

## **West Virginia Supreme Court Heard Voucher Challenge on October 4, 2022**

The West Virginia voucher law, HB2013, would allow any student who attends a public school 45 days or is entering kindergarten to receive a voucher. All home-schoolers would be eligible.

Public Funds Public Schools (PFPS) explains the matter in an October 4 release.

### **WEST VIRGINIA PUBLIC SCHOOL PARENTS BRING THEIR CHALLENGE TO UNCONSTITUTIONAL VOUCHER LAW TO STATE'S SUPREME COURT**

A lawsuit brought on behalf of West Virginia parents, *Beaver v. Moore*, stopped the State from implementing the expansive and harmful private school voucher law passed by the Legislature in 2021. Today, the state's Supreme Court of Appeals will hear why the lower court got it right.

"The voucher law violates the clear mandates of the West Virginia Constitution, which are essential to ensure all students have access to a quality public education," said Tamerlin Godley, partner at Paul Hastings LLP, co-founder of Public Funds Public Schools, and lead lawyer for the plaintiffs. "Courts across the country continue to recognize that voucher laws that violate their state constitutions must be struck down."

West Virginia's voucher law, House Bill 2013 (HB 2013), creates an Education Savings Account (ESA) voucher program that is open to any student who attends a public school for 45 days or is entering kindergarten, regardless of family income or any other criteria. 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. HB 2013 would eventually subsidize the private education of all private school and homeschooled students and is projected to cost the State over \$100 million per year.

"If millions of public dollars are funneled away to private school vouchers, our most vulnerable children—who would never be accepted by those private schools—will be the ones who suffer most," said Travis Beaver, plaintiff and parent of two children in West Virginia public schools.

In July, the Kanawha County Circuit Court ruled that the voucher law violated several provisions of the West Virginia Constitution and blocked the State from launching the voucher program. The state courts, including the Supreme Court of Appeals, have rejected numerous requests by the defendants to implement the voucher program while the lawsuit is pending.

The plaintiffs' [brief](#) filed in the Supreme Court explains why it should affirm the circuit court's ruling:

- The clear language of the West Virginia Constitution's Education Article requires the State to provide and maintain a system of public schools, and therefore it cannot support a separate system of private and home schooling.
- The Legislature can only reduce funds available for public education for a compelling, narrowly tailored purpose. But 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, which creates a separate board to oversee the voucher program, strips the West Virginia Board of Education’s exclusive constitutional authority to supervise state-funded K-12 education.
- The West Virginia Constitution mandates that all funds raised and spent on K-12 education “shall” be for the support of the public schools.
- The voucher law violates the constitution’s presumption against “special laws” that treat similar people differently, because it requires voucher students to pay for any public school resources they wish to use and 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.

State and national civil and education rights groups, disability rights organizations, as well as constitutional and education scholars, filed amicus curiae (friend of the court) briefs in support of the parent plaintiffs.

“We are proud to represent public school parents who oppose this unconstitutional law and are seeking to prevent the diversion of public dollars from their already under-resourced schools,” said Jack Tinney, partner at Hendrickson & Long in Charleston.

Today’s oral argument takes place at 11:30 ET and is livestreamed here:  
<https://www.youtube.com/c/wvsupremecourt/live>.

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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