Many state constitutions have provisions regarding establishment of religion that are more specific and restrictive than the U.S. Constitution’s First Amendment. Known as Blaine Amendments and found in 37 state constitutions, these provisions typically prohibit public funding “in aid of” (as opposed to directly “to”) nonpublic/religious schools or institutions.\(^1\)

James Blaine, a U.S. senator from Maine with presidential aspirations, proposed the original Blaine Amendment in 1875 to amend the U.S. Constitution. The amendment said that “no money raised by taxation in any State for the support of public schools … shall ever be under the control of any religious sect.” It failed. At the time, nothing in U.S. jurisprudence held that the First Amendment applied to the states, so nothing restrained states from funding religiously controlled educational institutions.

By then, America’s population had shifted from about 1 percent Catholic at the time of independence to over 10 percent.\(^2\) Overt Protestant views dominated the curriculum of public schools to an extent that almost certainly would be deemed to violate the Establishment Clause in the modern era. Catholic citizens protested such practices and sought to establish their own schools, arguing that some money from the public coffers or tax breaks should come their way.

While failing in the U.S. Congress, the Blaine language took root in states. Within a year, 14 had enacted similar legislation, and by the close of the 1890s, about 30 states had introduced similar provisions in their constitutions.

Fast forward to the current Blaine landscape. Such an amendment can pose legal obstacles for states’ attempts to legislate vouchers and other types of financial aid for parents of children attending private religious schools and to the schools themselves. The size and shape of the obstacles depend on a specific constitution’s language.

While court decisions span the spectrum, the pendulum has swung against the Blaine amendments preventing such programs. The U.S. Supreme Court case *Mitchell v. Helms* in 2000 saw a weakening of the defense of Blaine language and its use to challenge programs that directly or indirectly aid parochial schools or students. Consequently, Blaine language will likely be considered as discriminating based on viewpoint, thus violating the free speech clause of the First Amendment.

Most recently, the Supreme Court issued a 2017 decision in *Trinity Lutheran* involving Missouri’s version of a Blaine Amendment. In *Trinity*, a religious preschool was denied a state grant for playground resurfacing based on Blaine language. The Supreme Court found for the preschool on the basis that a neutral government grant program violated the First Amendment when it denied funds based only on the religious status of a qualified recipient. The court attempted a narrow ruling close to the facts—playground resurfacing grants—but the implications for the ability of states to rely on Blaine Amendments to deny public funding to religious entities per se in the broad sense are obvious. \(^\text{\textsuperscript{1}}\)
