



## Explainer: Constitutionality of Nonpublic Pupil Aid Programs

It has been claimed incorrectly by some legislators that nonpublic pupil aid violates Minnesota's constitutional ban on aid to "sectarian" schools. Putting aside that this "Blaine Amendment" was born from anti-Catholic bigotry and is itself constitutionally infirm under the U.S. Constitution,<sup>1</sup> nonpublic pupil aid programs have been upheld by both the U.S. Supreme Court and the Minnesota Supreme Court.

### **Nonpublic pupil aid programs are not subsidies or grants to private schools**

Nonpublic pupil aid programs are rooted in the state's commitment to provide essential services in an equitable manner to all students, irrespective of school choice. See Minn. Stat. 123B.40. They are aids to nonpublic *students*, not nonpublic *schools*, and are administered by public school districts for the benefit of those students. *The money is given to the district*, which then works with the nonpublic school to provide the nursing, counseling, textbook, and busing services for those students who desire the services.

The public school district provides the services for the benefit of the students. The private school is just the place where those are delivered. The mechanics of the program itself, which do not provide direct subsidies for nonpublic schools, do not violate the plain language of the Minnesota Constitution.

### **No violation of separation of church and state**

In the decision<sup>2</sup> in which the U.S. Supreme Court stated that there was a "wall of separation" between Church and state, the court still *upheld* a busing program for nonpublic school students as not being a violation of that principle.

The Minnesota Supreme Court followed the U.S. Supreme Court's lead<sup>3</sup> and upheld the state's nonpublic pupil busing program, the very law at issue in this legislative session. The programs have not faced a serious challenge ever since.<sup>4</sup>

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<sup>1</sup> See Institute for Justice, "Answers to Frequently Asked Questions About Blaine Amendments," available at <https://ij.org/issues/school-choice/blaine-amendments/answers-frequently-asked-questions-blaine-amendments/>

<sup>2</sup> *Everson v. Board of Education*, 330 U.S. 1 (1947).

<sup>3</sup> *Americans United v. Independent School District No. 622*, 179 N.W.2d 146 (1970).

<sup>4</sup> The Court of Appeals upheld aid programs to nonpublic school students in the form of the state's PSEO program. *Minn. Fed'n of Teachers v. Mammenga*, 500 N.W.2d 136 (1993).