

**January 11 Cleveland.com article: Fight over Ohio's private school vouchers far from over, with next round in court due soon.**

The Cleveland.com [article](#) provides an objective view of the positions of the Plaintiffs and Defendants in the EdChoice voucher lawsuit.

Notwithstanding the legal arguments, the bottom line in lay terms is that Article VI, section 2 requires the State of Ohio to secure a thorough and efficient system of public common schools (which the State has failed to do) and forbids any religious or other sect or sects, "to ever have any exclusive right to, or control of any part of the school funds of this state."

Simply stated, the state legislature has the responsibility to provide a thorough and efficient system of common schools and to keep the tax money away from any and all sects, religious or otherwise.

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COLUMBUS, Ohio - A deadline looms in the battle over whether private school vouchers are, in fact, unconstitutional, as a judge decided six months ago.

The Ohio 10th District Court of Appeals on Monday expects briefs from the state, organizations representing private school families, and a coalition of over 100 school districts and public school families.

At stake is how \$1 billion in education funds annually can be spent. After the briefs are filed, the case will be set up for arguments before the 10th District judges, based in Columbus.

Regardless of how the Democratic-controlled appellate court in Columbus decides, the case is almost certainly headed to the Ohio Supreme Court, which is dominated by Republicans.

The arguments each party must submit Monday are "reply briefs," which are expected to critique and shred the opposite side's positions.

It's the latest turn in the protracted battle over the fate of Ohio's two largest voucher programs, which serve 127,000 students and cost the public \$1 billion a year.

The state and private school families want the appellate court to reverse the trial-court ruling and declare vouchers constitutional. The coalition of school districts, [which mostly prevailed in the trial court](#), still maintain vouchers are unconstitutional, but is appealing one count on which it lost in the trial court.

After the briefs are all filed, eventually the case will be up for arguments before the 10th District judges.

Whichever school funding system ultimately prevails will get the public money, meaning the losing system could be diminished. This is the primary argument by the public school coalition.

The state, represented by Ohio Attorney General Dave Yost, begins its appeal by saying the public schools' idea that education is a "zero-sum game" is incorrect.

"That is, they claim that any funding for other options deprives them of funds to which they are uniquely entitled," Yost argues. "But nothing links these particular programs in budgeting any more than they are linked to spending on colleges, Medicaid, or highways."

But the school district coalition found examples of public school districts that get less per student in state funding than the value of the voucher.

“Despite the Constitutional mandate to support public education, the state’s funding mechanisms clearly favor private schools,” its appeal states. “This results in harmful and damaging outcomes for Plaintiff Students and other public school students throughout the state.”

### **Decision under appeal**

On June 24, [Franklin County Common Pleas Judge Jaiza Page, a Democrat, mostly agreed](#) with the school districts that vouchers hurt public schools by taking state funds that should be directed at public schools. She put her decision on hold, allowing vouchers to continue, while the case is appealed.

The school districts and a group of public school families sued the state in 2022. Ohio offers five voucher programs, costing around \$1 billion a year, from which families can get scholarship money.

The lawsuit focused on two of them: traditional EdChoice, which is for families who live in the boundaries of a poorly performing public school district, and EdChoice-expansion, which began as a program offering scholarships to lower- and middle-class families, based on income. EdChoice-expansion has grown in recent years to include families of all income levels.

EdChoice scholarships are \$6,166 for kindergarten through 8<sup>th</sup> grade and \$8,408 for high school students.

Key to the appellate court’s decision will be its interpretation of [Article VI, Section 2](#) in the Ohio Constitution, which states the General Assembly “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.”

Here’s a look at the arguments.

### **State’s appeal**

The state argues that the Ohio Supreme Court has twice upheld school choice programs as constitutional.

“Ohio’s voucher or ‘EdChoice’ program descends from the school-voucher program started in the 1990s, expanded and named EdChoice in 2005, to provide parents and students with educational choices, especially for families in failing school districts, first in Cleveland and then around Ohio,” states the appeal submitted by Yost.

The state says the legislature sets voucher and public school funds separately, and public school funding has increased.

On religious schools, the state says EdChoice does not give any religious group exclusive control over public funds, since scholarships are awarded based on parental choice.

“These words do not bar the State from sending funds on students’ behalf to religious schools that parents choose,” the state argues.

The state and two groups of private school families are asking the appeals court to reverse the lower court’s decision and allow EdChoice to continue.

The state has requested the appellate court schedule a hearing to argue these and other points.

### **School district coalition**

The coalition appealed the one count it lost, arguing the state allocates thousands more per student for private schools than for some public schools, in violation of the Ohio constitution’s equal protection guarantees.

In the 2023-2024 school year, students in Richmond Heights Local School District received \$1,530 in state funding. Students in Cleveland Heights-University Heights City School District received \$2,600. That's far less than what EdChoice students in grades K-8 received, \$6,166, and high school students got, \$8,408.

The districts argue this disparity is unjustified and discriminatory, and that public school students should not have to leave public education to receive equal treatment.

"The state must treat similarly-situated individuals equally, unless compelling or, at the very least, rational and legitimate reasons justify differential treatment. No valid reason—much less a compelling one—justifies allocating 3–4 times more in taxpayer dollars per student to private schools than to public schools," the districts argue.

### **Private school families**

Two appeals were filed by parents of private school students. One group represents Catholic school families, and the other is represented by the Institute for Justice, based in Arlington, Virginia, and EdChoice Legal Advocates, based in Indianapolis.

The Catholic school families argue EdChoice is constitutional and that public and private school funding formulas are separate.

"Whether the state issues the check to the parents ... or the state issues a warrant directly to the private school ... the fact is no money flows to a private school without there first being an independent decision of a parent to apply for and utilize the scholarship program," the Catholic families argue.

Families represented by the Institute for Justice argue EdChoice is a scholarship program, not a system of private schools, one of the allegations the school district coalition made in its original lawsuit.

"The General Assembly could not have been clearer when it established the EdChoice Program that it was creating 'scholarships to attend chartered nonpublic schools' for Ohio families—not a private school system," the appeal states.

They say that barring scholarships for private or religious schools could violate federal protections for religious freedom and parental rights.

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