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Texas Association of School Boards
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Texas Baptist Christian Life Commission
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Texas Elementary Principals & Supervisors Association
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Texas Public School Relations Association
Texas State Teachers Association

The Coalition for PUBLIC SCHOOLS



Private School Vouchers: An Experiment Tax Payers Can't Afford

Key Court Decisions on Vouchers and Tuition Tax Credits

The first education voucher program was implemented in Milwaukee in 1990. Since then, four states, including Colorado, Florida, Ohio, and Wisconsin, and the District of Columbia have adopted publicly-funded voucher programs. In 2002, the U.S. Supreme Court ruled that the publicly-funded voucher program in the Cleveland school district does not violate the "separation of church and state" provision in the U.S. Constitution. However, since then, several courts have ruled voucher programs unconstitutional on state constitutional grounds.

Below is a summary of the litigation on voucher and tuition tax credit programs to date:

Ford v. Browning, No. 08-1529, Fla. Supreme Ct. (2008):

Florida Supreme Court struck down three ballot initiatives, including two that would amend the state constitution and permit private and religious school vouchers. See *Holmes v. Bush* case below.

Joyce v. State of Maine, No. 08-24 (Me. 2008)

The Maine Supreme Judicial Court ruled a state statutory ban on using state funds for tuition payments to sectarian schools also bars a municipality from making such payments using general funds.

Cain v. Horne, No. 07-0143 (Ariz. App. Div. Two, 2008)

An Arizona appeals court has struck down two state voucher programs, finding that although they do not violate the state constitution's ban on funding religion, they do violate the constitution's ban on taxpayer funding of private schools.

Anderson v. Town of Durham, No. 04-591 (Me. 2006)

The Maine Supreme Judicial Court has ruled that the state's tuition payment statute, which allows school districts that do not operate a public high school to provide public funds for students to attend private, nonsectarian high schools, does not violate the U.S. Constitution's First and Fourteenth Amendments.

Holmes v. Bush, No. 04-2323 (Fla. 2006)

In a 5-2 decision, the Florida Supreme Court ruled that the state's Opportunity Scholarship Program (OSP), a private school voucher program, violates the Florida constitution's requirement that the state provides "a uniform, efficient, safe, secure, and high quality system of free public schools."

Owens v. Colo. Cong. Of Parents, No. 03SA364 (Colo. 2004)

The Colorado Supreme Court ruled in a 4-3 decision that the state's voucher program violated the state constitution's "local control of public instruction" requirement. The program, enacted by the legislature, was never implemented.

Zelman v. Simmons-Harris, 1225 S. Ct. 2460 (2002)

U.S. Supreme Court ruled in a 5-4 decision on June 27, 2002 that Ohio's Cleveland voucher program is constitutional under the U.S. Constitution, even though state funds are provided directly to religious schools.

Winn v. Killian, 207 F.3d 1011 (9th Cir. 2002)

U.S. Court of Appeals for the Ninth Circuit ruled that taxpayers could maintain a suit challenging the constitutionality of Arizona's tuition tax credit law on Establishment Clause grounds. The Ninth Circuit returned the case to federal district court for further consideration.

Kotterman v. Killian, 972 P.2d 606 (Ariz. 1999)

Arizona Supreme Court upheld the state's tuition tax credit that provides tax relief to parents with children in religious schools. The U.S. Supreme Court denied certiorari in October 1999, 528 U.S. 921 (1999).

Bagley v. Raymond School Department, 728 A.2d 127 (Me.1999)

The Maine Supreme Court upheld the state's educational tuition program that prohibits tuition payments to religious schools. U.S. Supreme Court denied certiorari in October 1999, 528 U.S. 947 (1999).

Strout v. Albanese, 178 F.3d 57 (1st Cir. 1999)

U.S. Court of Appeals for the First Circuit upheld Maine's educational tuition program's religious school prohibition on Establishment Clause grounds. U.S. Supreme Court denied certiorari in October 1999, 528 U.S. 931 (1999).

Jackson v. Benson, 578 N.W.2d 602 (1998)

Wisconsin Supreme Court held that the state's Milwaukee Parental Choice Program (voucher program) was constitutional even though state voucher funds were being paid to private religious schools. The U.S. Supreme Court denied certiorari in November 1998, 525 U.S. 997 (1998).