

West Virginia Voucher Program Being Challenged in Court

West Virginia came late to the voucher party, but went hog wild. The WV voucher program is the broadest in the U.S. When fully implemented, it will subsidize the private education of all private school and homeschooled students.

The constitutionality of the WV voucher scheme is being challenged. The March 30 issue of Public Funds Public Schools provides the details of the constitutional challenge to the voucher scheme.

The sponsors of Ohio's HB290 have said publicly that they are looking to WV as a model for Ohio's universal voucher program.

Public School Parents Urge West Virginia Court to Halt Voucher Program

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The parents in a lawsuit challenging West Virginia's expansive 2021 voucher law have asked the Kanawha County Circuit Court to block the State from launching the voucher program and prevent the diversion of public dollars from their already under-resourced public schools. The [preliminary injunction motion](#) was filed today in the lawsuit, [Beaver v. Moore](#), originally filed in January.

"The programs and services my children benefit from in school every day are threatened by the possibility that millions of public dollars will leave our schools because of this voucher plan," said Travis Beaver, plaintiff and parent of two children in West Virginia public schools.

West Virginia's voucher law, House Bill 2013 (HB 2013), creates an Education Savings Account (ESA) voucher program that is the broadest in the nation. ESA vouchers redirect public funding to private accounts that can then be spent on private school tuition and/or a range of private education expenses including homeschooling.

West Virginia's ESA voucher program is open to all students who attend a public school for 45 days or are entering kindergarten, regardless of family income or any other criteria. Over time, the voucher law will subsidize the private education of all private school and homeschooled students and is projected to cost the State over \$100 million per year.

The voucher law, according to the lawsuit and injunction motion, violates several provisions of the West Virginia Constitution, including the clear language of the Education Article, which requires the state to provide and maintain a system of public schools. The Legislature therefore can *only* provide for a system of free public schools and cannot support a separate system of

private and home schooling. In addition, the Legislature can only reduce funds available for public education for a compelling, narrowly tailored purpose. The State has no interest in funding private schools, and the extremely broad voucher law is the opposite of a narrowly tailored measure.

The voucher law also violates the West Virginia Constitution's presumption against laws that treat people differently, called "special laws," because it excludes voucher students from critical antidiscrimination protections afforded public school students. Under the voucher law, private schools can refuse admission or discipline students based on characteristics including their disabilities, religion, or LGBTQ status.

The motion for preliminary injunction asks the court to order the State to halt implementation of the voucher program before millions of dollars in public money are spent to implement this unconstitutional law. It explains that the plaintiffs are likely to succeed on the merits of their claims and sets forth the irreparable harm the plaintiffs' children—and public school students across West Virginia—will suffer if the voucher program is not stopped in its tracks.

"If the voucher program is implemented, massive amounts of public funds will be siphoned away from public schools, reducing district budgets and disrupting basic programs and services essential to a constitutionally adequate education," said Tamerlin Godley, partner at Paul Hastings LLP.

The plaintiff families in Beaver v. Moore are represented pro bono by the law firm Paul Hastings LLP, Education Law Center, and the West Virginia office of the firm Hendrickson & Long. Education Law Center co-leads the Public Funds Public Schools campaign, which works to ensure public funds are spent on public education and not diverted to private schools. Paul Hastings partner Tamerlin Godley has spearheaded other successful PFPS efforts, including NAACP v. DeVos, which stopped former Secretary of Education Betsy DeVos from diverting hundreds of millions of dollars in pandemic relief funds to private schools, and a 2016 lawsuit that permanently enjoined a similarly expansive voucher bill in Nevada.

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