

State defendants are powerless to prove that the EdChoice voucher plan passes constitutional muster: Part 4

A review of public education laws and practices indicates that public education improvements arose mostly from the local public education community. On page 4 of the 1852 annual report of the Secretary of State on the Condition of Common Schools of the State of Ohio, the Secretary noted: "There is a general concession of all hands that our present school laws are poorly calculated to meet the high expectations of the people." It is no wonder that numerous delegates to the 1850/1851 Constitutional Convention lamented that the legislature had seriously neglected the public common school system.

Article VI, section 2 of the Ohio Constitution, drafted by the Convention and approved by the people, changed the trajectory of common school education in Ohio. In his second Annual Report, H.H. Barney addressed the objective of "common school" stating:

"We now think and speak of common schools as lawyers are accustomed to mention common law—not as limited or insignificant in scope or importance-but as the 'birthright' of the youth of the commonwealth, free to all and denied to none. It has become the laudable purpose, both of government and people, to supply to the rising generation from infancy to majority-or from the ages of five to twenty-one-the opportunity for mental improvement and the acquisition of useful knowledge: nor of course, with such an arm, can the schools of the people be suffered to fall behind the contemporary standard of instruction."

HH Barney discusses the second part of Article VI, section 2 which is consistent with the concept of separation of church and state, "which is so vital an element of our Republican system." (Page 11)

Barney discusses the difference between American and European constitutions. He states "...where the ruler is the head of the church, a public system of instruction could not well avoid becoming ecclesiastical. But therein is precisely where our American constitutions preclude the analogy between our public schools and those in Great Britain, France or Germany." (Page 12)

Those who crafted and implemented Article VI, section 2 of the Ohio Constitution understood clearly that the State's responsibility was to secure a thorough and efficient system of common schools and that the State had no constitutional authority to fund private religious schools or any private schools.