

MASSACHUSETTS



CONSTITUTIONAL PROVISIONS

Blaine Amendment

"No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both ... and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society. Nothing herein contained shall be construed to prevent the Commonwealth from making grants-in-aid to private higher educational institution or to students or parents or guardians of students attending such institutions." MASSACHUSETTS CONST. Amend. Art. XVIII, § 2.

EXISTING SCHOOL CHOICE PROGRAMS

Public School Choice: **Yes**

Intradistrict/mandatory
Massachusetts Annotated Laws Chapter 71,
Section 37D
Interdistrict/voluntary
Massachusetts Annotated Laws Chapter 76,
Sections 12, 12A, 12B, 12C

Charter Schools: **Yes**

Massachusetts Annotated Laws Chapter
71, Section 89

Private School Choice: **No**

continued on next page

RELEVANT CASE LAW

Wirzburger v. Galvin, 412 F.3d 271 (1st Cir. 2005)

The 1st U.S. Circuit Court of Appeals held that the Massachusetts Attorney General properly denied certification of a proposed initiative to amend the state's Blaine Amendment to allow public financial support to be directed to students attending private, religiously affiliated schools because a separate constitutional provision places the Blaine Amendment off-limits to the initiative process. The court further held that this other provision did not impair the free exercise of religion under the First Amendment because the exclusions did not discriminate on the basis of religious belief or status.

Matthew J. v. Massachusetts Department of Education, 989 F. Supp. 380 (D. Mass. 1998)

A Massachusetts federal district court held that the reimbursement of special education costs under the Individuals with Disabilities Education Act for a mentally ill high school student in a Christian school outside the state did not violate the Massachusetts Blaine Amendment because the state was compensating a child to whom it had abdicated its responsibilities under IDEA.

Attorney General v. School Committee of Essex, 439 N.E.2d 770 (Mass. 1982)

The Massachusetts Supreme Court held that a statute requiring transportation of private school students on public school buses was a community safety measure not unlike police or fire protection. Any benefit

continued from previous page

provided to the private schools was remote and did not constitute substantial aid sufficient to violate the Massachusetts Constitution.

Commonwealth v. School Committee of Springfield, 417 N.E.2d 408 (Mass. 1981)

The Massachusetts Supreme Court held that using public funds to pay for special education services from private schools was not for the purpose of founding, maintaining, or aiding private institutions in violation of Massachusetts' Blaine Amendment. The court noted that paying for special education services in private schools was required only after it was first determined that a public school lacked the ability or desire to meet the needs of special education students and that this requirement was intended to benefit children, not to aid or promote private schools.

Bloom v. School Committee of Springfield, 379 N.E.2d 578 (Mass. 1978)

Seeing no difference between loaning textbooks to private school students and loaning them to the school, the Massachusetts Supreme Court held that Massachusetts' textbook lending law was unconstitutional. The court further observed that textbooks are of use only in the educational context and therefore are a "basic educational tool" to be distinguished from other basic government services like police and fire protection.

Opinion of Justices to Senate, 514 N.E.2d 353 (Mass. 1987)

The justices of the Massachusetts Supreme Court opined that proposed legislation that would provide tax deductions for certain educational expenses (tuition, textbooks and transportation) incurred by taxpayers whose dependents attended public or nonprofit private primary and secondary schools would violate Massachusetts' Blaine Amendment.

Opinion of Justices, 259 N.E.2d 564 (Mass. 1970)

The justices of the Massachusetts Supreme Court opined that purchase by the commonwealth of secular educational services from private schools would violate Article 46, Section 2, of the Massachusetts Constitution, a precursor to Massachusetts' current Blaine Amendment.

Opinion of Justices, 236 N.E.2d 523 (Mass. 1968)

The justices of the Massachusetts Supreme Court opined that the state could help finance construction projects at private universities without violating the Massachusetts Constitution.

ANALYSIS AND RECOMMENDATIONS

Absent constitutional amendment, Massachusetts lacks any good school choice option. The Massachusetts Constitution contains an extremely restrictive Blaine Amendment, which cannot be altered via referendum. The Massachusetts Supreme Court has interpreted that Blaine Amendment broadly and allowed public funds to flow to private school students only under the federal IDEA and for transportation. In striking down a textbook loan program, the court refused to distinguish between aiding students and aiding the schools they attend. In addition, the Massachusetts high court has opined that education tax credits would also violate the state's Blaine Amendment, although its opinion is not considered binding precedent.