

West Virginia Circuit Court Strikes Down Unconstitutional Private School Voucher Law

WV Circuit Court Judge Joanna Tabit strikes down the WV law. The WV Constitution has a constitutional requirement to provide a thorough and efficient system of public schools. (This WV provision was copied from Ohio's Constitution). Hence, the WV Legislature has no authority to fund a separate system of private schools that infringes on its ability to provide a "thorough and efficient system of public schools".

Attached is a Public Funds Public Schools (PFPS) press release that provides details.

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Charleston, WV – This morning, Judge Joanna Tabit of the Circuit Court of Kanawha County granted West Virginia parents' request to halt implementation of the state's expansive new private school voucher law. The hearing this morning in *Beaver v. Moore* resulted in Judge Tabit granting a preliminary injunction and permanently enjoining the program, which would have siphoned millions of public dollars from the state's underfunded public schools to subsidize private education.

The *Beaver* plaintiffs are public school parents challenging the private school voucher law under the West Virginia Constitution. The President of West Virginia's Board of Education and the State Superintendent are courageously standing with the parents in support of their request.

The state defendants and pro-voucher lawyers from the Institute for Justice had asked the court to dismiss the lawsuit. Judge Tabit denied their motions.

"The judge clearly understood that the West Virginia Constitution does not allow for this voucher program," said Tamerlin Godley, partner at Paul Hastings LLP, co-founder of Public Funds Public Schools, and lead lawyer for the case. "Stopping the voucher program was absolutely essential to protect the state's students and their public schools."

West Virginia's 2021 voucher law authorizes the broadest voucher program in the nation, with eligibility for any student who attends public school for 45 days or is entering kindergarten, regardless of family income. Under the voucher law, the State deposits public funds in private accounts for use on a wide range of private education expenses. There are no accountability or quality safeguards. Over time, the law will force West Virginia taxpayers to subsidize all private and homeschooling in the state, totaling over \$120 million a year.

"West Virginia has a proud history of prioritizing quality public schools for all the state's children, and that commitment is enshrined in our constitution," said Jack Tinney, co-counsel for the parent plaintiffs and a partner at Hendrickson & Long in Charleston. "We could not stand by and allow the voucher law to undermine West Virginia students' constitutional rights."

In the *Beaver* lawsuit, the parent plaintiffs highlight the numerous ways the voucher law violates the Education Clause of the West Virginia Constitution. The Legislature has no authority to fund a separate system of private schooling that infringes on its ability to provide a “thorough and efficient system of public schools.” The voucher law also violates the State Constitution’s prohibition against “special laws” that treat similar people differently because it excludes voucher students from critical protections afforded public school students against discrimination based on disability, religion, or LGBTQ status.

“In my view, the Legislature has violated its constitutional level obligations regarding public education and funding by enacting House Bill 2013 for the Hope scholarship fund,” Judge Tabit stated in explaining her decision.

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 law in Nevada.

For more information, visit the *Beaver v. Moore* [page](#) on the PFPS website.

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