



VIEWPOINT

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Ohio Supreme Court Right to Uphold Charter Schools

By: David J. Owsiany

Summary

Last week, the Ohio Supreme Court upheld the constitutionality of Ohio's charter school law. In doing so, the court properly recognized that educational policy decisions are the purview of the legislature, not the courts.

Main text word count: 680

The Ohio Supreme Court recently upheld the constitutionality of Ohio's charter school law. The court's decision is not only good for Ohio's schoolchildren but also a positive sign that Ohio's highest court understands its role is not to dictate education policy from the bench.

For about two decades, from the 1980s until 2003, a four-person majority of the seven-person court engaged in brazen judicial activism, transforming themselves into super-policymakers by striking down laws that they disagreed with personally, under the guise of constitutional interpretation. The court blocked legislation, passed by the General Assembly and signed into law by the governor, that would have reformed the workers compensation system and the out-of-control personal injury lawsuit system. The court even struck down Ohio's system of school funding on three separate occasions, forcing the General Assembly to meet the mandates of four members of the court instead of exploring avenues of meaningful reform for the state's education system.

In recent elections, Ohio voters, disturbed by the court's activism, elected justices who pledged to act with restraint on the bench, and a new majority emerged on the court with a more traditional judicial philosophy. This new majority understands that in the American system of government, the legislature is charged with setting public policy via the lawmaking function and the executive branch is charged with executing the laws. The role of the judiciary is to apply the law in a neutral fashion consistent with the state and federal constitutions. The new majority first showed its commitment to restraint in 2003 when it ended the decade-long school funding litigation. It held that "the duty" to develop an education system in Ohio "lies with the General Assembly."

The new majority reiterated its commitment to restraint last week when it upheld the constitutionality of Ohio's charter school laws. The court's majority concluded that "[t]he General Assembly is the branch of state government charged by the Ohio Constitution with making educational policy choices for the education of our state's children." The majority concluded that the justices' personal "educational policy choices are not relevant" in determining the constitutionality of charter schools.

The Ohio Constitution gives the General Assembly the authority to create "a through and efficient system of common schools throughout the state."



The Ohio Supreme Court reiterated its commitment to judicial restraint when it upheld the constitutionality of Ohio's charter school laws.

Source: Supreme Court of Ohio

The Ohio Supreme Court recognized that the Constitution's broad grant of authority empowers the legislature to explore innovative solutions to Ohio's educational challenges. One solution pursued by the General Assembly was to create a system of common schools that provides for traditional public schools as well as charter schools.

Former state representative Sally Perz, who sponsored the legislation creating charter schools in Ohio, points out that when the charter school law was enacted in 1997, the traditional public school system was dysfunctional, with high dropout rates and low academic achievement scores. She concluded that pouring increasing amounts of money into such a dysfunctional system was not going to help parents or students. She then got the legislature to incorporate competition into the public school system by providing for charter schools.

Charter 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. Today, more than 60,000 students are enrolled in Ohio's nearly 300 charter schools.

A recent Buckeye Institute study of proficiency test score gains from 2002 to 2004 shows that charter schools perform as well as and, in some cases, better than traditional public schools. Additionally, the competition from charter schools has forced traditional public schools to be more responsive to the needs of students and their parents.

Perz recently noted that "competition has moved districts to make better decisions and continues to give thousands of Ohio's children and families new opportunities for academic achievement and hope for a brighter future."

By enacting the charter school law, the General Assembly provided competition and choice in Ohio's education system and in doing so made all public schools better. Last week, the Ohio Supreme Court properly recognized that such innovative educational policy decisions are the purview of the legislature, not the courts.

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