

Notre Dame Law School Religious Liberty Initiative Filed an Amicus Brief in Support of the State Defendants' Motion to Dismiss the EdChoice Voucher Lawsuit

Pro-voucher groups nationwide are weighing-in against the EdChoice voucher lawsuit. The Notre Dame Law School Religious Liberty Initiative filed an amicus brief in support of the State's motion to dismiss the case. The group irrationally argues that "no aid" to private religious schools in Article VI, Section 2 of the Ohio Constitution was a manifestation of "virulent anti-Catholic nativism." This section of the Ohio Constitution forbids funding to any and all sects, not just the Catholic group. Many religious groups operated schools in 1851 when that language was adopted. The problem was that the Catholic Church was anti-common school.

Pope Pius IX formalized that opposition in the 1862 Papal Encyclical, The Syllabus of Errors:

Further, it is error to believe that: "The entire government of public schools in which the youth of a Christian state is educated...may and ought to appertain to the civil power...in the discipline of the schools, the arrangement of the studies, the conferring of degrees, in the choice or approval of the teachers."

It is error to believe that: "The best theory of civil society requires that popular schools open to children of every class of the people, and...all public institutes intended for instruction...for carrying on the education of youth, should be freed from all ecclesiastical authority, control and interference..."

On December 8, 1864 Pope Pius IX issued 80 errors, many of which would have raised concern among non-Catholics. Some of those which relate to education are:

21. The Church has not the power of defining dogmatically that the religion of the Catholic Church is the only true religion. - *Damnatio "Multiplices inter,"* 10 June 1851.

45. The entire government of public schools in which the youth of a Christian state is educated, except (to a certain extent) in the case of episcopal seminaries, may and ought to appertain to the civil power, and belong to it so far that no other authority whatsoever shall be recognized as having any right to interfere in the discipline of the schools, the arrangement of the studies, the conferring of degrees, in the choice or approval of the teachers. - *Allocutions "Quibus luctuosissimis,"* 5 September 1851, and *"In consistoriali,"* 1 November 1850.

47. The best theory of civil society requires that popular schools open to children of every class of the people, and, generally, all public institutes intended for instruction in letters and philosophical sciences and for carrying on the education of youth, should be freed from all ecclesiastical authority, control and interference, and should be fully subjected to the civil and

political power at the pleasure of the rulers, and according to the standard of the prevalent opinions of the age. - Epistle to the Archbishop of Freiburg, "Cum non sine," 14 July 1864.

54. Kings and princes are not only exempt from the jurisdiction of the Church, but are superior to the Church in deciding questions of jurisdiction. - Damnatio "Multiplices inter," 10 June 1851.

55. The Church ought to be separated from the State, and the State from the Church. - Allocution "Acerbissimum," 27 September 1852.

These papal pronouncements ran counter to the concept of the public common school initiative being implemented in the 19th century. Hence, the anti-public common school crusade of the Catholic Church created controversy, which some interpreted as an anti-Catholic bias.

The tax-supported common school system was designed for all children without regard to religion or demographics. Those that did not wish to use the common system were free to use private schools at their own expense.

A Delegate to the Constitutional Convention of 1873-1874 introduced a proposal to remove the "no aide" clause in Article VI, Section 2, but the proposal was widely rejected. Delegate Asher Cook expressed the efficacy of the public school 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."