

**Josh Cowen's October 30 Newsletter on school vouchers in the courts and on statewide ballots.**

Dr. Cowen is a nationally acclaimed expert on private school, tax-supported vouchers. (Dr. Cowen is working with the Plaintiffs' attorneys in the Ohio EdChoice voucher lawsuit and author of the recently published book, [The Privateers: How Billionaires Created a Culture War and Sold School Vouchers](#).) His most recent Newsletter published by Public Funds Public Schools (a project of the New Jersey Education Law Center) provides a plethora of information about voucher court cases and statewide voucher ballot issues.

**[And Now for Some Good News!](#)**

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Hey friends,

I'm writing this edition on the way back from a swing through Florida, Iowa, Ohio, and Kentucky. Officially this is a book tour, but the first three of those states are dealing with the fallout of devastating universal voucher schemes, and the fourth – Kentucky – has a constitutional amendment on the ballot on November 5 that could open the door to voucher schemes.

I've been talking about my book, [The Privateers](#). But underlying that conversation is always the basic facts about vouchers: they defund public schools, devastate student learning, and fund discrimination against vulnerable kids and families.

I've talked to so many folks on the road since August. Teachers who've given their careers to public schools, only to see themselves attacked and demoralized for their service. Parents who were lured in by the false promise of school choice for all, only to hear a school they chose for their child was not going to choose to accept them. Local activists and organizers who just want to know: "What can I do to stop these voucher schemes from growing in my state?"

I don't have all the answers. But I tried to end *The Privateers* with some uplifting words about the rock-solid evidence behind investing anew in public schools and communities and the moral value of whole-child commitments to kids everywhere.

But if I were writing that conclusion today, I'd also add this: the fight against school privatization isn't over. Not even close. And that's not just a statement of will but a statement of fact. Although a handful of right-wing billionaires have succeeded in ramming voucher laws through a number of state legislatures over the last few years, they've also had some big setbacks.

So, let's talk about that good news.

First, I mentioned Kentucky. There's a scheme on the ballot trying to pry open the door to vouchers, disguised as a constitutional amendment that would merely, innocently, provide more parental choice. Something similar is on the ballot in [Colorado](#), and in Nebraska, the state supreme court has allowed [a vote](#) on whether to roll back the state's newly enacted voucher scheme.

I don't know what's going to happen in those three states, but I know this:

[Vouchers have never survived a statewide vote](#) by real, actual parents and other voters. It's why so much dark money has to get spent to ply legislators into backroom deals to ram these things through.

Second, there are the courts. Kentucky's voucher amendment is up for a vote in 2024 because back in 2022 the commonwealth's [supreme court saw through](#) the voucher scheme passed as a tax credit by a supermajority, right-wing legislature. The court noted, correctly, that the tax credit version of vouchers has

the same revenue impact as a direct appropriation, and that using public dollars collected for education to fund anything other than the public schools (without voter approval) was a constitutional no-no for the Bluegrass State.

Well, guess what? Just a few weeks ago, the South Carolina Supreme Court also rejected that state's voucher scheme. Never mind the marketing around giving voucher cash to parents, the court said, all of that is just "[window dressing](#)" for sending public dollars to private schools. Again, another state constitutional no-no.

Shoutout, by the way, to my amazing colleagues this year at Education Law Center and in the ELC-led Public Funds Public Schools campaign, who [were co-counsel](#) in the South Carolina case.

There's also Tennessee – another place ELC is co-counseling a voucher challenge – where [the courts held vouchers at bay](#) for several years. Though a geographically- and income-limited scheme exists now, the program [has yet to find legislative votes](#) to expand statewide.

And look, we know the U.S. Supreme Court's conservative members [keep blessing the](#) diversion of public funds to private and religious schools. We know the [end goal for Betsy DeVos](#) and [the Koch network](#) is a SCOTUS ruling making private education vouchers mandatory in every state.

But we also know they've got a ways to go. The SCOTUS term just started. And already the Court [declined to take](#) up a case from the right-wing Mackinac Center in Michigan that sought to crack open my state's 529 savings plan for use on private K-12 tuition.

And while voucher allies have [just asked the Court to hear](#) Oklahoma's Catholic charter school case – basically, they want SCOTUS to say religious public schools are A-okay – let's be clear about why they've had to appeal to the U.S. Supreme Court in the first place. That's because earlier this summer, Oklahoma's Supreme Court [threw that religious public school out](#) the legal window. Watch's ELC's [webinar](#) on the decision for more details.

(ELC is also [co-counseling](#) a separate case challenging the religious charter school, by the way.)

What do you notice? Kentucky, Oklahoma, South Carolina, Tennessee. A case still pending in Ohio. When you ask state courts to decide for themselves on the constitutions they know best – and when you ask state voters – turns out these voucher schemes just don't pass muster much of the time.

And that's important to remember because we know the other side claims the moral high ground, that they're speaking for parents. And more often than not, they try to claim the legal high ground, too.

Except it's not at all true. Real voters have yet to pass a voucher scheme, and the courts have often rejected voucher laws. Vouchers are batting pretty well with judges like Samuel Alito and John Roberts. But so did [ending reproductive rights](#) and granting broad presidential [immunity](#).

I have said for more than two years now that the school voucher issue specifically, and the Christian Right's privatization plans for education more generally, have passed the point of being credibly called effective public policy or a reflection of the "will of the people." The evidence is just too dreadful for us to really have that debate any longer.

And what we actually learn about vouchers comes as much from journalists and real parents shortchanged by the reality of failed voucher promises, as well as their legal advocates, as from researchers like me: outside of a few special interest groups fueled by right-wing billionaires, real parents and voters reject these schemes. Vouchers don't have to be a foregone conclusion.

Thanks again for reading and take good care.