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Suit: State aid ban for private schools ‘anti-Catholic’

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(Photo: Jaymie Perry / Facebook)

A Grand Rapids Catholic school is trying to invalidate a nearly 50-year-old ban against using state aid for private education, arguing it is “anti-Catholic” and violates the U.S. Constitution.

Immaculate Heart of Mary filed a lawsuit last month against the state because the school is forced by the government to comply with various public health measures but isn’t given state aid to help it meet the mandates. It has asked the state Court of Claims to declare a voter-approved measure unconstitutional because it “forces a religious school to choose between remaining a religious school or become entitled to a public benefit.”

The move comes after several public school and parent groups led by the American Civil Liberties Union of Michigan [filed a lawsuit last year in state court](#) to block \$2.5 million that lawmakers put in the state budget in 2017 to fund mandates on non-public schools — requirements such as immunization compliance, criminal background checks, and fire and tornado drills. They argued the state Constitution’s so-called Blaine Amendment, passed by voters in 1970 as “Proposal C,” prevents public dollars from going to non-public schools.

In addition, the public schools group said the 2017 budget failed to gain a super-majority of votes in the Senate, a requirement when public funds are appropriated for private purposes. The Legislature appropriated \$2.5 million in 2017 and 2018 for private schools and wants to do so again for the next budget year.

The court granted an injunction that stopped the release of the money, and the original ACLU lawsuit is scheduled for a hearing in Detroit on Monday. Lawyers who filed the Grand Rapids suit made a motion Tuesday to consolidate their case with the 2017 lawsuit and are awaiting a decision.

The Grand Rapids school's lawsuit argues the state's so-called Blaine Amendment was developed in a furor of "anti-Catholic sentiment" and should be disregarded in the debate over the \$2.5 million state allocation for non-public schools.

"The Blaine Amendment is unconstitutional discrimination of religion," said John Bursch, one of the lawyers bringing the suit.

Although the withheld money accounts for a minuscule portion of the \$16 billion education budget, opponents fear that allowing it would set a precedent for larger subsidies to private schools.

"We know that voters many years ago voted not to have vouchers in the state, and we really see this as a back-door way to get vouchers," said Chris Wigent, executive director for Michigan Association of School Administrators.

In 2000, state voters defeated by 69-31 percent a ballot proposal to let parents in some struggling school districts use up to \$3,100 in public money to pay for their child's tuition at a private or religious school. The effort was led by Grand Rapids area school choice advocate Betsy DeVos, who became President Donald Trump's education secretary in 2017. Voters overwhelmingly defeated a similar voucher proposal in 1978.

Gov. Rick Snyder, who asked the state Supreme Court to issue an opinion on the allocation in 2016, has proposed eliminating the \$2.5 million allotment in 2018 and 2019 budgets. But House lawmakers included the controversial funding for the third year running in an early draft of the 2019 budget approved Tuesday.

When a group that included Immaculate Heart of Mary School asked to join the state as defendants against the ACLU's suit, the Court of Claims ruled they could not.

Instead, Immaculate Heart of Mary filed the second lawsuit against the state on March 12, asking the court to declare the state aid ban unconstitutional because it violates the free exercise, free speech and equal protection clauses of the U.S. Constitution. The Catholic school asks the state Court of Claims to disperse the roughly \$2.5 million promised in the state's 2017 budget.

In the lawsuit, advocates argued the state aid ban was targeted at Catholic schools seeking public funding and was "intended to curtail the minority but growing Catholic school system."

The suit includes excerpts from newspaper clippings, advertisements and campaign literature in 1970 that speak to the alleged anti-Catholic basis for the amendment.

“And the religious invective proved successful,” the lawsuit said. “Based on anti-Catholic rhetoric, voters narrowly approved Proposal C with 56 percent of the votes cast in November 1970.”

A super-majority vote in the Senate was not needed to approve the \$2.5 million in 2017 funding because the aid served a public purpose, said Bursch, former Michigan solicitor general under Attorney General Bill Schuette.

“When you’re talking about funds for hundreds of thousands of private school students for the public purpose of safety and welfare, that’s clearly a public purpose,” he said.

In a March letter to Immaculate Heart of Mary families, the Rev. Troy Nevins said the Grand Rapids school has always completed drills and training, but state guidelines now prevent the school from running those services efficiently.

“The costs associated with the mandates are currently being absorbed by our parishes, parents, and donors, which is not equitable,” Nevins wrote. “These services have nothing to do with our educational mission.”

Those filing the lawsuit include Immaculate Heart of Mary, parents Stephen and Jennifer Sanford, Republican state Sens. Phil Pavlov of St. Clair and Patrick Colbeck of Canton Township and GOP state Reps. Tim Kelly of Saginaw Township and Kim LaSata of Bainbridge.

Named in the lawsuit are the State of Michigan, Snyder, the Michigan Department of Education and State Superintendent Brian Whiston. The state education department and governor’s office declined comment, citing the ongoing litigation.

David Maluchnik, a spokesman for the Michigan Catholic Conference, said the group is not involved in the suit brought by Immaculate Heart of Mary School, but believes it “has merit.”

“MCC’s focus is on the frivolous suit brought by the ACLU,” Maluchnik said. “We are confident that the attorney general, the governor and the state legislature are all correct that the \$2.5 million appropriation is an allowable expenditure by the state.”

Steven Norton, executive director of Michigan Parents for Schools, said his group joined the ACLU’s lawsuit last year because the \$2.5 million for private schools appeared to be an attempt to chip away at the rules about public funding.

“The question isn’t whether schools belong to or are affiliated with any religious organization,” Norton said. “The question is whether the schools are accountable to the public or not.”

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