



Could This Be a Win for Parents?

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By: Susan Pendergrass

The debates have only just begun, and they're sure to be loud and contentious. But one result of the confirmation of President Trump's pick for the Supreme Court could be more options for parents when it comes to their child's education.

Judge Brett Kavanaugh has not had the opportunity to rule on many education cases, as there is only one school district in the DC Circuit Court's jurisdiction. However, he has written essays and amicus briefs on school choice cases. He clearly [supports](#) the notion that religious schools and institutions should be able to receive state funding provided that "the funding was pursuant to a neutral program that, among other things, included religious and nonreligious institutions alike."

Like many states, Missouri has a Blaine amendment in its Constitution. These amendments, originally intended to discriminate against the waves of Catholic immigrants coming from Europe, are used as cover to prevent parents from spending their children's state education dollars anywhere other than their assigned public school. (For more on Blaine amendments and some additional thoughts on the Kavanaugh nomination, see my colleague Mike McShane's recent *Forbes* piece [here](#).) Ironically, the U.S. Supreme Court took up a case in 2017 that focused on a Missouri church-affiliated preschool's access to public grant money for [playground](#)

resurfacing. While the court found in favor of Trinity Lutheran Church, the finding was narrow and Missouri's Blaine Amendment still stands.

Judge Kavanaugh has [spoken approvingly](#) of Justice William Rehnquist and the impact that his writings on the Establishment Clause had on Trinity Lutheran and other cases. He was also part of the defense team when Governor Jeb Bush was [sued](#) over the Florida voucher program. It will be interesting to see how this son of a public school teacher contributes to court decisions on education, particularly those that involve private school choice.

School choice will likely take a back seat to other issues in this confirmation process. As Missourians consider a Constitutional Convention in 2022, however, we may be faced with either ditching our Blaine Amendment ourselves or having it done for us.

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Susan Pendergrass was Vice President of Research and Evaluation for the National Alliance for Public Charter Schools before joining the Show-Me Institute. Prior to coming to the National Alliance, Susan was a senior policy advisor at the U.S. Department of Education during the Bush administration and a senior research scientist at the National Center for Education Statistics during the Obama administration. She earned a Ph.D. in Public Policy from George Mason University.

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[3] https://www.the74million.org/article/trump-supreme-court-brett-kavanaugh-dc-teacher-private-schools/?utm_source=The+74+Million+Newsletter&utm_campaign=c7e6bae190-EMAIL_CAMPAIGN_2018_07_09_10_20&utm_medium=email&utm_term=0_077b986842-c7e6bae190-176104713

[4] <https://www.forbes.com/sites/mikemcshane/2018/07/10/does-a-justice-kavanaugh-mean-that-blaine-amendments-are-history/#204ef2176e74>

[5] <https://showmeinstitute.org/blog/school-choice/trinity-lutheran-has-its-day-court>

[6] <http://www.aei.org/publication/from-the-bench-the-constitutional-statesmanship-of-chief-justice-william-rehnquist/>

[7] <https://www.leagle.com/decision/20001435767so2d66811317>

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