

EdChoice Voucher Lawsuit Moving Toward a Favorable Outcome

Background

The EdChoice voucher lawsuit has taken some interesting turns and twists since it was filed January 4, 2021. The Court permitted two parties to intervene—the Institute for Justice, based in Virginia and Catholic Families based in Ohio. The intervenors slowed down the process in the trial court, which may have been beneficial to us as plaintiffs.

Along the way, Coalition attorneys attempted to depose the Speaker of the House when he was President of the Senate. He resisted the deposition by going to court. He lost in the trial court and appeals court, but the Coalition did not pursue the matter after he appealed to the Ohio Supreme Court. Coalition attorneys determined that continuing to pursue his deposition would not be worth the cost. They determined that any information he would reveal could be gotten elsewhere. As it turned out, we didn't need a deposition from him to win in court.

The Franklin County Court of Common Pleas Judge Jaiza Page set the trial for November 4, 2024, but then delayed the trial date. In April 2025 Judge Page held a two-day hearing on the Motions for Summary Judgment. On June 24, Judge Page, in a surprise ruling (without a trial), ruled the EdChoice voucher system unconstitutional on the basis of the 2-day hearing. Judge Page ruled in favor of the Coalition on three (counts 1, 2, and 4) of the five claims; thus, the EdChoice voucher system is unconstitutional. On count 3, the ruling favored neither side. She ruled in favor of the state on count 5, which relates to equal protection or fundamental right. The fact is that when the state pays \$8400 for a high school voucher student and \$2000 for a district high school student, a fundamental right issue surfaces.

The counts are:

- **Count 1:** The creation of one or more systems of uncommon schools is unconstitutional. Funding for the EdChoice private school voucher program comes from the same line-item in the two-year state budget that funds public schools. Each public tax dollar that goes to private schools is a dollar less for public schools. That's unconstitutional.
- **Count 2:** Lawmakers have failed to adequately fund a thorough and efficient system. Private school vouchers force local school districts to raise local taxes through levies to make up the reduction in state dollars. That's unconstitutional.
- **Count 3 :** Private school vouchers make segregation in public schools worse. Private schools take public tax dollars while applying litmus tests to pick and choose their students based on academics, athletics, disciplinary records, financial status, race, and religion. That's unconstitutional.
- **Count 4:** No religious or other sect shall ever have any exclusive right to or control of any part of the school funds of the state. It's there in black and white in the Ohio Constitution. More than 90 percent of private schools in Ohio are parochial with hundreds of millions of dollars going to sectarian schools. That's unconstitutional.

- **Count 5:** Ohio citizens hold all power under the Ohio Constitution. When we are successful, state lawmakers will not be permitted to fund the harmful private school voucher program or any other separate, but unequal system of schools. In other words, the state is funding voucher students and public school students differently. This is a violation of the equal protection clause in Article I, section 2 of the Ohio Constitution.

The state has appealed the trial court decision to the 10th District Court of Appeals. The Coalition has cross appealed on count 5. What and when the 10th District Court will rule is obviously not known.

Some possible outcomes from the 10th District Court of Appeals:

1. Uphold the trial court decision in full
2. Reject the trial court decision in full
3. Send one or more of the Plaintiff's claims back to the Common Pleas Court, ordering a trial on some or all counts

We believe our case is very strong going forward to both the 10th District Court of Appeals and the Ohio Supreme Court. The Ohio Constitution is very clear in terms of the state's responsibility to secure a thorough and efficient system of common schools and the state's responsibility to prohibit the use of school tax funds by religious or other sects. Michael Curtin's essay published by the Columbus Dispatch on September 28 provides an excellent read on this matter.

Mr. Curtin points out in his essay that the current make-up of the Ohio Supreme Court tends toward the originalism judicial philosophy. (Originalism bases constitutional, judicial, and statutory interpretation of text on the original understanding of the words at the time of adoption.) If the members of the Court are true to their philosophy, our case should get a fair hearing at the Ohio Supreme Court.

There are two types of courts in which we must win—the court of law and the court of public opinion. Our very competent attorneys are working hard to win in the court of law. The rest of us need to be working equally hard to win in the court of public opinion.

During the DeRolph school funding case, we won in the court of public opinion before the Ohio Supreme Court ruled in the Coalition's favor. Highlighting the decrepit school facilities and the inadequacies in education programs and services in lower wealth school districts helped the general public understand and side with our cause. An advantage we had in the DeRolph litigation era was that 580 boards of education joined the Coalition. This broad-based involvement informed the public in the various school communities all across the state.

As of October 22, 2025, 326 Boards of Education have paid Coalition dues one or more years since fiscal year 2021. Although it is somewhat encouraging that so many Boards of Education have joined the litigation effort, a greater buy-in by Boards of Education would be extremely helpful.

It is imperative that those boards that have joined continue to re-up every year and non-members be added ASAP.

Our quest for additional Coalition membership must involve concerned citizens— citizens that understand the role of the public common school system in our democracy. The public common school and democracy are interdependent. This mutual exclusivity is well documented and was understood by our founding fathers. They realized that democracy would fail without the provision of a tax-supported, compulsory, public common school system.

The EdChoice voucher litigation relates to the preservation of the public common school system. Unfortunately, many folks, even within the public education community, do not comprehend the nexus between democracy and compulsory public education via the common school system.

In years past, public school opponents were not open about their schemes to eliminate the public common school system. Now, as cited in the October 8 [ProPublica article](#), many public common school opponents are saying out loud what their real goal is: to eliminate public education.

A sample from a recent [ProPublica article](#):

Lindsey Burke, with The Heritage Foundation: “I’m optimistic that, you know, five years from now a majority of kids are going to be in a private school choice program.” And “If American’s public schools cease to exist tomorrow, America would be a better place.”

Tiffany Justice, with the Heritage Foundation, when asked the question regarding the percentage of students that should be in public school going forward replied: “I hope zero. I hope to get to zero.”

The Vouchers Hurt Ohio challenge to the constitutionality of the EdChoice voucher program is essentially an effort to save the public common school. It is heartening that nearly 325 boards of education have signed on to this effort for one or more years, but at the same time, disheartening that the other boards of education are sitting on the porch merely watching the support-public education parade go by.

In our quest to win this case in the court of public opinion, we must also engage public education activists who are willing to confront state politicians at the local level with the harm vouchers are causing. Legislators often talk a good game about their support of public education at the local level, but they vote for vouchers and anti-public-school legislation handed down by their party leadership. Politicians need to be held accountable by their constituents in the face of their voucher-loving party leaders.

The key to winning in the court of public opinion is to inform those not familiar with how vouchers hurt Ohio and energize those who know the consequences of EdChoice vouchers and are willing to act on our behalf.