

School Vouchers

Many states are looking at education vouchers and asking whether a market solution can improve the quality of public education. In *Zelman v. Simons-Harris* (2002), the U.S. Supreme Court ruled that the federal Establishment Clause of the First Amendment permits education voucher plans to include religious schools. This decision upholds the right of Cleveland parents to use publicly funded vouchers to send their children to private religious schools and provides constitutional support for existing voucher programs in Wisconsin and Florida. The school voucher debate now moves to state legislatures and state courts where many state constitutions specifically prohibit using public funds to support or benefit religious schools or institutions.

The Court majority characterized the decision as a logical outgrowth of earlier cases involving individuals choosing to use public money to indirectly support private religious schools

The U.S. Supreme Court decided that Cleveland's voucher program, which provides private and religious school tuition and tutorial aid to low-income families residing in a failing school district, did not violate the Establishment Clause prohibition against government support of religion because the program:

- was entirely neutral with respect to religion
- provided benefits directly to a wide spectrum of individuals defined only by financial need and residency
- permitted individual parents to exercise genuine choice among public and private, religious and secular school option.

The Court relied on three earlier Establishment Clause cases in reaching its decision, including *Mueller v. Allen* (1983) in which the Court ruled permissible Minnesota's tax deduction for parents paying school expenses where, as a practical matter, primarily parents with children in religious school incurred those expenses (then-Associate Justice Rehnquist authored the Court's opinion in *Mueller*).

The Court majority found that Cleveland's voucher program did not give any preference to religious schools and, in fact, created a disincentive to attend religious schools by providing, at most, half the aid provided for students attending public charter and magnet schools. The majority did not attach constitutional significance to the preponderance of religious schools participating in the program because many American cities have relatively large numbers of religious schools. The majority believed that the number of public and private educational choices available to parents was sufficient to insulate the government from concerns about violating the prohibition against government subsidizing or endorsing religion.

Dissenting justices characterized the decision as a major devaluation of the Establishment Clause

The Court's dissenting justices were troubled by the scale and kind of government aid being shifted from public secular schools to private religious schools. The dissent argued that the voucher program was a dramatic departure from prior church-state decisions in which the Court declared that no public money could be levied to support any religious activities or institutions. The dissent also was troubled by upholding government aid that provides public money "to a core function of the church: the teaching of religious truths to young children" since

Cleveland's voucher program does not require tuition money to be spent only on the nonreligious aspects of a student's education. The dissent argued that eligible students had no real choice because most of the participating schools were religious schools, and the \$2,250 tuition cap steered students toward religious schools charging tuition below the cap. The dissent warned that the decision would increase government regulation of religion and dilute religious freedom by attaching strings to government funding.

School voucher decision moves the school voucher debate to state legislatures and state courts

The expansion of school choice programs, the public's interest in private schools for safety and academic reasons, and a clarification of constitutional issues may encourage state legislatures to explore school voucher plans that base students' eligibility on family income and residency, similar to Cleveland and Milwaukee, or enrollment in failing schools, similar to Florida. Many state constitutions prohibit using public funds to support or benefit religious schools or institutions. The language of these state constitutional provisions varies widely and in many cases appears more restrictive than the First Amendment Establishment Clause.

Minnesota's constitution prohibits using public money to support religious schools

Minnesota's Constitution, article XIII, section 2, reads: "In no case shall any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any. . .religious sect are promulgated or taught." Although the prohibition appears more restrictive than that of the federal Establishment Clause, voucher proponents may argue that Minnesota's constitution prohibits support of religious schools but does not prohibit aid to students attending a religious school. If a Minnesota court interprets the state's constitutional prohibition restrictively, voucher proponents may have to seek to amend the state constitution or challenge the prohibition under the federal Free Exercise, Free Speech, and Equal Protection clauses.

Debate asks if school vouchers expand educational opportunities or subsidize private schools

School vouchers, as a school choice option, have raised issues about:

- whether to use public funds for religious schools
- what criteria private schools may apply when selecting students
- the degree to which private schools are publicly accountable for student performance
- the extent of autonomy private schools enjoy in determining curriculum or other pedagogical or financial matters.

Proponents argue that school vouchers give poor families educational opportunities similar to those enjoyed by wealthier families and ensure, through market forces, that parents have sufficient choices to provide their children with an education consistent with their values and beliefs. Opponents argue that school vouchers negatively impact the democratizing function of public schools by exacerbating economic, ideological, and racial segregation across schools.

For more information: See the House Research publication *School Vouchers*, September 2002.

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