

The EdChoice Voucher Legal Challenge Sets Forth an Originalist-View of Constitutional Interpretation

The Coalition's lawsuit challenging the constitutionality of the EdChoice voucher scheme is most assuredly not asking the Court to "legislate from the bench." The Complaint filed puts a spotlight on the wording and intent of Ohio's constitutional requirements for a high quality system of common schools and how the EdChoice voucher system is a cancer that has the potential to kill off the common school.

The attached piece shows that if the Court objectively considers the pertinent language of the Constitution, it will ditch the EdChoice voucher scheme.

Originalist: one who aims to discover how the writers of a document intended it to be interpreted and interpreted in that way.

Subsequent to the adoption of Article VI, section 2 of the Ohio Constitution (adopted in 1851), legislation was enacted that included the establishment of the office of State Commissioner of Common Schools. Every commissioner from 1853 to 1912 understood that constitutional language to mean that the state is responsible for a public common school system. (All legislatures agreed)

During the Constitutional Convention of 1873-1874, a delegate introduced an amendment to strike the following clause of section 2: "but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state." The delegates overwhelmingly rejected the proposal. Delegate Asher Cook expressed the sentiments of those who opposed funding for entities other than the common system: "Here the children of a district, and often those of an entire village, are united in one school, where all cause of strife and contention is removed, and their minds, true to the instincts with which they are endued, rich and poor, mingle together, for a loving group of little friends, who, hand in hand, march bravely up the rugged hill of science, making the ascent easy by each other's aid and smoothing its rugged surface by glad peals of laughter, which ring out merrily and clear over hill top, across valley and up the mountain side, until their echoes wake up a joyous community to thank God for the common schools."

A 1912 amendment to the Ohio Constitution transferred state responsibilities from the Commissioner of Common Schools to a Superintendent of Public Instruction. The Superintendent's duties related to the public system. Another 1912 amendment required the state to provide, by law, for the organization, administration and control of the public school system supported by public funds.

A 1953 amendment to the Ohio Constitution assigned the Superintendent of Public Instruction to the State Board of Education, established by the same amendment. Again, the original interpretation of Article VI, sections 2 and 3 was invoked.

The original interpretation of these constitutional provisions was compromised in the late 1960's when the so-called Fair Bus Bill was enacted, which provided for transportation of private school students. Further compromise of the conservative view of constitutional interpretation continued when auxiliary services and later, non-public administrative cost reimbursement were added.

The addition of vouchers accelerated the erosion of the plain, originalist reading of the constitutional provisions for public common schools.

The introduction of the common school in Ohio began in 1825 when the legislature required communities within townships to support, by taxation, public common schools. Twenty-two years later, the legislature

CC3049 Monday 1.10.22

established the Office of Superintendent of Common schools and employed Samuel Lewis as Superintendent.

Article VI, section 2 of the Ohio Constitution adopted in 1851 established the duty of the state of Ohio to secure, by taxation, a thorough and efficient system of common schools.