



Summary of amicus brief supporting education freedom in Kentucky

[House Bill 9](#), which was intended to fund public charter schools in Kentucky, was deemed unconstitutional by a judge with a history of opposing Education Freedom.

- The ruling, which blocked implementation of the legislation, is flawed. BIPPS has provided the Kentucky Supreme Court with a detailed rebuttal of the lower court’s ruling, as well as the rationale for the existence and funding of public charter schools. Read the full amicus brief [here](#).
- BIPPS engaged former Kentucky Solicitor General Chad Meredith to construct an amicus brief that:
 - Explains that the Kentucky Constitution broadly permits the General Assembly to appropriate money out of the commonwealth’s General Fund for educational programs no matter whether they are “common schools.”
 - A textualist and originalist analysis demonstrates that the plain language of the Kentucky Constitution allows the General Assembly to appropriate money out of the commonwealth’s General Fund to support educational programs no matter whether they are common schools. The constitution was not originally understood – and cannot be understood today – to limit the General Assembly’s appropriation power in the manner that the lower court held.
 - [Section 184](#) of the constitution – the primary section at issue – places no limitations on General Fund appropriations. Moreover, it is largely a taxpayer-protection measure. The delegates to the constitutional convention believed that Kentuckians were taxed enough already and included a provision in Section 184 to shield taxpayers from the burden of additional taxes that might be imposed for education. Naturally, this is a limitation on the power to *tax*, not the power to *spend*.
 - Subject to a few limitations that don’t apply here, the legislature remains free to spend money for educational purposes however it desires. Thus, no matter whether charter schools are viewed as “common schools” or not, nothing in the constitution prohibits the General Assembly from funding them with General Fund appropriations.
 - Demonstrates that our interpretation of the Kentucky constitution is consistent with historical and current appropriations practices.
 - This consistency further demonstrates that our interpretation is the correct one.

- From the adoption of the constitution to the present, the General Assembly has appropriated funds for all manner of educational endeavors, including ones that cannot possibly satisfy the lower court's definition of a common school – like magnet schools, the Gatton and Craft Academies, and many others.
- If the lower court is correct, then appropriations to those schools are unconstitutional and will have to be discontinued. This is manifestly not what the constitution requires.
- Explains that charter schools are consistent with the constitution's command that the General Assembly create an efficient system of common schools.
 - The principle that competition improves quality is just as applicable in education as in any other field.
 - If the General Assembly wants to improve the educational market, the best way to do that is by engendering more competition for educational services.
 - Charter schools have been remarkably successful in improving education in the states that have implemented them, and we will discuss a variety of studies and statistics that demonstrate this point.
 - Nothing in the constitution takes away the General Assembly's authority to exercise its policymaking power to improve education in this manner. To the contrary, one could argue that the General Assembly has an affirmative duty to take measures like HB 9.

Read the full amicus brief [here](#). The brief is related to Case Number: 2024-SC-0022; COMMONWEALTH OF KENTUCKY, EX REL. ATTORNEY GENERAL RUSSELL COLEMAN COUNCIL FOR BETTER EDUCATION, INC., ET AL

*Bluegrass Institute for Public Policy Solutions
P.O. Box 11706, Lexington, KY 40577
jwaters@freedomkentucky.com
(270) 320-4376
www.bipps.org*