

Michael Curtin's essay published on the Opinion page of the September 28 Columbus Dispatch should be required reading for the Governor, members of the legislature, and the Ohio Supreme Court.

Michael Curtin begins his essay by noting that majority members of the Ohio Supreme Court embrace fidelity to originalist judicial philosophy (i.e.) to apply the law as written and understood at the time of adoption. He then cites the words of a delegate to the 1850/1851 Constitutional Convention in which the delegate explains (regarding the words of Article VI, section 2) that the whole religious community shall be forever excluded from any participation in the school funds of the state; and that because they are religious. Mr. Curtin cites another delegate who explained that every citizen will have the right to participate in the means of education; but the intention of the provision merely is that no organized body of Christians, as such, shall be entitled to lay its hands upon the school funds of the state, and appropriate it to the furtherance of their own particular view.

Mr. Curtin then reviews the history of public schools and how some religious leaders attempted, over the years, to tap into the public treasury for private religious education funding. Finally, Mr. Curtin reviews the current use of tax money for private religious education.

Those who receive this post should either read Mr. Curtin's article immediately or print it for reading at a later time.

Ohio didn't want to fund religious schools in 1851. Court must honor that.

Mike Curtin, 9.29.25

What were Ohio voters thinking on June 17, 1851?

What were they thinking as they entered polling places on the day of a special election to adopt a new state constitution to replace the original 1802 document?

What did they know and think about the proposed constitution's mandate that "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."

These questions are at the heart of a high-stakes case inching its way to the Ohio Supreme Court on the constitutionality of the EdChoice voucher program, which sends nearly \$2.5 billion in taxpayer money to private -- mostly religious -- schools in the state's current, two-year budget.

These questions are paramount because the court's majority (6-1) Republicans all profess fidelity to originalist judicial philosophy -- to apply the law as written and understood at the time of its adoption.

Ohio Supreme Court Chief Justice Sharon L. Kennedy vows: "As justices, we are required to faithfully, fairly and impartially uphold the law as written. We do not rewrite it or legislate from the bench."

Justice R. Patrick DeWine just wrote an article for the Ohio State Law Journal pledging adherence to "an original public meaning approach to the Ohio Constitution."

Justices must determine "what the public understood the words to mean when the constitution and its amendments were first approved," he wrote. The constitutional text "should always be the first consideration . . . and when that text is clear judges should stop right there. To assign any other meaning than the original understanding of constitutional text replaces the democratically enacted meaning with a judge-created meaning."

If justices need to understand the historical context in which a constitutional provision was adopted, DeWine wrote, "context can be gained from examining constitutional convention proceedings and other historical materials."

Referring to the constitution's education sections, DeWine wrote, "a study of the literature and history of the (common school) movement would likely be of use in understanding the public meaning" at the time of adoption in 1851.

An "original public meaning approach" is proper, DeWine wrote, because every provision of the constitution was approved by Ohio voters. If revision is desired, today's voters can be asked to approve an amendment.

The electorate, of course, is vastly different now. In 1851, voting was restricted to white men aged 21 and over who lived in Ohio for at least one year. Black men won the vote in 1870; women in 1920.

On June 24, Franklin County Common Pleas Judge Jaiza N. Page ruled the EdChoice program unconstitutional. Page agreed with DeWine's analysis, which she cited. Page also noted past Ohio Supreme Court rulings affirming the primacy of plain language interpretation.

Page quoted the plain words of delegates to Ohio's Constitutional Convention of 1850-51, who adopted language to ensure school funds of the state would be used solely to support common (public) schools.

On Dec. 5, 1850, delegate Samson Mason, a Clark County lawyer, explained the common-school language was intended to ensure "the whole religious community in fact shall be forever excluded from any participation in the school fund of the state; and that because they are religious."

Delegate Simeon Nash, a Gallia County lawyer, followed: "Every citizen has, and will have a right to participate in the means of education; but the intention of the provision merely is, that no organized body of Christians, as such, shall be entitled to lay its hand upon the school funds of the state, and appropriate it to the furtherance of their own particular views . . . It means merely that neither Presbyterian, the Episcopalian, or the Catholic church shall have the power to seize upon the public funds and appropriate them to suit itself."

The Ohio General Assembly understood the new constitutional prohibition and acted. On March 14, 1853, it approved "An Act to Provide for the Reorganization, Supervision and Maintenance of Common Schools."

The act established township boards of education, authorized management of school property, imposed a 2-mill property tax and mandated that school funds "be applied exclusively to the support of public or common schools."

The 1851 constitution and 1853 law ended a decades-long practice of allocating public funds to both private and public schools.

From statehood in 1803 until 1821, the most common type of school was the "subscription" or pay school, which most families could not afford. Ohio's first general school law, in January 1821, authorized but did not mandate local property taxes for schools.

In 1825, the General Assembly enacted the state's first general property tax, introduced the principle of taxing land according to its true monetary value, and imposed separate millage rates for the state's general revenue fund, the common-school fund and other funds.

The law set aside a half-mill tax for common schools and charged county officials with collecting the tax and distributing the proceeds to township school districts.

In the late 1820s and '30s, county officials distributed state and county property-tax proceeds to public and private schools alike. In his first annual report to the General Assembly, in January 1838, State Superintendent of Common Schools Samuel Lewis reported the state school fund supported 4,336 public schools and 2,175 private schools.

What drove delegates to Ohio's 1850-51 constitutional convention, and state legislators in 1853, to shut the door – a door that remained shut for the next 112 years – on using public funds to support private schools?

Between 1830 and 1850, as the common school movement gained wide support, Ohio experienced explosive population growth. Fueled by waves of German and Irish immigrants, Ohio's population more than doubled to nearly 2 million over those two decades.

Most of the Irish and a large percentage of the Germans were Catholics, posing a challenge to Ohio's long-dominant Protestant values and institutions. The common school movement was rooted in nonsectarian Protestantism, including moral instruction and Bible reading – usually the King James Version.

Nowhere was the clash of cultures more pronounced than in Cincinnati. With an 1850 population of 115,435, Cincinnati had become the sixth largest city in the nation -- nearly twice as large as Ohio's next five cities combined (Columbus, Cleveland, Dayton, Zanesville and Chillicothe).

By 1850, nearly half of Cincinnati's population was foreign-born. Immigrants were gaining political power, spawning resentment among the native-born. The cost of poor relief soared, prompting the *Commercial* newspaper to lament the city was "more cursed and more imposed upon by the emigration of paupers into it, probably, than any city in the Union."

No one spread anti-Catholic bias like Rev. Lyman Beecher, a prominent Presbyterian minister and president of Cincinnati's Lane Theological Seminary from 1832 to 1850.

Beecher preached and wrote that Catholics were more loyal to the pope than to the nation's elected leaders, threatening American liberties. He wrote the Vatican held "in darkness and bondage nearly half the civilized world."

Into this toxic political-religious environment, in 1832, arrived John B. Purcell, newly appointed bishop of the Diocese of Cincinnati, whose territory covered all of Ohio. In 1830, the diocese had 16 churches serving an estimated 35,000 Catholics. Purcell would lead the diocese for almost 50 years – a time of rapid growth of Catholic parishes and schools.

Since 1829, when the Cincinnati public schools were organized, the Protestant Bible – usually the King James Version – served as a textbook for moral instruction. Like the nation's other Catholic bishops, Purcell objected to requiring Catholic pupils to study it.

Purcell lobbied for public funds to support parochial schools. In 1851, Cincinnati had 13 parochial schools teaching nearly 4,500 pupils. Catholic schools also operated in Cleveland, Columbus, Dayton and other Ohio cities.

On June 17, 1851, most of Ohio's white male voters likely knew of the religion-fueled school battles. The 108 delegates to the 1850-51 constitutional convention, most of them Protestants, were keenly aware. The reason they drafted constitutional language to restrict public funds to public schools was no mystery.

In the first two decades of the 20th century, Catholic leaders tried and failed three times to persuade the General Assembly to provide public funds for parochial schools.

In 1933, in the depths of the Great Depression, with many teachers in Catholic schools working without pay, Ohio's four Catholic bishops made another appeal for public aid. At the time, Ohio's Catholic schools educated about 170,000 pupils.

Gov. George White voiced support. A special committee of the Ohio Senate studied creating an emergency fund for parochial schools. However, Ohio Attorney General John W. Bricker, a conservative Republican and future governor and U.S. senator, advised such support would be unconstitutional.

In his Aug. 17, 1933 opinion, Bricker wrote, “No authority exists in law for the diversion or use of the school funds of the state for the promotion or maintenance of private schools or for any purpose other than the establishment and maintenance of common or public schools.”

Such fidelity to the “original public meaning” of the constitution’s school-funding language, after 112 years, began to crack in July 1965. That’s when Gov. James A. Rhodes signed the “Fair Bus Bill,” requiring school districts to transport nonpublic school pupils living more than two miles from school.

Two years later, the legislature opened the door wider by passing a law providing a range of “auxiliary services” to students in nonpublic schools, such as counseling, special education, textbooks and equipment. The state’s current two-year budget provides \$342.5 million for these services.

Nearly three decades later, “original public meaning” suffered a more significant blow. On June 26, 1995, Gov. George V. Voinovich signed a new budget bill that included \$5.25 million for a voucher “pilot project” in Cleveland -- to help low-income students attend the city’s financially struggling parochial schools.

Since that modest start, Ohio’s voucher program has expanded into one of the nation’s largest, at well over \$1 billion annually. In 2023, the state legislature made it a universal system, making all K-12 students eligible regardless of family income. Last year, vouchers supported 585 of Ohio’s 725 chartered, nonpublic schools. About 90 percent of voucher schools have a religious affiliation.

Ohio House Speaker Matt Huffman, R-Lima, a voucher champion, now pushes a new subsidy -- state funds to private schools for building construction and renovations. He notes most private schools are in urban areas, making vouchers inaccessible to rural families.

For starters, the 2024-25 state budget included \$4.3 million for eight construction or renovation projects for Christian schools. “The capacity issue is the next big issue on the horizon for school choice,” Huffman said. “If there’s no place for you to go, then there’s no school choice.”

Ohio’s aggressive push for “school choice” has coincided with its retreat in sharing the cost of public education. Between 2002 and 2017, the state annually provided about 45% of state and local funds for public K-12 schools; it now provides about 37%, shifting more burden to local taxpayers. Ohio now ranks 45th among states in state share of K-12 funding, and leads the nation in the frequency of local school levies.

These trends prompted a coalition of Ohio school districts, in January 2022, to file a lawsuit challenging the constitutionality of the EdChoice program. The coalition includes more than half of Ohio’s 609 public school districts.

In her decision favoring the coalition, Judge Page noted that, on a per-pupil basis, private schools participating in the EdChoice program receive about twice as much state funding as public schools.

For example, in 2024 EdChoice vouchers provided up to \$6,166 for students in K-8 and up to \$8,408 for students in 9-12, while the state provided about \$3,800 per student in Columbus City Schools.

Page noted the Ohio Supreme Court’s 1999 *Goff* decision, which upheld the constitutionality of the Cleveland voucher “pilot project,” stated, “We fail to see how the school voucher program, *at the current funding level*, undermines the state’s obligation to public education.”

In the quarter-century since that decision, Page wrote, “the state has created “a second system of uncommon, private schools (that) could never be valid under Article VI, Section 2 of the Ohio Constitution.”

Ohio Attorney General Dave Yost soon will file the state's appeal of Page's decision in Franklin County's 10th District Court of Appeals. If his brief resembles the state's argument in Page's courtroom, it will argue the Ohio Constitution does not prohibit the state from supporting private schools chosen by parents for their children.

After the appeals court rules, the case undoubtedly will head to the Ohio Supreme Court. How will the court of public opinion judge whether the supreme court upholds “original public meaning” or imposes a “judge-created meaning?”

A supreme court ruling could be years away. Given the stakes, it might not be the final word. As Justice DeWine says, Ohio voters are the ultimate authority. If the state loses at the supreme court, the General Assembly can put the question to voters by a three-fifths vote of each house. If the coalition of school districts loses, it can use the initiative power to let the voters decide.

After nearly two centuries, Ohioans could well revisit a historic question: Should public funds be spent to support private schools?