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## Research & Commentary: Repeal States' Anti-Catholic Blaine Amendments

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Blaine amendments – named after James G. Blaine, the former speaker of the House of Representatives and the Republican Party's presidential nominee in 1884 – are anti-Catholic pieces of legislation that were designed to prevent public money from being sent to religious schools. They currently exist in 38 state constitutions.

In reaction to the emergence of a large and steadily growing Catholic minority in the United States in the mid-nineteenth century, Catholic leaders pushed for government programs that would have provided state funding for their own religious educational institutions. Catholics felt these schools were necessary because public schools at the time were essentially Protestant in orientation. For example, school lessons were taught from the King James Bible and students sang from Protestant hymnals. Rather than enacting a measure that would have prohibited religion from public education completely, the Blaine amendments were created to enforce a Protestant theological worldview on publicly-funded schools.

“Although the public schools of that period were called ‘nondenominational,’ that description did not mean that they were non-religious or secular in today’s terms,” wrote Richard D. Komer of the Institute for Justice. “It meant that they did not teach the doctrine of any particular Protestant sect or denomination in the course of conducting religious activities, such as school prayer, Bible reading and lessons, and hymn singing. Understandably, Catholics and certain other religious groups were unwilling to participate in the public schools and maintained their own schools.”

Blaine originally wrote his amendment with the intention of it becoming an amendment to the U.S. Constitution. The amendment read: “No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations.”

The amendment passed the House of Representatives by an overwhelming margin in 1875, but it failed by just four votes in the Senate.

With the support of a national Protestant majority, which sought to keep Catholic schools from receiving public funds as Catholic immigrants and schools grew, states began adopting their own versions of Blaine's federal amendment. It was made known to the Western territories applying for statehood the price of admission to the Union would be a state constitution containing a Blaine amendment. Arkansas, Iowa, and Louisiana are the only states west of the Mississippi River that do not have a Blaine amendment in their constitutions.

"The Blaine amendments reflected more than reactionary nativism or a principled dedication to the protection of religious liberty through no-aid separationism," wrote Richard W. Garnett of Notre Dame Law School. "They cannot be fully understood without reference to the irreducibly anti-Catholic ideology that inspired and sustained them."

Blaine amendment supporters routinely employ them in lawsuits against state voucher programs that some students use at private religious schools. They tend to characterize the amendments as an important and secondary safeguard to the separation of church and state.

Advocates seek legal ways to administer school choice around Blaine amendments or by trying to dispose of the amendments entirely through re-amending state constitutions. They criticize Blaine for its formidable barrier to extending better education with public money and its discriminatory history and intent.

Daniel Patrick Moynihan once said, "[A]nti-Catholicism remains the one acceptable form of intellectual bigotry," and Arthur Schlesinger referred to the "prejudice" against the Catholic Church as the "deepest bias in the history of the American people." The continued existence of Blaine amendments in so many states is a prime example of this.

It is well past time for states to repeal these relics of bigotry. These shallow, unfounded, discriminatory laws prevent parents from having the right to choose where their children attend school, which in many cases means kids are receiving an inferior education than they otherwise would without Blaine amendments.

The following documents provide more information on Blaine amendments and private school choice.

### The Legal Landscape of Parental-Choice Policy

The U.S. Supreme Court decision in *Zelman v. Simmons-Harris* cleared away the most significant obstacle to the expansion of private school choice programs by ruling the First Amendment's Establishment Clause does not preclude faith-based schools from participating in private school choice programs. These programs raise other important legal questions, which fall into four categories: the scope of students' rights to an education and parents' rights to choose their children's schools; state constitutional obstacles to private school choice; the effect of laws governing racial integration and the inclusion of disabled students; and the religious liberty

implications of faith-based schools participating in such programs. The American Enterprise Institute (AEI) writes the lack of clarity on these questions poses challenges, but AEI also says these questions create opportunities for proponents of private school choice to scale up existing programs and expand program options.

Taking Credit for Education: How to Fund Education Savings Accounts through Tax Credits  
<https://www.heartland.org/publications-resources/publications/taking-credit-for-education-how-to-fund-education-savings-accounts-through-tax-credits?source=policybot>

This Cato Institute paper shows how legislators can design an education savings account (ESA) that is privately funded through tax-credit-eligible contributions from taxpayers, similar to tax-credit scholarship programs that already exist in states across the country. Tax-credit-funded ESAs would empower families with more educational options while enhancing accountability and refraining from coercing anyone to financially support ideas they oppose. Because they are funded through voluntary contributions, rather than public funds, tax-credit scholarships have been found by the U.S. Supreme Court and by every state supreme court that has considered the issue to be within the bounds of the U.S. Constitution and most state constitutions. In states that have Blaine amendments, which greatly restrict the ability of lawmakers to create some school choice programs, tax-credit ESAs could be a lifeline to families in need.

The Theology of the Blaine Amendments

<https://www.heartland.org/publications-resources/publications/the-theology-of-the-blaine-amendments?source=policybot>

This essay from *First Amendment Law Review* by Richard W. Garnett of Notre Dame Law School offers a “series of reflections, prompted by the Blaine Amendments, on education, citizenship, political liberalism, and religious freedom.”

School Choice: Answers to Frequently Asked Questions About State Constitutions’ Religion Clauses

<https://www.heartland.org/publications-resources/publications/school-choice-answers-to-frequently-asked-questions-about-state-constitutions-religion-clauses>

This resource, authored by Richard D. Komer of the Institute for Justice, serves as an excellent primer on Blaine amendments, compelled support clauses, and other state constitutional religious clauses.

State of Blaine: A Closer Look at the Blaine Amendments and Their Modern Application

<https://www.heartland.org/publications-resources/publications/the-state-of-blaine-a-closer-look-at-the-blaine-amendments-and-their-modern-application>

This essay published by *Engage* and authored by Meir Katz of the Georgetown University Law Center explores the important role Blaine amendments have played and continue to play in deciding modern church-state legal questions.

Secularism’s Laws: State Blaine Amendments and Religious Persecution

<https://www.heartland.org/publications-resources/publications/secularisms-laws-state-blaine->

amendments-and-religious-persecution

This essay published by the *Fordham Law Review* by Kyle Duncan concludes Blaine amendments generally raise explicit, religion-sensitive barriers to the allocation of otherwise publicly available resources. Consequently, Duncan says, the operation of the Blaine amendments would typically violate the religious non-persecution principle of the First Amendment.

Nothing in this *Research & Commentary* is intended to influence the passage of legislation, and it does not necessarily represent the views of The Heartland Institute. For further information on this subject, visit *School Reform News* at <http://news.heartland.org/education>, The Heartland Institute's website at <http://heartland.org>, and *PolicyBot*, Heartland's free online research database, at [www.policybot.org](http://www.policybot.org).

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