



FILE - The exterior of the South Carolina Supreme Court building in Columbia, S.C. is shown Jan. 18, 2023. (AP/James Pollard)

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South Carolina's law allowing parents to spend taxpayer money on private schools violates the constitution, [the state's highest court](#) ruled Wednesday.

The 3-2 ruling prohibits paying tuition or fees with "Education Scholarship Trust Funds," but it does allow parents to use that money for indirect private expenses like tutoring, textbooks and other educational material.

Nearly 3,000 students have already been awarded \$1,500 each under the program. The court won't require it be paid back if spent on private school tuition or fees. The case was argued before the high court in March, well before the money was distributed.

The South Carolina law is part of a nationwide movement. Groups that study the programs report that at least [16 states have some form of the vouchers](#).

The South Carolina case centered on part of the state constitution that says "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."

Lawyers who think [the program is illegal](#) said giving the private schools public money is a direct benefit even if the program allows students to pay fees or transportation to attend a public school outside of their district.

"A parent who chooses to use a scholarship to pay their child's private school tuition is undoubtedly using public funds to provide a direct benefit to the private school," wrote Justice Gary Hill in his first major opinion since joining the court a year ago.

Hill's sharply written ruling tracked the history of why South Carolina voters had to amend their constitution in 1972 to affirm the right of a free public school education for all children after state lawmakers spent two decades trying to keep Black children from going to school with white children through a flurry of maneuvers and proposals including eliminating public school entirely.

"Our General Assembly knew how to draft an amendment to present to the people that would allow public funding for private schools, but it did not," Hill wrote of lawmakers more than 50 years ago.

Supporters of the now overturned [law](#) said putting the money into a trust fund was key. The money goes to parents, who get to make a decision on where to spend it instead of state government directly paying the private schools themselves.

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In a dissent, Chief Justice John Kittredge said the ruling ignores the broad power South Carolina's Legislature has to create policy.

"The literary style of the majority opinion may be appealing, but its underlying rationale is anathema to the rule of law," Kittredge wrote.

The chief justice also suggested other programs where private money goes toward public education institutions like college scholarships paid with money from the state lottery or the pre-kindergarten program First Steps.

Hill responded in his decision those programs have a different structure than the trust fund driven vouchers.

Supporters of the law can appeal. They also could attempt in 2025 or beyond to put a constitutional amendment before voters eliminating the constitutional provision, but fears that getting a majority vote could be tricky prevented them from trying that the first time.

"Families cried tears of joy when the scholarship funds became available for their children, and today's Supreme Court ruling brings those same families tears of devastation," Republican State Superintendent of Education Ellen Weaver said in a statement that promised to work to find a way to get the program started again.

Republican Gov. Henry McMaster said the state will ask the state Supreme Court to reconsider its ruling because it "may have devastating consequences for thousands of low-income families."

The decision goes against what lawmakers saw in past court opinions, said Republican Senate Majority Leader Shane Massey.

"The Court changed the rules, and poor children lose," Massey said in a statement.

The new law allowed vouchers of up to \$6,000 for as many as 5,000 students a year, eventually expanding to about 15,000 students, or about 2% of the statewide school age population. Only families making under about \$120,000 could get the assistance.

Allowing parents to spend public money on private schools has been a two-decade effort that ran through three governors, four House speakers and five education superintendents in a state where Republicans have been consolidating and expanding their power.