

VOUCHER CASES

Use of Public Funds for Private Education

Davis v. Grover, 480 N.W.2d 460 (Wis. 1992): Program providing vouchers for low-income children to attend non-sectarian schools did not violate public purpose doctrine requiring that public funds be spent only for public purposes, nor state constitutional requirement that legislature establish uniform school districts.

Bush v. Holmes, 919 So.2d 392 (Fla. 2006): Voucher program violated state constitution because it diverted public money into a private education system, contravening requirement that the public system be the only means of fulfilling the state's education mandate, and violated the uniformity requirement for public schools.

Cain v. Horne, 202 P.3d 1178 (Ariz. 2009): Two voucher programs appropriating state funds parents could use to pay for private school did not violate Arizona Constitution's Religion Clause prohibiting appropriations for religious purposes but did violate its Aid Clause prohibiting appropriations of public money to aid private or sectarian schools.

Meredith v. Pence, 984 N.E.2d 1213 (Ind. 2013): Voucher program did not violate Indiana Constitution's Education Clause because it affords the legislature broad discretion to fulfill its duty and because the state still provided a uniform system of public schools. The program also did not violate the state constitution's clauses regarding religion.

Louisiana Fed'n of Teachers v. State of Louisiana, 118 So.3d 1033 (La. 2013): Voucher program invalidated because it violated Louisiana Constitution by diverting Minimum Foundation Program funds from public to private schools.

Hart v. State of North Carolina, 368 N.C. 122 (N.C. 2015): Voucher program for low-income students did not violate state constitution's school funding provision because scholarships were funded from general revenue, and did not violate constitution's uniformity or public purpose provisions.

Schwartz v. Lopez, 382 P.3d 886 (Nev. 2016): Permanently enjoined implementation of broad Education Savings Accounts (ESA) voucher program because it unconstitutionally diverted funding provided by the legislature for public schools to pay for private educational expenses. Included ruling in *Duncan v. Nev. State Treasurer*, holding that ESA program did not violate state constitutional provision prohibiting use of public funds for sectarian purposes. Rejected claim made by both *Lopez* and *Duncan* plaintiffs that ESA program violated uniformity requirement in state constitution's education clause.

Tax Credit Scholarship Voucher Programs

Kotterman v. Killian, 972 P.2d 606 (Ariz. 1999): Statute providing state tax credit for donations to school tuition organizations, which grant scholarships students can use to attend schools of their choice, did not violate either U.S. Constitution's Establishment Clause or provisions of

Arizona Constitution, including state constitution's prohibition on appropriations to establish religion or aid sectarian schools.

Arizona Christian Sch. Tuition Org. v. Winn, 563 U.S. 125 (2011): Establishment Clause challenge to Arizona tax credit scholarship vouchers did not meet *Flast v. Cohen* exception to general rule against taxpayer standing.

Duncan v. State, 102 A.3d 913 (N.H. 2014): Taxpayers lacked standing to challenge New Hampshire's Education Tax Credit Program as violating state constitutional provision prohibiting use of tax dollars by religious schools.

McCall v. Scott, 199 So.3d 359 (Fla. Ct. App. 2016): Taxpayers lacked standing to challenge Florida Tax Credit Scholarship Program as violating state constitutional provisions prohibiting state revenue to aid churches and requiring a system of free and uniform public schools. Review denied by Florida Supreme Court.

Gaddy v. Ga. Dep't of Revenue, 802 S.E.2d 225 (Ga. 2017): Taxpayers lacked standing to bring mandamus action challenging the constitutionality of Georgia's Qualified Education Tax Credit program.

Espinoza v. Mont. Dep't of Revenue, No. DV 15-1152A (Mont. Dist. 2017): Montana tax credit program can grant scholarships to religious schools. Appeal pending to Montana Supreme Court.

Civil Rights –Vouchers for Students with Disabilities, Segregation

Niehaus v. Huppenthal, 233 Ariz. 195 (Ariz. Ct. App. 2013): ESA program for students with disabilities did not violate Arizona Constitution's Religion Clause or Aid Clause. It did not unconstitutionally condition receipt of government benefit on waiver of constitutional right to free public education because program is voluntary and students can re-enroll in public school.

Brunfield v. Louisiana State Bd. of Educ., 806 F.3d 289 (5th Cir. 2015): Reversed for lack of subject matter jurisdiction district court's grant of DOJ motion to enjoin state from providing vouchers to students in districts under federal desegregation orders absent court authorization.

Oliver v. Hofmeister, 368 P.3d 1270 (Okla. 2016): Program providing state-funded scholarships for students with disabilities to attend private schools, including sectarian schools, did not violate Oklahoma Constitution's "no aid" clause regarding public support of religious institutions because parents receive and then direct funds to private schools.

Citizens for Strong Schs., Inc. v. Fl. State Bd. of Educ., 232 So.3d 1163 (Fl. Dist. Ct. App. 2017): Appellants lacked standing to challenge Florida Tax Credit Scholarship under *McCall v. Scott* and McKay program providing vouchers for students with disabilities did not violate uniformity requirement of the Florida Constitution's education clause. On appeal to Florida Supreme Court.

Religion – First Amendment, Blaine Amendments

Comm. for Pub. Ed. & Religious Liberty v. Nyquist, 413 U.S. 756 (1973): New York program providing tuition reimbursement and tax benefits to families of students attending non-public schools violated Establishment Clause.

Opinion of the Justices (Choice in Educ.) 616 A.2d 478 (N.H. 1992): Proposed bill requiring a child's current school district to pay portion of tuition of any state-approved school selected by parent would violate state constitution's compelled support clause because it constituted unrestricted application of public money to sectarian schools.

Jackson v. Benson, 578 N.W.2d 602 (Wis. 1998): Voucher program did not violate Establishment Clause because its primary purpose was providing school choice to low-income families, not advancing religion. Program did not run afoul of state constitution religious establishment or uniformity provisions.

Chittenden Town Sch. Dist. v. Dep't of Educ., 738 A.2d 539 (Vt. 1999): Program under which school district reimbursed tuition for sectarian high schools without adequate safeguards against use of funds for religious worship violated state constitution's compelled support clause.

Zelman v. Simmons-Harris, 536 U.S. 639 (2002): Ohio voucher law did not violate Establishment Clause, even though majority of participants enrolled in religious schools, because program was neutral as to religion and direction of government aid to religious institutions was the result of private choice.

Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012 (2017): Denial of competitive state grant to Missouri church seeking to resurface preschool playground, based on policy of denying grants to religious entities, violated Free Exercise Clause.

Douglas Cty. Sch. Dist. v. Taxpayers for Pub. Educ., 137 S. Ct. 2327 (2017): Vacated Colorado Supreme Court decision that tax scholarship program violated state constitutional provision prohibiting use of public money to aid religious schools, 351 P.3d 461, and remanded in light of *Trinity Lutheran*. Dismissed in 2018 because new school board ended voucher program.