

Susan Tebben: Ohio Capital Journal: Public school advocates claim victory as Ohio judge calls private school voucher program unconstitutional

Susan Tebben, wrote about Judge Page's ruling that the EdChoice voucher scheme in Ohio is unconstitutional, the responses she was given by various State officials and voucher proponents are amazing:

A spokesperson for the Senate President said, "The suit was a shameful case of bench-shopping from a radical organization that prefers to vilify parents and children who want a better educational environment than they have now." Wow! What an ignorant statement coming from the people's House. The Coalition plaintiffs did not shop for a judge. Judge Page was assigned to the case by the Franklin County Court of Common Pleas. Students who received the most recent batch of vouchers were never enrolled in public schools; thus, these voucher recipients have no clue regarding the efficacy of the public common school system.

Public School Advocates Claim Victory as Ohio Judge Calls Private School Voucher Program Unconstitutional

A Franklin County judge said Ohio's private school voucher program is unconstitutional in a ruling this week. Ohio Attorney General Dave Yost's office is planning an appeal of the decision.

The court granted a summary judgment, which is a ruling that comes from a judge without the need for a full trial in the case.

Franklin County Court of Common Pleas Judge Jaiza Page said the General Assembly has "exceedingly broad powers to tax, organize, administer and control the common school system," but those powers "do not include unlimited discretion."

The judge pushed back on private school voucher supporters' claims that the program is a subsidy program providing scholarships, rather than a separate system of schools.

The idea of the "EdChoice" vouchers as a scholarship program instead of a system of schools "is mere semantics," Page wrote, due to the fact that the state pays schools directly, rather than parents.

"More importantly, private schools participating in EdChoice receive substantially more state funding per student than public schools," Page wrote. "Where EdChoice participating private schools are inexplicably receiving double the per-pupil state funding than public schools, it is difficult to say that EdChoice is simply a scholarship that follows and/or benefits the students as opposed to a system that benefits private schools."

The state spent [nearly \\$1 billion on private school vouchers](#) in 2024 alone as near-universal eligibility was approved by the Ohio General Assembly.

The ruling rejected one of the claims from voucher opponents, an accusation that the voucher program created segregation in public schools as white students leave to attend private schools. The judge said no evidence of “discriminatory intent” was shown.

Though the judge ruled the voucher program unconstitutional, she allowed the program to continue “in recognition that this decision may cause significant changes to school funding in Ohio and the high likelihood that the parties will immediately appeal.”

Public school advocates praised the decision as not just a good one, but the constitutionally correct one.

“Any ruling different than the one we got would have been a horrific surprise and a mistake according to the constitution,” said William Phillis, executive director of the Ohio Coalition for Equity & Adequacy of School Funding, one of the leaders of the lawsuit.

A spokesperson for Senate President Rob McColley said the suit was “a shameful case of bench-shopping from a radical organization that prefers to vilify parents and children who simply want a better educational environment than they have now.”

A history lesson

The lawsuit was a constitutional challenge to Ohio’s private school voucher program. It started in January 2022, when opponents of the program filed their case in Franklin County, alleging violations of two clauses of the Ohio Constitution.

The first was a claim that the voucher program violated the requirement in the constitution that the state support a “thorough and efficient” system of public education, and the second claim alleged a violation of the state’s equal protection clause.

The case included an attempt to question Ohio House Speaker Matt Huffman back when he was the Senate’s president, about legislative measures to support the voucher program and the process of implementing the program statewide. Huffman [fought a subpoena](#) and argued he had nothing to share in a deposition, adding that legislative privilege protected him from such questioning.

The court allowed Huffman to avoid an in-person deposition, instead requiring him to submit to written questioning, a [decision he appealed](#) to the [Ohio Supreme Court](#).

Many Ohio school districts signed on to the lawsuit, including districts in Columbus, Cleveland Heights-University Heights, Richmond Heights, Huffman’s hometown of Lima, and Barberton. Individuals and parents of students also joined as parties to the lawsuit.

The schools and voucher opponents argued the funding that was being given as part of the program was taking away funding from public schools, who serve the vast majority of students in Ohio.

Page noted in her decision that in fiscal year 2022, more than \$300 million went to about 575 chartered non-public schools through the voucher program, and of the schools that received the funds, 154 were given voucher funds for 75% or more of their enrolled students.

The judge also brought up arguments from certain schools who joined the lawsuit, who said “inadequate funding” has caused lay offs or suspensions of teachers and staff, causing overcrowded classrooms and insufficient support.

Page said the amount of records in the case “is unquestionably voluminous,” with reference materials “from before Ohio’s statehood up to the General Assembly’s modification of EdChoice in (Ohio House Bill) 33,” the previous state budget bill.

The 47-page court decision included its own history of school funding legislation and legal battles, which included education debates at “the forefront of Ohio’s leaders’ decision-making during the (state) Constitutional Convention of 1850.”

Ultimately, out of that convention came the current language of the constitution, requiring the General Assembly to “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.”

Several state constitutional conventions attempted to change this wording, even proposing leaving out the “religious or other sect” language.

Delegates at an 1873 convention said removing the language on religious sects would “leave the Constitution so crippled that the various religious denominations may divide the common school fund among them, for the support of sectarian schools.”

“The moment we consent to do so, we deal the death blow to the system of common schools, upon which expanded and improved by increasing experience and wisdom, more than upon anything else ... depends the perpetuity and efficiency of our American institutions and government,” another delegate said in 1873.

‘School choice’

Private school voucher supporters, including Ohio’s legislative leaders and Gov. Mike DeWine, have argued Ohioans should be free to choose the school they want to send their students to, instead of being tied down to “underperforming” public schools in the area in which they live. The mantra of “school choice” is one that has sounded from Republican state leaders and federal GOP leaders alike.

In Tuesday's ruling, Page said the non-public schools who receive private school vouchers are largely religious, and are able to deny enrollment to students based on their own standards.

These schools aren't subject to anti-discrimination laws, Page wrote, therefore they can turn students away based on religion, sexual orientation or disability.

"By bestowing participating private religious schools with complete control over prospective students' participation, the 'school choice' here is made by the private school, not 'as the result of independent decisions of parents and students,'" Page wrote, citing previous case law. The Catholic Conference of Ohio released a statement expressing their disappointment in the ruling, but also emphasizing their confidence that the private voucher program "will prevail" on appeal.

"The Catholic Church will continue to advocate for and defend programs that support parents as the primary educators of their children and enable them to select a school that best suits their child's needs," the statement from conference Executive Director Brian Hickey said.

The heads of Ohio's education unions said the ruling was just a confirmation of what public schools have known already, "that Ohio's unsustainable and costly private school vouchers are draining public funds and preventing legislators from fully funding the quality public school education that every child ... is entitled to under the Ohio Constitution," as Ohio Federation of Teachers leader Melissa Cropper put it.

Ohio Education Association President Scott DiMauro said though he expects this ruling to be the first step in a longer process through appeals, the ruling "represents a huge victory for Ohio's public school educators, school communities and students."

"The work does not stop here," DiMauro said in a statement. "But I am confident this initial ruling will ultimately stand up through the appeals process, and Ohio can once again dedicate its resources fully to funding our public schools and ensuring all Ohio students can get the world-class education they deserve – no exceptions."

A request for comment from House Speaker Matt Huffman was unreturned as of Wednesday afternoon.