

The US Supreme Court Heard Arguments December 8 on Whether Parents May Use State Education Money for Sectarian Schools

The State of Maine provides subsidies to parents for education in rural districts that don't have their own high schools. Parents are allowed to use the subsidy to enroll their children in other public or private schools—but not religious schools. The Maine Supreme Court upheld the State's decision to prohibit the use of the subsidies in religious schools. The matter is now before the US Supreme Court. Oral arguments were held December 8. Some experts believe a ruling in favor of the parents who brought the appeal could expand vouchers significantly.

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Supreme Court to hear religious schools case

Voucher program could expand based on ruling

John Fritze USA TODAY WASHINGTON – When the Supreme Court hears arguments Wednesday in a case about whether parents may use state education money for sectarian schools, the central question will deal with religious freedom versus separation of church and state.

But lurking just below the surface is a broader battle over school choice, including voucher programs, which could grow significantly depending on how the court rules.

At issue is a relatively unusual program in Maine that provides subsidies for education in rural districts that don't have their own high school.

The state allows parents in that situation to use the money that would have been spent locally to send their children to other public or private schools – but not to programs that offer religious instruction.

The parents of students who wanted to use the state subsidy for religious education sued, asserting Maine's policy violated their First Amendment right to practice religion free from government interference. They brought their appeal to the Supreme Court at a time when its 6-3 conservative majority has looked favorably on religious freedom claims.

Some experts see potential impact far beyond Maine if the Supreme Court rules in such a way that requires states to fund religious schools in programs where they currently do not. For instance, could states that permit charter schools, which are publicly funded but privately managed, be required under the court's ruling to approve sectarian charters?

'The implications of this could be enormous,' said Kevin Welner, professor at the University of Colorado-Boulder and director of the National Education Policy Center, who filed a brief supporting Maine. 'We're all trying to read those tea leaves in terms of how far the court might go and how concerned the justices might be about a slippery slope.'

There are also brass tacks political considerations in play.

States with voucher programs that allow parents to use taxpayer subsidies for private school tuition already must let that money flow to religious schools. But education choice supporters say that critics, including teachers unions and many Democrats, often raise the threat of litigation over religious issues in states considering such programs.

Clearing up whether such choice programs may fund religious schools without running afoul of the Constitution's prohibition on government becoming entangled with religion could remove an arrow from the quiver of groups that oppose vouchers, experts said.

'It will finally remove this argument that school choice opponents continually rely on, either in legislatures or in courts of law, to try to prevent these programs from being adopted in the first place,' said Michael Bindas, a senior attorney with the libertarian Institute for Justice, which is representing the parents against Maine in the case.

Leslie Hiner, vice president of legal affairs for the advocacy group EdChoice, agreed. Another problem, she said, is that the way federal courts have drawn a distinction between types of religious schools gives states far too much power to dig into their curricula to determine whether they're 'too religious' for state funding.

'What's at stake in this case is the liberty of parents and their empowerment in school choice programs to be able to make a true free choice,' said Hiner, whose group filed a brief at the high court opposing Maine's position. 'Whether that choice is at a religious school or at a secular school, the choice must rest in the hands of parents.'

The possibility that the court's decision could expand the use of vouchers or undermine states' ability to set curricula for public education has drawn sharp blowback from teachers' unions, including the National Education Association, and groups that represent public school officials. Those groups have traditionally opposed vouchers for siphoning taxpayer money away from public schools they argue need it most.

'The fundamental question for school districts and for school boards is, 'are public dollars going to go to fund religious instruction?'" asked Francisco Negrón, chief legal officer for the National School Boards Association, which is supporting Maine. A ruling against the state, he said, could put school districts 'in a position of having to make down-the-road doctrinal determinations about religious education.'

School vouchers are one of the more controversial types of school choice programs because they involve allowing taxpayer money to flow to private schools. Currently, 16 states plus Washington, D.C., offer voucher programs, according to EdChoice. They enroll more than 210,000 students, according to the group – a relatively small number compared to the approximately 5.8 million students who attend private schools.

Voucher programs have expanded significantly since 2010.

Amy Carson, one of the Maine parents who filed the suit, told USA TODAY this year that it wasn't as if she was asking for some special perk. The state would have spent that same money to educate her daughter if her local district had a high school.

'I don't think, just because you have the word 'Christian' or 'Catholic' in a school's name that it should preclude your child from receiving the tax funds you're paying,' Carson said. 'People automatically go to, 'I don't want my tax dollars going to religious things.' I don't want my tax dollars going to a lot of things they go to. Where do you draw the line?'

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