SCHOOL VOUCHERS AND EDUCATION SAVINGS ACCOUNTS: ARE THEY CONSTITUTIONAL?

NCSL LEGISLATIVE SUMMIT
AUGUST 8, 2016
Where Are We Today?

Private Choice

- **School Vouchers = 17 + D.C. States**
  - State funded scholarships parents can use to pay private school tuition

- **Education Savings Accounts (ESAs) = 5 States**
  - State funded grants parents can use for a variety of educational goods and services

- **Scholarship Tax Credits = 15 States**
  - State created, privately funded scholarships can use to pay private school tuition
Grounds for Challenging Choice Programs

- Education or general provisions within the state constitution:
  - Duty to establish a statewide uniform system of free public education
  - Prohibition against using state money for private purposes
General Constitutional Provisions

- *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006): Voucher program violated state’s duty to provide uniform, efficient high-quality system of free public schools

General Constitutional Provisions

- *Colo. Congress of Parents, Teachers, & Students v. Owens*, 92 P.3d 933 (Colo. 2004): Voucher program violated constitutional requirement for local control by school district boards of education by requiring school districts to spend locally raised money for educational programs they did not control.
Religious Constitutional Provisions

- No money appropriated or aid given to sectarian schools or other institutions
- No person compelled to attend, support, or maintain a place of worship, ministry, or religious sect against his or her will
Dismissed for lack of standing

- *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011): Plaintiffs could not demonstrate standing – tax credit was not an expenditure of state money in violation of Establishment Clause and didn’t amount to a religious tax or tithe.
Federal cases


- *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002): OH voucher program did not violate Establishment Clause - was religion neutral and subject to independent parental choice
Federal Cases

- Locke v. Davey, 540 U.S. 712 (2004): Upheld WA exclusion of theology degree programs from eligibility for a state scholarship program – states can be more stringent in interpreting state constitutional religious provisions without violating federal Free Exercise or Establishment Clauses
State cases where upheld program

- Jackson v. Benson, 578 N.W.2d 602 (Wis. 1998)
- Simmons-Harris v. Goff, 711 N.E.2d 203 (Ohio 1999)
- Meredith v. Pence, 984 N.E.2d 1213 (Ind. 2013)
State cases where upheld program

- Magee v. Boyd, 175 So.3d 79 (Ala. 2015)
- Oliver v. Hofmeister, 368 P.3d 1270 (Okla. 2016)
State cases where struck down program

- *Chittenden Town Sch. Dist. v. Dep’t of Educ.*, 738 A.2d 539 (Vt. 1999)


As the legality of voucher plans unfolds on a state–by–state basis, it may depend more on the political climate of the states and the dispositions of respective state high courts than on the exact wording of the state constitutional provisions.