



HAS THE TIDE TURNED AGAINST VOUCHERS?



Late last year in [Montana](#), the State Supreme Court struck down the state's three-year-old neovoucher program, ruling against the constitutionality of tax-credit-funded voucher law because it funded private, religious education.

In November in [Arizona](#), voters rejected the proposed expansion of Empowerment Scholarship Accounts, state tax dollars that parents can use for home schooling, private schooling and other educational expenses. [An audit by the state's attorney general](#) subsequently found that parents had misspent or attempted to misspend the funds on such expenses as cosmetics, non-educational music albums, and entry into a seasonal haunted house.

A couple years before that, the Supreme Court in [Nevada](#) concluded that the state's "Education Savings Account" voucher plan violated the Nevada constitution because of a funding mechanism that drew money away from public schools.

In Colorado, in 2017, a slate of school board candidates funded by the American Federation of Teachers [ousted](#) a set of Koch-backed opponents who introduced a pilot school voucher program in a conservative Denver suburb.

And at the [national level](#), the Republican-backed Tax Cuts and Jobs Act of 2017 may have the (almost certainly unintended) consequence of substantially reducing federal tax benefits for wealthy donors to neovoucher programs. Internal Revenue Service guidance on the matter is expected any day now, according to Carl Davis, a tax policy expert who is the research director at the Institute on Taxation and Economic Policy.

Davis also estimates that these and other voucher programs cost states considerable amounts of money. Neovouchers alone, he says, are diverting more than \$1 billion annually from state

revenue for public schools. In a Q&A in a previous National Education Policy Center newsletter, Davis noted that the loss is growing rapidly, with Florida's program alone growing by 25 percent a year.

When Secretary DeVos took over the U.S. Department of Education, she made a strong push for a federal voucher program or incentive. After two years, all she has to show for these efforts is a new law that allows tax-advantaged 529 plan savings (which were formerly only for college tuition) to be used for tuition expenses at private and religious elementary and secondary schools.

Meanwhile, recent studies from Louisiana, Ohio, Washington DC, and Indiana have shown that receiving a voucher is associated with a decrease in mathematics test scores (for language arts scores, one study showed a decrease while three studies found no difference). While some proponents have shifted the goalposts, arguing that test scores are no longer the right way to evaluate such programs, others have tempered their support out of fear that taxpayers might want to attach regulations or transparency to private schools that receive public dollars.

Following on the heels of decades of victories and expansions, these setbacks raise the question: Could the voucher tide be on its way out?

Certainly, it would have a ways to go. Neovouchers currently exist in 19 states, while traditional vouchers are available in at least 15 states plus the District of Columbia. Five states have education savings accounts like Arizona's that cover not only tuition but other educational expenses such as those related to home schooling; five provide individual tax credits for private school expenses; and four offer individual tax deductions. Lawmakers in Georgia plan to expand their neovoucher program, while lawmakers in Kentucky will be pushing to create a neovoucher program.

Further, the justices on the Supreme Court have been increasingly favorable to vouchers. The landmark 2002 *Zelman v. Simmons-Harris* Supreme Court case found that Cleveland's vouchers did not violate the Establishment Clause of the First Amendment, even though parents were permitted to use them for religious schools. A 2010 U.S. Supreme Court ruling (*Arizona Christian School Tuition v. Winn*) found that taxpayers had no standing to even challenge the constitutionality of Arizona's neovoucher law. And in 2017's *Trinity Lutheran Church of Columbia v. Comer* decision, the Court signaled that it might strike down state restrictions on program funding if those programs don't offer the funding on an equal basis to religious institutions. We will have to see whether the Court applies that rule to strike down state restrictions on the funding of religious schools.

In the meantime, the expansion of conventional vouchers—but not neovouchers or education savings accounts—appears to have stalled. And vouchers, whatever their form, have yet to spread to the majority of states, despite support from deep-pocketed conservative donors such as the Koch brothers and the Lynde and Harry Bradley Foundation.

These voucher-related developments concerning research, politics and law may or may not curtail the practice of diverting public funds to private education. But for now, it's worth keeping an eye on the direction of the tide.

NEPC Resources on Vouchers

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