



VIEWPOINT

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Ohio Supreme Court Should Not Interfere with Ohio's Community Schools

By: David J. Owsiany

Summary

Ohio's charter school system is entirely consistent with the Ohio Constitution's broad grant of authority to the legislature and it gives parents choices to ensure their children get the education that meets their needs. The Ohio Supreme Court should not interfere with those choices.

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Last month, the Ohio Supreme Court heard oral arguments in a case challenging the constitutionality of Ohio's charter school law. A coalition of teacher unions and school districts argued that the law providing for charter schools—"community schools" as they are known here—violates the Ohio Constitution by diverting money from traditional public schools.

Last week, the teacher unions claimed the Florida Supreme Court's recent decision invalidating a school voucher program in Florida supports their argument. That court considered whether Florida's statewide voucher program, which is very different from Ohio's community school program, was consistent with the Florida Constitution. The Florida Supreme Court's interpretation of its own state constitution, however, will have no impact on Ohio's community schools.

The Ohio Constitution provides that "The General Assembly shall make such provisions, by taxation, or otherwise, as . . . will secure a thorough and efficient system of common schools throughout the state."

For nearly a decade, Ohio's primary and secondary education program was tied up in litigation over whether its method of funding schools was consistent with this "thorough and efficient" clause. Ultimately, in the 2003 case *DeRolph v. State IV*, a majority of the Ohio Supreme Court concluded that "the duty" to develop an education system in Ohio "lies with the General Assembly."

The provision granting the General Assembly the authority to create "a thorough and efficient system of common schools throughout the state" was adopted at Ohio's Second Constitutional Convention of 1850-51. It is clear that the delegates at the convention intended to give wide latitude to the legislature in adopting a program for the education of school children in Ohio.

Samuel Quigley, a delegate from Columbiana County, argued that "all that was necessary" was to include in the Constitution a provision granting "to the legislature" the authority to raise funds "by taxation" and "to carry out in detail" provisions for "a good and efficient system of Common School Education." William Hawkins of Morgan County agreed and summed up the argument for a majority of the delegates when he stated: "enjoin upon the legislature the duty of establishing an efficient system and we shall have done our duty."

Clearly, the Ohio Constitution gives broad authority to the General Assembly to establish an education system. The teacher unions, which contend that community schools take resources away from traditional public schools, fundamentally misunderstand that community schools are a part of the system of common schools the General Assembly established under its broad grant of authority from the Ohio Constitution.

Community schools are public schools, run by non-profit organizations. They are publicly funded and open to all students. They must hire state certified teachers and may not charge tuition. State law specifically defines a “community school” as “a public school, independent of any school district,” that is “part of the state’s program of education.”

The act of the General Assembly in creating different options within the public education system, including community schools, is exactly what the founders of the American system of government envisioned. The U.S. Constitution specifically limits the federal government’s reach to enumerated powers, preserving for the states the authority to explore public policy solutions. The Ohio Constitution’s broad grant of education authority empowers the legislature to explore innovative solutions, including a system of common schools that provides for traditional public schools as well as community schools.

The teacher unions argue that Ohio’s community schools do not perform as well as traditional public schools. While such arguments have no bearing on the constitutionality of community schools, analysis of proficiency test data shows the claims are false.

In a recently released policy brief, the Buckeye Institute undertook the first ever rigorous statistical analysis of community schools in Ohio. Buckeye Institute researchers Matthew Carr and Sam Staley compared traditional schools with community schools within their boundaries, controlling for demographic and school-based variables. Using the results of the Ohio Proficiency Test, they examined the gains made in passage rates between 2002 and 2004. Their conclusion was that “in all cases charter schools performed as well or better than traditional public schools.”

It is clear that community schools provide education opportunities that enhance student performance, which is why more than 60,000 students are now enrolled in Ohio’s nearly 300 community schools.

The Ohio General Assembly has chosen to create an education system that provides for traditional public schools, and other options, including community schools. This system is entirely consistent with the Ohio Constitution’s broad grant of policymaking authority to the General Assembly and it gives parents choices to ensure their children get the education that meets their needs. The Ohio Supreme Court should not interfere with those choices.

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(David J. Owsiany is the senior fellow in legal studies for the Buckeye Institute for Public Policy Solutions in Columbus, Ohio. More information on educational issues is available at www.buckeyeinstitute.org. Permission to reprint in whole or in part is hereby granted, provided the author and his affiliation are cited.)

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