

# WASHINGTON



## CONSTITUTIONAL PROVISIONS

### Blaine Amendments

“No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment ...” WASHINGTON CONST. Art. I, § 11.

“All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.” WASHINGTON CONST. Art. IX, § 4.

### Education Article

“The legislature shall provide for a general and uniform system of public schools.” WASHINGTON CONST. Art. IX, § 2.

### EXISTING SCHOOL CHOICE PROGRAMS

Public School Choice: **Yes**

Intradistrict/mandatory  
Washington Revised Code Section 28A.225.270  
Interdistrict/mandatory  
Washington Revised Code Sections  
28A.225.220 to 28A.225.240, 28A.225.280 to  
28A.225.310

Charter Schools: **No**

Private School Choice: **No**

### RELEVANT CASE LAW

*Locke v. Davey*, 540 U.S. 712 (2004)

The U.S. Supreme Court upheld Washington state’s exclusion of a theology major from a state-funded college scholarship program. The Court held that Washington could justify this exclusion as a way to avoid an unconstitutional establishment of religion under the state Constitution. Importantly, the Court carved out only a narrow exception—public funding for the religious training of clergy—to the general rule requiring equal treatment of religious and non-religious options. Indeed, the scholarship program allowed students to select religious schools, as well as public and non-religious private schools, much like K-12 school choice programs. It only excluded students actually training to be ministers.

*Garnett v. Renton School District No. 403*, 987 F.2d 641, 646 (9th Cir. 1993)

The 9<sup>th</sup> U.S. Circuit Court of Appeals held that the federal Equal Access Act provides religious student groups an equal right to use school grounds on the same basis as other clubs. Washington argued that its state Constitution would deny such equal access, but the court held that state law must yield to federal law.

*State ex rel. Gallwey v. Grimm*, 48 P.3d 274 (Wash. 2002)

The Washington Supreme Court held that a state educational grant program for “placebound” students—those who the state identified as not

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likely to complete a four-year degree without public financial assistance—that included religious schools does not violate Washington’s first Blaine Amendment (Article I, Section 11) because the program was not intended to aid religious schools. The program stipulates that participating students may not select schools that require religious instruction or worship. Additionally, the court held that Washington’s other Blaine Amendment (Article IX, Section 4) did not apply to institutions of higher education.

*Malyon v. Pierce County*, 935 P.2d 1272 (Wash. 1997)

The Washington Supreme Court held that a sheriff’s department’s chaplaincy program does not violate Washington’s first Blaine Amendment (Article I, Section 11) because the chaplains are not paid for their time.

*Witters v. Commission for Blind*, 717 P.2d 1119 (Wash. 1989)

The Washington Supreme Court held that Washington’s first Blaine Amendment (Article I, Section 11) prevented the state from using public funds to pay for a handicapped student’s seminary studies.

*Higher Education Facilities Authority v. Gardner*, 699 P.2d 1240 (Wash. 1985)

In accordance with its holding in *Spellman*, the Washington Supreme Court held that granting tax-exempt revenue bond proceeds to religious colleges did not transfer public funds or property to a sectarian institution. For that reason, Washington’s first Blaine Amendment (Article I, Section 11) did not apply.

*Health Care Facilities Authority v. Spellman*, 633 P.2d 866 (Wash. 1981)

In upholding a statute that provided tax-exempt bond proceeds for nonprofit hospitals, the Washington Supreme Court held that although the bonds were enabled by a public body, “the money was not acquired either for or from the general public” and therefore did not violate Washington’s first Blaine Amendment (Article I, Section 11).

*Calvary Bible Presbyterian Church v. Board of Regents*, 436 P.2d 189 (Wash. 1967)

The Washington Supreme Court held that

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when public school students read the Bible as a piece of literature among other works in a class required for graduation, it does not violate either of Washington's Blaine Amendments. The class imposes no religious or sectarian message on its students.

*Perry v. School District No. 81*, 344 P.2d 1036 (Wash. 1954)

The Washington Supreme Court held that allowing religious groups to distribute attendance cards and make announcements about the released-time program on public school grounds is a use of school facilities supported by public funds for the promotion of a religious program and therefore violates Washington's first Blaine Amendment (Article I, Section 11).

*Mitchell v. Consol. School District*, 135 P.2d 79 (Wash. 1943); *see also Visser v. Nooksack Valley Sch. Dist.*, 207 P.2d 198 (Wash. 1949)

The Washington Supreme Court struck down a transportation program for private school students. The court said the program violated Washington's Blaine Amendments because the public would incur some additional expense if private school students were transported on public school buses.

*Saucier v. Employment Security Department*, 954 P.2d 285 (Wash. Ct. App. 1998)

The Washington Court of Appeals held that although the Salvation Army should be treated as a church and its receipt of appropriated grants and its exemption from paying unemployment insurance taxes confer "appropriated" funds and benefits, such an appropriation does not violate Washington's first Blaine Amendment (Article I, Section 11) because the state's purpose in doing so is to fund a secular drug treatment program.

## ANALYSIS AND RECOMMENDATIONS

A tax credit program is Washington's best school choice option. The Washington Constitution contains Blaine Amendment language in two provisions. Both have been interpreted by the Washington Supreme Court as being more restrictive than their federal Establishment Clause counterpart.

*Model Legislation: Great Schools Tax Credit Program, Family Education Tax Credit Program*

