

In an August 8 blog, Jan Resseger writes about the voucher illusion of equity and the court challenge of Ohio's universal EdChoice voucher scheme.

Jan Resseger's [article](#) provides her perspective on how Vouchers Hurt Ohio. It is brief but compelling.

“Vouchers Hurt Ohio” Lawsuit Tests Constitutional Protection of Equal Access to Public Schooling

Posted on [August 8, 2024](#) by [janresseger](#)

In *The School Voucher Illusion: Exposing the Pretense of Equity*, academic experts who have studied the growing expansion of private school tuition vouchers almost perfectly capture the reality of Ohio's universal school voucher explosion:

“As currently structured, voucher policies in the United States are unlikely to help the students they claim to support. Instead, these policies have often served as a facade for the far less popular reality of funding relatively advantaged (and largely White) families, many of whom already attended—or would attend—private schools without subsidies. Although vouchers are presented as helping parents choose schools, often the arrangements permit the private schools to do the choosing... Advocacy that began with a focus on equity must not become a justification for increasing inequity. Today's voucher policies have, by design, created growing financial commitments of taxpayer money to serve a constituency of the relatively advantaged that is redefining their subsidies as rights—often in jurisdictions where neighborhood public schools do not have the resources they need.” (*The School Voucher Illusion: Exposing the Pretense of Equity*, p. 290)

Here is how that works today in Ohio. With the launch of the Cleveland Voucher Program in the mid-1990s, then Governor George Voinovich and the Ohio Legislature announced a program they claimed would expand opportunity for the poorest students in the Cleveland Public Schools. Thirty years later in a state that now has five voucher programs—in the Fiscal Year 2024-2025 state budget without much legislative debate or sufficient hearings—the Ohio Legislature created a universal voucher program by raising the family income eligibility cap on the state's EdChoice Expansion vouchers from 250 percent to 450 percent of the federal poverty level, thereby [radically expanding eligibility for this program to upper income families](#) whose children are already enrolled in private schools. In fact, if Ohio families have income over 450 percent of the poverty level, they can get smaller vouchers depending on their income. *News 5 Cleveland's Damon Mahoney reported* that for each of their children, “The wealthiest Ohioans earning 751% (of the federal poverty level) or higher are eligible for 10% of the scholarship, which is \$650 for grades K-8 and \$950 for grades 9-12.”

Public school districts have been pushing back against school privatization. The Vouchers Hurt Ohio lawsuit was filed in January of 2022 by over a hundred Ohio school districts and the Ohio Coalition for Equity and Adequacy of School funding. The lawsuit was filed eighteen months before the Ohio Legislature used the state budget to make EdChoice Expansion vouchers universally available and [increased the diversion of state funds for the state's five voucher programs to a billion dollars annually](#). Today the plaintiff school districts number [nearly a third of Ohio's 610 school districts](#). As the Vouchers Hurt Ohio lawsuit moves toward its scheduled trial date on November 4, 2024, we should expect that attorneys for today's large Ohio voucher constituency of relatively advantaged families and the private schools which have benefited from the increased tax support they are receiving from the state will actively argue to protect the vouchers they have now come to expect. Their protests and their arguments should not, however, mask the fact that the core principles at the heart of this case are protected in the Ohio Constitution.

The [lawsuit declares](#): “The EdChoice Scholarship Program poses an existential threat to Ohio's public school system. Not only does this voucher program unconstitutionally usurp Ohio's public tax dollars to

subsidize private school tuitions, it does so by depleting Ohio's foundation funding—the pool of money out of which the state funds Ohio's public schools... The discrepancy in per pupil foundation funding is so great that some districts' private school pupils receive, as a group, more in funding via EdChoice Vouchers than Ohio allocates in foundation funding for the entire public school districts where those students reside. This voucher program effectively cripples the public school districts' resources, creates an 'uncommon', or private system of schools unconstitutionally funded by taxpayers, siphons hundreds of millions of dollars of taxpayer funds into private (and mostly religious) institutions, and discriminates against minority students by increasing segregation in Ohio's public schools. Because private schools receiving EdChoice funding are not subject to Ohio's Sunshine Laws or most other regulations applicable to public schools, these private facilities operate with impunity, exempt from public scrutiny despite the public funding that sustains them."

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Article VI, Section 2 of the Ohio Constitution declares: "The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; 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 [lawsuit includes](#) four counts by which taxpayer supported private school vouchers violate Article VI, Section 2:

1. "Creation of one or more systems of uncommon schools in violation of the Ohio Constitution, Article VI, Section 2."
2. "Failure to secure a thorough and efficient system of common schools in violation of the Ohio Constitution, Article VI, Section 2."
3. "Segregation in violation of the thorough and efficient system of common schools as provided in Article VI, Section 2 of the Ohio Constitution."
4. "Diversion of funding in violation of the "No Religious or Other Sect Shall Ever Have Any Exclusive Right To or Control Of, Any Part of the School Funds of the State" clause of Article VI."

A fifth count is based on a violation of Article I, Section 2 of the state constitution which establishes the principle of equal protection of the law. The plaintiffs write: "No compelling or legitimate state interest can account for this discriminatory treatment of Plaintiff Students in comparison with their private school counterparts. No valid government explanation can justify spending two to ten times more per pupil to subsidize private school tuition than the per-pupil amounts paid by the state to educate Ohio's public school students."

The Vouchers Hurt Ohio lawsuit was filed to protect what the Ohio Constitution's framers defined as core democratic principles:

1. Public education is intended to be [universally available for all children](#), and the Ohio Constitution endorses the principle of [equality of opportunity](#) through the equitable distribution of school funding. Equity is a central element of the state's school funding formula: the state's contribution to funding schools is designed to support adequate programming in all school districts whether or not they have the local property taxing capacity to raise funding locally. The growth of the vouchers (paid for out of the school foundation budget) robs the public schools of adequate and equitable school funding. There is an additional geographic factor today by which the growing diversion of tax dollars to private school vouchers is undermining equity. The state has been diverting more and more state dollars to private and religious schools that exist in populous counties but leaving out the students in the state's [46 rural counties where there is insufficient](#)

[population for private schools](#). This diversion of funds to vouchers robs rural public schools of essential operating dollars even though rural citizens pay the state taxes that pay for vouchers.

2. The [Ohio Constitution protects religious liberty](#) by declaring that state school funding may not flow to private religious schools.
3. The Ohio Constitution and additional state and federal laws protect [equal access for every one of the state's students](#) to publicly funded schools. Public schools must welcome and provide services to meet the needs of all students, whatever their race, or their family income, or their gender, or their sexual orientation or their special needs or disabilities. Private schools can choose who they accept, whether they provide services for all kinds of children, and whether to force out children who don't fit their particular school profile.

In his powerful book, [Schoolhouse Burning](#), about the history of public education as a primary responsibility of every state, the constitutional scholar, Derek Black describes the development of state constitutions, among whose primary purposes is protection for every child of the right to public education: "The framework is the same as it has always been... where we understand public education as a constitutional right. This means public education is the state's absolute and foremost duty... This means the state must fully fund schools and reform policies unrelated to money when they impede adequate and equal opportunity. This means that the state cannot manipulate educational opportunity by geography, race, poverty, or anything else for that matter. This means the state cannot favor alternatives to public education over public education itself. This means the state must honor the constitution over its own ideologies and bias. This, finally, means that public education must be in service of our overall constitutional democracy. Every education policy we face must be filtered through these principles." (*Schoolhouse Burning*, pp, 254-255)