



We've Been Here Before: Charter School Opponents Use Same Legal Arguments and Lose Every Time

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Executive Summary

In November 2012, Washington state voters became the first in the country to approve a public charter school law by a ballot initiative. Initiative 1240 authorized the creation of 40 charter schools over the next five years beginning with the 2014 school year. Forty-one states and the District of Columbia already have public charter schools. More than 6,000 charter schools are educating more than two million children nationwide; and one million names remain on charter school waiting lists nationwide.

Just months after I-1240 passed, charter school opponents filed a lawsuit in state court to block the law from being implemented, saying it violates the state constitution in several ways. This is not the first time charter school opponents have taken their policy disputes to court when they haven't been successful convincing legislators or voters to oppose charter schools. In fact, over the past 15 years arguments similar to those made by Washington charter school opponents have been tried in other states with charter schools, and they have failed every time. From California to Ohio to New Jersey, the same constitutional claims raised in this case have been rejected by state courts of appeal and state supreme courts.

This paper explains when and where these constitutional claims have been made, what the respective outcomes were, and how the lessons learned from these cases can – and should – be applied to this constitutional challenge. In Washington, charter school opponents are making six arguments, each of which has been found lacking in another state with a similar constitutional provision.

1. According to the opponents, Washington charter schools do not qualify as “common schools” because they are not subject to the control of voters in a school district.

Fact: Washington’s charter school law was enacted by voter-initiative, the most fundamental form of voter control there is. Moreover, Washington’s constitution shares many similarities with those in Ohio, Michigan, California, and Colorado, where similar constitutional challenges were raised and rejected. The Washington constitution plainly makes room for public charter schools as part of the broader public education system.

2. According to the opponents, charter schools aren’t part of the state’s required “general and uniform” school system because they are exempt from certain educational requirements imposed on traditional schools and therefore do not uniformly offer every child the same advantages.

Fact: Similar arguments have been raised and rejected in Colorado, California and Ohio. Washington’s charter school law, like those around the country, allows for certain flexibility in the educational process. At the same time, charter schools are subject to most of the same requirements as traditional public schools, including providing the “basic education” established by statute, hiring certified teachers, administering the statewide student proficiency exams, and satisfying performance goals adopted by the state board of education.

3. According to the plaintiffs, because the Washington Supreme Court previously held that the state’s school funding system as a whole is insufficient, any diversion of school funds to charter schools, while still part of the public school system, violates the state’s “paramount duty” to provide adequate funding for public education.

Fact: Like in Ohio and New Jersey, Washington's charter schools do not undercut the state's duty to adequately fund public education. Rather, charter schools, as part of the state's public education system, are further evidence of the state's *commitment* to public education. Charter schools don't reduce money to the public school system. The money is simply moved to the public charter schools students attend.

4. Opponents contend Washington's Charter Schools Act unconstitutionally delegates the legislature's "duty" to non-elected boards by failing to provide sufficient educational standards for charter schools.

Fact: Two states have faced, and in turn rejected, a similar argument. As in California and New Jersey, Washington law puts tight boundaries around the flexibility given to charter schools by imposing many of the same mandates on charter schools as it does on traditional district schools.

5. According to plaintiffs, the charter school law creates a class of public schools under the authority of the Charter Commission, rather than the Superintendent, making the law unconstitutional.

Fact: Here, too, state courts in Michigan, Utah, and California have found similar arguments meritless. As a part of the public schools system, and as the Charter Schools Act expressly provides, Washington charter schools are subject to the Superintendent's supervision.

6. Opponents contend that Washington's Charter Schools Act unconstitutionally mandates using funds from local school district levies for purposes not approved by voters—namely, to support charter schools.

Fact: The Charter Schools Act allows Washington charter schools to receive local levy funds. In every circumstance, these levy funds would only go to their voter-approved purpose.

If Washington state courts follow the patterns of their peers, Washington will join 41 states and the District of Columbia in opening charter schools. Nothing in the Washington constitution bars the use of public charter schools to enhance the state's current public school system. With charter schools around the country demonstrating such a tremendous track record serving disadvantaged students, Washington families will ultimately benefit from Washington courts adhering to case law from states with similar constitutions.

Introduction

The state constitutional challenge to Washington's new voter-approved charter school law, *League of Women Voters of Washington v. State of Washington*, No. 13-2-24977-4 SEA (King County), is not the first time charter opponents have taken their policy disputes to court, seeking to scuttle charter schools on state constitutional grounds. And in every similar prior effort, the charter school opponents have failed, their constitutional claims rejected by state appellate courts around the country, from California to Ohio to New Jersey.

The challenge to Washington's charter school law shares many similarities to constitutional challenges in other states, which date back more than 15 years. Charter schools have been deemed constitutional in every similar instance. Given the similarities in legal arguments and state constitutional provisions between this case and prior unsuccessful challenges, the Washington courts have before them a clear roadmap for declaring charter schools constitutional.

Washington's charter school opponents raise six constitutional arguments. As explained below, each has been rejected by other state appellate courts. The same should be true here. Simply put, the Washington constitution does not provide charter school opponents with a constitutional basis for enforcing what, at bottom, are nothing more than outdated preferences for public education.

Charter Schools Are “Common Schools.”

Plaintiffs first argue that Washington's voter-approved Charter School Act is unconstitutional when measured against the Washington constitutional requirement in Article IX, § 2, that the common school fund and the state tax for common schools be used exclusively for “common schools”:

The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

According to the opponents, Washington charter schools do not qualify as “common schools” because they are not subject to the control of voters in a school district. Several states have rejected similar “common schools” challenges to public charter schools. Ohio's constitution, for instance, requires that the legislature provide for “a thorough and efficient system of common schools throughout the state” *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn.*, 111 Ohio St. 3d 568, ¶ 24 (Ohio 2006) (emphasis added). As in Washington, opponents in Ohio argued that charter schools run by unelected boards were not subject to uniform statewide standards and thus did not qualify as common schools. *Id.* at ¶ 25. Citing the legislature's “authority and latitude to set the standards and requirements for common schools, including different standards for [charter] schools,” the Ohio Supreme Court held that the legislature constitutionally classified charter schools as common schools. *Id.* at ¶¶ 29, 34. Far from violating constitutional commands, the General Assembly instead “augmented the state's

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public school system . . . by providing for statewide schools that have more flexibility in their operation.” Id. at ¶¶ 30, 32. As to the authorization of unelected boards to govern the schools, the Court rejected the argument that school district residents must be able to vote on the members and organization of any school board operating in their community, explaining that “the Ohio Constitution does not prevent the General Assembly from creating additional schools that are located within city school districts but are not part of the district.” Id. at ¶¶ 43, 47.

The California Court of Appeals reached a similar conclusion. Similar to Ohio and Washington, the California constitution requires the California legislature to “provide for a system of common schools by which a free school shall be kept up and supported in each district” *Wilson v. State Bd. of Edn.*, 75 Cal. App. 4th 1125, 1134 (Cal. App. 1st Dist. 1999). In the face of arguments that California’s charter schools violated this command, the California court of appeals held that charter schools are indeed “common schools,” as that term is used in the state constitution. The “Constitution vests the Legislature with sweeping and comprehensive powers in relation to our public schools, including broad discretion to determine the types of programs and services which further the purposes of education.” Id. at 1134-35 (citations omitted). Charter schools satisfied the common schools requirement because the legislature created them as free schools open to all students, subject to statewide educational standards. See id. at 1137-38.

Similarly, the Michigan Supreme Court rejected an argument that Michigan’s charter schools did not satisfy the “public elementary and secondary schools” requirement in the Michigan constitution. *Council of Orgs. v. Governor*, 455 Mich. 557, 572-73 (Mich. 1997). The Michigan plaintiffs argued that because charter schools in the Wolverine state are not under the immediate and exclusive control of the state itself, but, instead, are run by a non-elected board of directors, they are not public schools. Id. Rejecting that contention, the Court emphasized that charter schools are “open and public to all in the locality,” and are thus public schools. Id. at 576 (quotation omitted). While the charter school boards of directors are not popularly elected, the Michigan legislature did establish a selection process for the board of directors and, in addition, the state otherwise had control over the schools through state funding and other regulatory and administrative mechanisms. Id. at 572-76.

Finally, in Colorado, the state Supreme Court held that its charter school approval system—which called for local schools boards to approve a proposed school’s charter and, if denied, for the proposed school to appeal to the state board of education—similarly satisfied state constitutional requirements. *Bd. of Edn. of Sch. Dist. No. 1 v. Booth*, 984 P.2d 639, 642, 655 (Colo. 1999). Colorado’s constitution required the legislature to provide for a thorough and uniform system of free public schools and to provide for the organization of school districts, which “shall have control of instruction in the public schools of their respective districts.” Id. at 645, 648. Concluding that where the state board of education’s authority conflicts with a local school board’s, a balance must be struck, the Court held that the state board did not act outside of constitutional parameters when it ordered the local board to approve a charter application. Id. at 649, 655.

Washington’s constitution shares many similarities with those in Ohio, Michigan, California and Colorado, where constitutional challenges to the respective charter school programs have been rejected. Like these states and many others, the Washington constitution places the state legislature in charge of the state system of education: “The legislature shall provide for a general and uniform system of public schools,” which are to consist of “common schools.” Art. IX, § 2. While the Charter Schools Act is a voter-enacted initiative, the voters exercised legislative powers in approving the Act, which became part of Washington law. See *McGowan v. State*, 148 Wn.2d 278, 288 (Wash. 2002). The constitution’s broad grant of authority plainly

makes room for public charter schools as part of the broader public education system, just as in Ohio, Michigan, California, and Colorado. Like charters in those states, Washington's charter schools are subject to many of the same requirements that the legislature has imposed on traditional public schools, including statewide academic standards, being free and open to all students, and to employ state-certified teachers. See RCW 28A.710.005, .020, .040, .070, .080.

To be sure, over a century ago, in a different era of public schooling, the Washington Supreme Court referred to a "common school" as "one that is common to all children of proper age and capacity, free, and subject to, and under the control of, the qualified voters of the school district." *Sch. Dist. No. 20 v. Bryan*, 51 Wash. 498, 504 (Wash. 1909). But there, it must be said, the Court was simply describing, in dicta, the system as it had been created, at that time, as part of a broader explanation for why teacher-training schools in the state violated the state constitution. See State's Cross Mot. for S. J. at 15 (Sept. 16, 2013). Modern public education, however, shares few similarities with the system in place at the turn of the 20th century. Likewise, public charter schools share few similarities with teacher-training schools.

Against this mountain of authority declaring public charter schools to be "common schools," as the phrase is used in a host of state constitutions, only the Georgia Supreme Court declared its charter school program to be violative of state constitutional requirements, and even then did so based on a unique constitutional provision adopted by few other states. Indeed, unlike state constitutions that vest the state legislature with authority to establish a school system, the Georgia constitution commands that "[a]uthority is granted to county and area boards of education to establish and maintain public schools within their limits." *Gwinnett County Sch. Dist. v. Cox*, 289 Ga. 265, 265-66 (Ga. 2011). The state legislature, by comparison, maintains the authority to create only "special schools." *Id.* at 267. Applying these unique provisions that put educational control almost exclusively in the hands of local officials, the Georgia Supreme Court declared that charter schools were not "special schools" (which could be authorized by the state legislature) and thus that charter schools that were not approved by local school districts violated the state constitution's local control provision. *Id.* at 272.¹ Notably, that charter schools were not deemed "special schools" in Georgia is consistent with constitutional interpretations from other states that charter schools, rather than exceptions to common schools, are instead one more link in the public school system chain.

Critically, unlike Georgia's constitution, which vests authority over the educational system in local school districts, the Washington constitution shares no such limitation. Rather, it authorizes the state to craft a public education system that it believes will best meet the demands of 21st-century students and families. Enhancing that system with public school options plainly satisfies that constitutional requirement.

¹ A Florida appellate court struck down part of Florida's charter school law that established an independent commission, in place of local school boards, with authority to charter schools in the state. *Duval Cnty. Sch. Bd. v. State Bd. of Edn.*, 998 So. 2d 641, 642-44 (Fla. 1st DCA 2008). According to that court, the commission violated the Florida constitution's provision that "[t]he school board shall operate, control and supervise all free public schools within the school district" *Id.* at 643-44. Despite this ruling the remainder of Florida's charter school program remained free to operate as enacted by the state legislature.

Washington's Charter Schools Are Part Of A General And Uniform System Of Schools.

Next, Plaintiffs cite the Washington constitution's "general and uniform" clause as a basis for blocking charter schools. That provision commands that "[t]he legislature shall provide for a general and uniform system of public schools." Art. IX, § 2. According to the opponents, charter schools fail this requirement because they are exempt from certain basic educational requirements imposed on traditional schools and thus do not uniformly offer every child the same advantages.

Here too, similar arguments have been raised and rejected in other states. Colorado's constitution, for instance, requires that state's legislature to "provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state" *Boulder Valley Sch. Dist. RE-2 v. Colorado State Bd. of Edn.*, 217 P.3d 918, 925 (Colo. Ct. App. 2009). This "thorough and uniform" clause, the Colorado appellate courts have explained, does not require "a single uniform system of public schools consisting of school districts . . . governed by locally elected officials." *Id.* at 928 (quotation marks omitted). In other words, the state constitution does not prohibit "schools that are not part of the local school district system." *Id.* at 927. Relying in part on the legislature's express declaration that charter schools were part of the state's thorough and uniform school system, the court there held that Colorado "may provide additional educational opportunities open to all students in the state through . . . charter schools, provided that these opportunities are available statewide." *Id.* There, that objective was satisfied because Colorado's charter school law "is intended to make the statewide education system more thorough by expanding the options available to all students in the state and more uniform by ensuring that comparable opportunities for creating charter schools exist across the state." *Id.* at 927-28.

In California, charter school opponents, like those in Washington, maintained that their state constitution's "system of common schools" clause prohibited "a separate system of charter public schools that has administrative and operational independence from the existing school district structure, and whose courses of instruction and textbooks may vary from those of noncharter schools." *Wilson*, 75 Cal. App. 4th at 1136. The California appellate court read the "system" clause to mean "that the educational system must be uniform in terms of the prescribed course of study and educational progression from grade to grade." *Id.* at 1137 (quotation omitted). That being said, "curriculum and courses of study are not constitutionally prescribed," and charter schools are "within the system uniformity requirement" because (1) teachers must meet the same requirements as traditional schools, (2) their education programs must be geared to meet the same standards, and (3) student progress will be measured by the same assessments. *Id.* at 1135, 1138.

The Ohio constitution is of similar effect. While it does not contain a uniformity clause, charter school opponents, as part of its common-schools challenge to Ohio's charter program, asserted that Ohio's charter schools were not part of the system of common schools because they are "not subject to uniform statewide standards." Ohio Congress of Parents & Teachers, 111 Ohio St. 3d 568, at ¶ 25. The Court, however, rejected this argument. "[W]hile it is true that [charter] schools are exempted from certain state standards, there are others to which the schools must adhere," the Court explained, and at all events the legislature has the authority to set "different standards for [charter] schools." *Id.* at ¶¶ 29-30.

The same is true in Washington. No one, not even the plaintiffs here, could fairly contend that every school in Washington must operate in the exact same manner as the rest. Indeed, the

Washington Supreme Court has said as much, rejecting the notion that each public school must mirror one another, and instead holding that “[a] general and uniform system . . . is . . . one in which every child in the state has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities” *Federal Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 524 (Wash. 2009) (quotation omitted). Washington’s charters, like those around the country, allow for certain flexibility in the educational process. Yet at the same time, they are subject to many of the same requirements as traditional public schools. Among other things, Washington’s charter schools must (1) provide the “basic education” established by statute, (2) employ certified teachers, (3) administer the statewide student proficiency exams, and (4) satisfy performance goals adopted by the state board of education. RCW 28A.710.040. Charter schools, in sum, do not violate the state constitution’s uniformity clause.

Charter Schools Do Not Undermine The State’s “Paramount Duty” To Provide Adequate Funding For Public Education.

Washington charter school opponents claim that by transferring state funds to charter schools, the Charter School Act violates Washington’s “paramount duty . . . to make ample provisions for the education of all children residing within its borders” Art. IX, § 1. According to the plaintiffs, with the Washington Supreme Court having previously held that the state’s school funding system as a whole is constitutionally deficient, any diversion of school funds to charter schools, while themselves still part of the public school system, is unconstitutional. Not surprisingly, this odd argument has already been rejected in other states.

Most analogously, in Ohio, the Ohio Supreme Court, citing that state’s constitutional requirement of “a thorough and efficient system of common schools throughout the state,” had, like the Washington courts, declared Ohio’s school funding system unconstitutional. See *DeRolph v. State*, 78 Ohio St. 3d 193, syllabus (Ohio 1997). And as in Washington, following the enactment of a charter school program in Ohio, opponents argued that diverting funds to charter schools prevented a thorough and efficient system of common schools. Ohio Congress of Parents & Teachers, 111 Ohio St. 3d 568, at ¶ 35. That argument was rejected. Ohio’s charter schools, like those in Washington, are part of the state’s system of public schools. And the legislature “has the exclusive authority to spend tax revenues to further a statewide system of schools compatible with the Constitution,” including funding public charter schools, among other efforts. *Id.* at ¶ 39.

Similarly, in New Jersey, opponents argued that the charter school funding mechanism—which required school districts to pay directly to charter schools a percentage of the total funding required for each student that enrolled at a charter school—prevented those local school districts from offering a “thorough and efficient” system of education, as mandated by the state’s constitution. *In re Grant of the Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 164 N.J. 316, 330-31 (N.J. 2000). But the New Jersey Supreme Court disagreed, holding that no constitutional violation had been shown because no evidence was presented that any local school districts would fail to provide a thorough and efficient education due to a proposed charter school. *Id.* at 331-32.

Funding Washington’s charter schools similarly does not undercut the state’s “duty” to adequately fund public education. After all, considering that charter schools are part of the state’s public education system, the creation of public charter schools is further evidence of the state’s commitment to public education. See RCW 28A.710.220. And while some district

schools may receive less funding should students leave to attend a charter school, that funding will simply be redirected to other public schools—in other words, the “funds follow the student.” See *Ohio Congress of Parents & Teachers*, 111 Ohio St. 3d 568, at ¶ 39. This is what happens today when a student leaves one school district and enrolls in another in the state—the funding from the original district is redirected to the new district. No state constitution mandates a certain enrollment level at any given school. Equally true, whether funding for Washington’s education system as a whole is “ample,” as the state constitution specifies, will not be impacted by charter schools.

The Charter Schools Act Is Not An Unconstitutional Delegation Of The State’s “Paramount Duty” Regarding Education.

Again invoking the “paramount duty” clause, the opponents contend that the Charter Schools Act unconstitutionally delegates the legislature’s “duty” to non-elected boards by failing to provide sufficient educational standards for charter schools. Two states have faced, and in turn rejected, a similar argument. As in those states, Washington law adequately safeguards the educational freedom given to charter schools by imposing many of the same mandates on charter schools as it does on traditional schools.

Charter school opponents in California asserted that the charter legislation there “amount[ed] to an unconstitutional delegation of legislative powers to the Board and other chartering authorities” because “the power to issue charters has been handed over without standards or guidance as to a whole quilt of concerns: decisions about curriculum, texts, educational focus, and teaching methods” *Wilson*, 75 Cal. App. 4th at 1146. The California appeals court concluded otherwise. It held that delegation is permissible “so long as adequate safeguards exist to protect against abuse of that power.” *Id.* at 1147. The legislature set limits and standards for charter schools, established a process for reviewing denied charter school petitions, and imposed open meeting requirements. *Id.* Noting the underlying legislative intent of encouraging educational innovation, the court reasoned that further regulation “could not be better in this situation” and held that the charter school system was not an unconstitutional delegation of authority. *Id.*

Likewise, in New Jersey opponents argued that the state’s charter school law “improperly delegates legislative authority to a private body, namely, a board of trustees neither elected by voters nor appointed by an elected official.” *In re Grant of the Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 320 N.J. Super. 174 (Super. Ct. App. Div. 1999) (this portion of opinion adopted by *In re Grant of the Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 164 N.J. at 319). New Jersey courts, however, held that “charter schools are not private within the meaning of the no-delegation principle; they are subject to control by the Commissioner and must meet the Act’s standards in order to maintain their charters.” *Id.* at 231. Therefore, there was no unconstitutional delegation. *Id.* at 232.

As in California, Washington’s legislation is also intended to “offer more customized learning experiences for students.” RCW 28A.710.005. And in doing so, it does not abdicate all educational standards for charter schools. Rather, it establishes the requisite safeguards by requiring charter schools to provide the “basic education” established by statute. RCW 28A.710.040; see also *Barry & Barry, Inc. v. Dep’t of Motor Vehicles*, 81 Wn.2d 155, 159 (Wash. 1972) (holding that legislature may delegate authority so long as it provides standards or guidelines and establishes procedural safeguards). State law also specifies that charter schools

employ certified teachers, administer statewide student proficiency exams, satisfy performance goals adopted by the state board of education, and follow certain reporting obligations. RCW 28A.710.040. Given these parameters, the limited delegation to charter schools is well within constitutional boundaries.

Charter Schools Do Not Interfere With The Superintendent of Public Instructions' Supervision Of Public Schools.

Plaintiffs also rely on the constitutional command that “[t]he superintendent of public instruction shall have supervision over all matters pertaining to public schools” Art. III, § 22. According to plaintiffs, the charter school law creates a class of public schools under the authority of the Charter Commission, rather than the Superintendent, making the law unconstitutional. Here too, other state courts have found similar arguments meritless. As a part of the public schools system, and as the Charter Schools Act expressly provides, Washington charter schools are subject to the Superintendent’s supervision.

The Michigan constitution provides that “[l]eadership and general supervision over all public education . . . is vested in a state board of education.” Council of Orgs., 455 Mich. at 583. Applying this provision to the State’s charter school program, the Michigan Supreme Court held that this supervisory authority was maintained for charter schools because the legislature deemed them to be public schools and, thus, “they are necessarily subject to the . . . supervision of the State Board of Education to the same extent as are all other public schools.” Id. at 584. Even if the charter school law did not explicitly provide for the State Board’s authority, that authority was “established by other statutes” that apply generally to all public schools. Id.

Utah’s constitution has a similar requirement: “The general control and supervision of the public education system shall be vested in the State Board of Education.” *Utah Sch. Bds. Assn. v. Utah State Bd. of Edn.*, 17 P.3d 1125, 1129 (Utah 2001). And the Utah Supreme Court applied similar reasoning to that of the Michigan Supreme Court. It found Utah’s charter law constitutional because “the State Board has been vested with the authority to direct and manage all aspects of the public education system in accordance with the laws made by the legislature,” which “must include . . . any other schools and programs the legislature designates as part of the public education system,” including charter schools. Id. at 1131.

California’s constitution prohibits the use of public money for “any school not under the exclusive control of the officers of the public schools” Wilson, 75 Cal. App. 4th at 1138. Interpreting that constitutional provision, the California court of appeals held that charter schools meet this requirement because they are part of the public school system and the legislature expressly declared that they are “under the exclusive control of the officers of the public schools.” Id. at 1139.

This collective line of reasoning applies to Washington’s charter school program as well. The statute expressly provides that “[c]harter schools are subject to the supervision of the superintendent of public instruction and the state board of education, including accountability measures, to the same extent as other public schools except as otherwise provided” RCW 28A.710.040. While the statute also vests the Charter School Commission with authority to administer charter schools “in the same manner as a school district board of directors,” RCW 28A.710.070, nowhere does the law remove the Superintendent’s authority.

Certainly the Superintendent is not responsible for managing the day-to-day activities of every school in Washington, nor could he be. Nor, for that matter does “supervision” authority mandate such power. In actuality, the Superintendent has only certain oversight responsibility, such as administering the funding system, RCW 28A.150.250, .260, .262, .290, .305, .390, or developing essential academic learning requirements for public schools, RCW 28A.655.070. The Charter Schools Act maintains that oversight authority.

The Charter School Program Does Not Improperly Divert Funding From Local Levies.

Lastly, the Washington charter school opponents contend that the Charter School Act unconstitutionally mandates the use of funds from local school district levies for purposes not approved by voters—namely, to support charter schools. The constitution requires that “a proposition . . . to levy an additional tax for a school district shall be authorized by a majority of the voters voting on the proposition, regardless of the number of voters voting on the proposition.” Art. VII, § 2(a). Because levies must be so approved, plaintiffs argue, the funds cannot be used for any purpose other than the approved purpose. In briefing, but not in their Complaint, Plaintiffs also rely on another constitutional provision stating that “[n]o tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied.” Art. VII, § 5.

The Ohio Supreme Court rejected a similar challenge. Ohio’s constitution has an identical provision to the latter Washington mandate. Ohio Const., Art. XII, § 5 (“No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.”). Ohio opponents asserted that the Ohio charter school law unconstitutionally gave tax dollars that voters approved for the local school district to charter schools. Ohio Congress of Parents & Teachers, 111 Ohio St. 3d 568, at ¶ 51. The Ohio Supreme Court rejected the argument based on the funding scheme for charter schools in Ohio. By statute, charter school funding came from state funds, not funds derived from local levies. *Id.* at ¶ 52. Because no levy funds originally raised for local schools would be transferred to charter schools, no constitutional violation could occur. *Id.* at ¶ 60.

As the Ohio ruling makes clear, any funding for Washington’s charter schools derived from state funds raises no constitutional problem. Furthermore, the Charter Schools Act expressly establishes that Washington charter schools are eligible to receive local levy funds. This arrangement does not violate the constitution’s levy fund provisions; rather, it reinforces it. In each circumstance contemplated by the statute, levy funds would only go to their approved purpose. See RCW 28A.710.220. First, charter schools with local school board authorizers would fall within the voter-approved use of levy funds collected for the district. Second, going forward, charter schools must be included as part of any local tax levy, meaning voters will be approving funds for charter schools. RCW 28A.710.220(8). And third, funds could be allocated to charter schools from a general-purpose (rather than specific-purpose) levy. In light of such undeniably constitutional funding options, the Charter Schools Act does not violate local levy laws.²

² Plaintiffs also claim that the Charter Schools Act violates a constitutional provision that prohibits amending a statute by mere reference and instead requires any amended laws to be set forth in full. That claim is state-specific, indeed legislation-specific, and is thus not addressed here.

Conclusion

The Washington courts should follow the sound reasoning applied by other state courts that have considered and rejected similar constitutional arguments. Washington's voter approval of the charter schools initiative was a valid exercise of legislative authority to supplement Washington's general and uniform system of common schools with charter schools. Charter schools will not unconstitutionally divert funding from public schools because charter schools are public schools themselves, nor does the statute impermissibly delegate legislative authority to private entities given the educational requirements imposed on charter schools, which mirror those imposed on traditional schools. Additionally, the state's Superintendent maintains supervisory authority over charter schools and the statute does not require local levy funds designated for a specific purpose to be diverted to charter schools. Each of the arguments raised in the Washington suit have been presented, in one form or another, to other state courts with comparable constitutional provisions, and they have been uniformly rejected. The Washington courts should do the same.