

## **The Charter School and Voucher Wars Continue: A Tale of Two Cities, or Maybe Three**

Denis Smith, retired school administrator and ODE Charter School Office consultant, discusses school privatization in 3 C's—Columbus, Charleston and Concord.

Privatization of public education is a plague spreading faster than the COVID-19 virus. It is disabling the education of school children in public school districts across the state and nation. Legislators and governors throughout the nation are enabling this plague with tax funds.

### COMMENTARY

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“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness,” Charles Dickens famously wrote. But if a latter-day Dickens were writing today, the tale might be about foolishness and not wisdom in the misuse of public funds. And the setting would not be two, but three cities, state capitals whose names, interestingly enough, all begin with the letter C.

Certainly the times aren't exactly Dickensian, but there is nevertheless the distraction of a raging global pandemic. Moreover, since today's tale deals with recent events in these state capitals, that means we must relate a tale not of wisdom but of foolishness in the legislatures that sit in Charleston, West Virginia; Concord, New Hampshire; and Columbus, Ohio. The three states are alike in that they show a trifecta government in place, where both houses of the legislature and the governor's office are under Republican control.

Which means that when the topic is the privatization of public education, where state funds are used in violation of state constitutional language to support private and religious schools and tax dollars are siphoned away from neighborhood public schools, there is no wisdom to be found on the front or back benches of these legislatures, only foolishness.

Or maybe that foolishness disguises deliberate, reckless behavior that enables a legislative wrecking crew intent on destroying public education, constitutional norms notwithstanding.

Let's start with developments in Charleston, West Virginia.

On Dec. 20, a circuit judge issued an injunction temporarily halting the opening of the first charter schools in the Mountain State. In that action, Kanawha County Circuit Court Judge Jennifer Bailey ruled that the creation of an unelected body, the West Virginia Professional

Charter Board, violated the state constitution because an independent school district cannot be created within an existing county school district without the consent of the voters in the district or the county school board's elected board of education. The judge's action is expected to be appealed to the West Virginia Supreme Court.

Note that the judge is merely asking the legislature — and inevitably appellate courts, to honor the principle of seeking the consent of the governed, as called for in the state's constitution.

Meanwhile, in another state capital that begins with the letter C, opposition to legislation that would support vouchers in New Hampshire drew 600 people to Concord, and after thousands of citizens had contacted their representatives in defense of their public schools.

As a result of stiffening opposition from communities who see their school systems strapped for revenue following a series of tax cuts to state businesses, the New Hampshire legislature on Jan. 6 tabled House Bill 607, a new voucher bill that would greatly benefit private and religious schools. This action, taken at the very beginning of the legislative session, was in part a result of six lawsuits against the state “for avoiding its constitutional mandate to fund an adequate education.” Interestingly enough, the first in that series of lawsuits challenging the adequacy of state funding for public education in New Hampshire occurred in 1993, at the very time the landmark *DeRolph v Ohio* school funding case was winding its way through courts in the Buckeye State.

Like the situation in the Mountain State, with its charter-loving legislature poised to further damage poor county school systems in a low-wealth state, we await further developments from the Granite State, where the legislature, like the situation in West Virginia, works hand-in-hand with a Republican governor to further undermine public education.

Which brings us to the charter and voucher war situation in the third letter C capital, Columbus.

Parallel with the anti-voucher developments in Concord, New Hampshire's capital, the pushback against educational vouchers in Columbus also picked up steam on Jan. 4, when 100 school districts joined in a lawsuit against the state of Ohio for violating the constitutional requirement to fund an adequate system of public education. The emphasis here is on the word system, as that term is used in the singular form.

At issue is a huge expansion of the voucher program, or EdChoice, as it is commonly known. Since the establishment of the Cleveland Voucher Program in 1996, Republicans have schemed to expand what they call school choice, and what others argue is instead code language for school privatization and public school destabilization, a sure way to destroy public employee unions.

Critics have long contended about the hypocrisy of Republicans who have long fashioned themselves as the party of strict constructionism when it comes to constitutional issues. In particular, the coalition of Ohio districts contend that the language in Article VI, Section 2 is abundantly clear: “The General Assembly ... shall secure a thorough and efficient system of common schools throughout the state ...”

William Phillis, a former deputy state superintendent of schools and long-time leader of the public school advocacy group, Ohio Coalition for Equity and Adequacy of School Funding, argues that there is no ambiguity in the meaning of that part of the Ohio Constitution. He wrote recently:

“The definitions of key words are taken from Noah Webster’s American Dictionary of the English Language, published in 1828.

System: an assemblage of things adjusted into a regular whole. The State is responsible for a system, not systems.

Therefore, the State is responsible for a (i.e.) one high-quality system of schools belonging to all. Private schools constitute a grouping of schools for which the State has no responsibility and is constitutionally forbidden to support.”

The lawsuit filed by Ohio school districts against the legislature for creating systems (note the use of the plural form here) of schools by using public funds to support private and religious schools in violation of the state constitution has received national attention. That is in addition to the privatization and voucher moves being engineered in the other two state capitals.

If only. Yes, if only the charter school and voucher-loving Ohio legislature could learn something from fellow legislators in the Granite State of New Hampshire and from a county judge in West Virginia. It starts by reading – and accepting – clear constitutional language, an exercise that Republicans (used to) call strict constructionism.

Those who value public services and the need for strict constructionism in following the letter of the law as written in state constitutions need to follow the drama found in this tale of three cities, Charleston, Concord, and Columbus. But if these hypocrisy-filled legislators continue their rampage of privatization unchecked, it will indeed be the worst of times, an age not of wisdom but of foolishness.

And you can add recklessness to that.

It was Mark Twain, the sage of Hannibal and Hartford — yet another state capital — who supposedly said that “no man’s life, liberty, or property are safe while the legislature is in session.” He knew what he was talking about.

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To be continued.

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