

Premier blogger Jan Resseger provides some reviews of press coverage of the May 12, 10th District Court of Appeals hearing on the EdChoice voucher scheme.

In general, it seems that by way of the press coverage of the EdChoice voucher hearing, the State had a bad hair day before the 10th District Court of Appeals.

[Appeals Court Judges Question Constitutionality of Ohio's EdChoice Vouchers](#)

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On Tuesday, May 12, 2026, Ohio's 10th District Court of Appeals heard an appeal of last year's Franklin County Court decision that Ohio's universal EdChoice school vouchers are unconstitutional.

The *Plain Dealer's* [Laura Hancock reports](#): "Ohio 10th District Appellate Judges Kristin Boggs, David Leland, and Shawn Dingus—all Democrats—heard arguments Tuesday from the plaintiffs, a group of 330 school districts and public school families, and defendants, the state and a group of private school families, about why a Franklin County Trial court judge erred in June 2025."

History of the Vouchers Hurt Ohio Lawsuit

On Tuesday, the justices heard the state of Ohio's appeal of a case decided not quite a year ago, when, on June 24, 2025, Franklin County Judge Jaiza Page found Ohio's EdChoice and EdChoice Expansion state funded private school tuition vouchers unconstitutional under [Article VI, section 2 of the Ohio Constitution](#):

"The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, 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."

The original [Vouchers Hurt Ohio lawsuit was filed in January of 2022](#) by over a hundred public school districts, a group of parent plaintiffs, and the Ohio Coalition for Equity and Adequacy of School Funding, whose executive director, [Bill Phillis explains](#) the three counts on which Judge Page, in 2025, ruled Ohio's EdChoice school vouchers unconstitutional:

- "Count 1: The creation of one or more systems of uncommon schools is unconstitutional."
- "Count 2: Lawmakers have failed to adequately fund a thorough and efficient system."
- 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."

Phillis adds that Judge Page ruled for neither side on a third count, that school vouchers intensify racial segregation in Ohio's public schools. On a fifth count, Page ruled for the state, that the vouchers violate equal protection (Article 1, Section 2) due to the state's "funding private school voucher students and public school students differently."

Last summer, the *Plain Dealer's* [Laura Hancock reported](#) that Judge Page, "concluded that EdChoice constitutes a state-supported system of 'uncommon schools' and granted summary judgment in favor of the plaintiffs." The plaintiffs had shown myriad ways vouchers have depleted state revenue and contributed to the state's inability fully to fund the phase-in of the Fair School Funding Plan, thereby undermining the rights of the majority of Ohio children and adolescents who are enrolled in the public schools.

The *Dayton Daily News's* [Eileen McClory adds](#) one more detail to provide context for Tuesday's oral arguments: "Ohio's voucher system, called EdChoice, will serve about 171,000 Ohio students this school

year, according to data from the Ohio Department of Education and Workforce. This system cost the state roughly \$1 billion in 2023 and has paid about the same amount of money each year since. Most of Ohio's students—more than 1.46 million—are enrolled in traditional public schools, according to the same data.”

This Week's Oral Arguments

Appellate judges listened to arguments from plaintiff school districts' attorneys as well as the state's attorneys and posed questions for the attorneys for both the plaintiff school districts and the attorneys defending the state's voucher program. A group of private school families who use the vouchers were also represented by Keith Neely of the far-right [Institute for Justice](#), the same law firm that represented the state's smaller Cleveland voucher program in *Zelman v. Simmons Harris* at the U.S. Supreme Court in 2001, and the same firm that has litigated several Supreme Court cases challenging the First Amendment protection of the separation of church and state.

[Laura Hancock reports](#) on one important interchange during this week's 10th District Court of Appeals hearing when Appellate Judges Shawn Dingus and David Leland questioned whether vouchers protect the rights of all children by providing a real choice for Ohio families or whether the private schools themselves have the choice: “Dingus provided a hypothetical example of a family with gay parents living in a rural area with only one private school. The school could decline the student admission, he said.” Hancock continues, quoting Judge Leland: “All the parents do is apply to private schools,... The schools are the ones who make the choice. They're the ones who decide. Unlike a public school... the public schools have to take everybody. That's the requirement in public education so that everybody in society would have an equal opportunity to get a good education.” Hancock then describes the response from the state of Ohio's attorney: “Stephen Carney, an appellate lawyer with the Ohio Attorney General's office, argued that parents nonetheless have a choice in applying. That's why it's considered school choice, he said.”

The Statehouse News' [Karen Kasler](#) reports on a comment after the oral arguments had concluded from Mark Wallach, one of the attorneys for the Vouchers Hurt Ohio plaintiffs: “The schools' argument is grounded in Article VI, Section 2 of the Ohio Constitution, which 'requires the General Assembly to secure a thorough and efficient system of common schools'... The issue here isn't about choice. It's education... The school systems exist not to provide choice. They exist to provide education so we have educated citizens... That's what gets lost with all of this nonsense about choice... The students can only decide to apply. The schools decide who they want to take.”

WEWS TV reporter, [Morgan Trau describes](#) another issue that was discussed—data confirming that most families accepting EdChoice vouchers had already been sending their kids to nonpublic schools. Trau describes appellate Judge David Leland demanding that Ohio Deputy Solicitor General Stephen Carney justify the vouchers: “What's the purpose, counselor, of having an admission policy where students who can afford private tuition to private schools are nonetheless subsidized by Ed Choice vouchers?” Here is Carney's response: “Well, it's to provide choice to parents.”

Hancock describes another attorney for the plaintiff school districts, Miriam Fair, who explained during the formal oral arguments that across the state, the per-pupil amount of each state-funded private school tuition voucher is more than the per-pupil amount the state school funding formula awards that student's public school district in per-pupil public school funding. Fair provided two examples from among the plaintiff districts: “In the 23-24 school year, Richmond Heights Local School District received \$1,530 in state funding per student. Cleveland Heights-University Heights City School District received \$2,600 per student. That's far less than what the state provides in EdChoice vouchers for students in grades K-8 (\$6,166) and high school (\$8,408).” Fair argued that the state's diversion of revenue from public school districts harms those districts and the rights of their students.

The state has always contended that, because the parents receive the vouchers and make the decision to enroll their children in religious schools, the state itself is not violating Article VI, Section 2 of the Ohio Constitution by awarding state funds to religious institutions. Hancock quotes the plaintiff's attorney Miriam Fair explaining to the appeals court judges: "When private schools receive voucher checks from the state, 'they deposit them into their accounts without any mandatory parental involvement whatsoever... And then, of course, the private schools are the ones that decide how these funds are used.' "

It would appear from the questions asked and the comments by the appeals court judges at this week's oral arguments, that the 10th District Court of Appeals will uphold Judge Jaiza Page's decision that Ohio's EdChoice vouchers are unconstitutional. Politics matters in Ohio right now, however. Despite the explicit language in the Ohio Constitution's Article VI, Section 2, we'll need to remember that the judges on the 10th District Appeals Court are all Democrats, and the case will now be appealed to the Ohio Supreme Court, which is dominated by a six to one Republican majority.