

FAQs

»» Frequently Asked Questions About School Choice

Is school choice constitutional?

Policy design is critical. School choice is constitutional at the federal level and in most states as long as policies and programs are designed properly.

In 2002, the U.S. Supreme Court answered this constitutional question thoroughly at the federal level. In the landmark *Zelman v. Simmons-Harris* case, the Supreme Court upheld the constitutionality of Cleveland's school voucher program by a 5-4 vote. The justices made it very clear that when an individual uses public funds to make a private choice—in this case when a parent uses a voucher to send his or her child to a private school (including religious schools)—it does not violate the First Amendment.

Chief Justice William Rehnquist explained in the majority opinion that voucher programs such as Cleveland's are "neutral in respect to religion (because they) provide assistance directly to a broad class of citizens, who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice." Hence, if a school choice program allows "true private choice" and it is "religiously neutral," then it is constitutional.

The 2002 *Zelman* decision is in line with a long series of precedent. For example, in 1983 the court upheld Minnesota's income tax deduction for educational expenses, including private-school tuition. In 1993, the court unanimously upheld the use of public funds by a blind student pursuing a divinity degree at

a religious college.

The G.I. Bill and Pell grants are constitutional. Both federal programs offer vouchers to college students so he or she can attend the public or private school of their choice, including religious colleges and universities.

While recent U.S. Supreme Court rulings have favored voucher programs, some state constitutions have language prohibiting the use of taxpayer dollars to support religious schools. However, as the Institute for Justice argues, "many court decisions interpret state constitutions to parallel the First Amendment. If so, the recent First Amendment cases discussed above should control state constitutional interpretation. If the state constitutional provision is more restrictive, advocates may have to challenge such restrictions under the federal constitution."

As of 2010, school vouchers are constitutional in 34 states and tax-credit scholarships are constitutional in 48 states.

In the end, the constitutionality of a voucher or school choice policy depends on how well the policy is designed. If parents make a truly private choice of which school their child attends, if there is no financial incentive to attend a religious school over a non-religious school, and if a program does not allow undue government interference with religious schools, chances are the bill will be looked on favorably by the courts.

NUMBER OF STATE CONSTITUTIONS ALLOWING SCHOOL CHOICE POLICIES

Vouchers
34

Tax-Credit Scholarships
48

Source: Richard D. Komer and Clark Neily, *School Choice and State Constitutions: A Guide to Designing School Choice Programs*, Institute for Justice, April 2007.