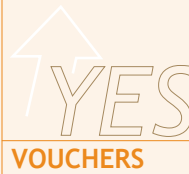


SOUTH CAROLINA



CONSTITUTIONAL PROVISIONS

Blaine Amendment

"No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution." SOUTH CAROLINA CONST. Ann. Art. XI, § 4.¹

Education Article

"The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable." SOUTH CAROLINA CONST. Ann. Art. XI, § 3.

¹ Prior to its amendment in 1973, the Blaine Amendment read: "The property or credit of the State of South Carolina, or of any county, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization." South Carolina Const. Ann. Art. XI, § 9. (repealed)

EXISTING SCHOOL CHOICE PROGRAMS

Public School Choice: **Yes**

Interdistrict/Voluntary
South Carolina Code Annotated Sections
59-63-45, 59-63-490

Charter Schools: **Yes**

South Carolina Code Annotated Sections 59-40-10 to 59-40-210

Private School Choice: **No**

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RELEVANT CASE LAW

Durham v. McLeod, 192 S.E.2d 202, 204 (S.C. 1972)²

The South Carolina Supreme Court held that using public money to guarantee student loans for students attending private schools did not violate South Carolina's Blaine Amendment because the program is religiously neutral and supports higher education, not institutions of higher education. It was on that basis that the court distinguished its holding in *Hartness*.

Hartness v. Patterson, 179 S.E.2d 907 (S.C. 1971)³

The South Carolina Supreme Court held that giving public tuition grants to students attending private schools violates South Carolina's Blaine Amendment because there

² Decided under since-repealed version of the South Carolina Blaine Amendment that had prohibited "direct or indirect" aid to parochial schools.

³ Decided under since-repealed version of the Blaine Amendment that had prohibited "direct or indirect" aid to parochial schools.





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can be no distinction between giving money to students for tuition and giving money to institutions.

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The South Carolina Attorney General concluded that distributing state lottery funds directly to “historically black colleges”—whether or not they were religious—violates South Carolina’s Blaine Amendment because it is a “direct benefit [to] certain private educational institutions.”

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The South Carolina Attorney General concluded that using lottery funds to contract with private schools to provide education for low-income, educationally disadvantaged students complied with South Carolina’s Blaine Amendment because the program was religiously neutral, was explicitly intended to help students, had findings to support that purpose, gave money through contracts rather than outright grants, and limited the manner in which the money could be spent.

ANALYSIS AND RECOMMENDATIONS

Both tax credit and voucher programs are school choice options for South Carolina. They are completely consistent with the South Carolina Constitution and relevant South Carolina state court decisions.

In 1973, South Carolina amended its Blaine Amendment by eliminating the ban on “indirect” funding of private educational institutions. According to the authoritative “West Committee,”¹ the change reflected the framers’ intent to allow public funds to be used to assist students who independently choose to attend private educational institutions, but to prohibit direct government subsidization of those institutions.

From the school choice perspective, this change is important for two reasons. First, a voucher program represents precisely the type of funding the framers of the current version of its Blaine Amendment (Article XI, Section 4) wished to allow. Second, South Carolina Supreme Court cases like *Hartness v. Patterson* that reject the distinction between aid to students and aid to institutions are no longer valid, as they were premised on constitutional language that was later deleted in order to allow student benefit programs.

When crafting school choice legislation, South Carolina legislators may want to pattern it on the South Carolina Higher Education Excellence Enhancement Program,² which does an excellent job of adhering to the requirements of the South Carolina Constitution and the jurisprudence of South Carolina courts. The program includes a detailed legislative findings section that explicitly recognizes the role of private institutions in helping the state meet the needs of low-income and educationally disadvantaged students. Additionally, funds for the program are appropriated from the Education Lottery Account, and there are express rules governing their use.

Model Legislation: Parental Choice Scholarship Program (Universal Eligibility), Parental Choice Scholarship Program (Means-Tested Eligibility), Special Needs Scholarship Program, Foster Child Scholarship Program, Autism Scholarship, Great Schools Tax Credit Program, Family Education Tax Credit Program

¹ Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895.

² SCCA 2-77-10 through SCCA 2-77-50.