.

At the heart of the decision was an arcane yet essential legal term—“standing,” or a plaintiff’s right to sue. Critics say the court increasingly relies on standing to dismiss church-state challenges without addressing the merits of the complaints.

Writing for the 5-4 majority in the Arizona case, Justice Anthony Kennedy defended the reliance on standing: “In an era of frequent litigation, ... courts must be more careful to insist on the formal rules of standing, not less so.”

The Arizona ruling already is influencing other cases that touch on the First Amendment’s prohibition on a government “establishment” of religion:

- A Wiccan chaplain lost a religious discrimination case in a federal appeals court on June 1, which cited the Arizona decision in its ruling.
- Two weeks later, the Freedom From Religion Foundation voluntarily dropped its case challenging tax exemptions for clergy housing in light of the Arizona decision.
- That same atheist group now is carefully mulling whether to seek an

appeal in a case it lost trying to declare the National Day of Prayer proclamation by President Obama unconstitutional.

Annie Laurie Gaylor, co-president of the [Freedom From Religion Foundation](#), said by focusing on the standing issue, the court's conservative majority has reduced its ability to hear cases on their merits.

"They are slamming the door shut, and they do not want any examination of the constitutionality of governmental support for religion," she said. "It's just rendering our Establishment Clause meaningless, because we cannot enforce it."

Conservative Christian legal groups like the [American Center for Law & Justice](#) hope the April decision in *Arizona Christian School Tuition Organization v. Winn* will help them in future cases.

[Melissa Rogers](#), a church-state expert at Wake Forest University Divinity School, said standing is not just a dry legal concept.

"It can make the difference between whether the Establishment Clause is a vibrant source of values that protect us and protect the religious liberty that we enjoy, or whether it's a paper promise that theoretically bars certain things but not in practice," she said.

With losses in federal court, church-state separationists hope for better success in state courts. Barry Lynn, executive director of [Americans United for Separation of Church and State](#), estimates three dozen states have constitutions that prohibit "even more clearly the expenditure of government funds for religious purposes." So he hopes plaintiffs may have a greater ability to sue at the state level.