MEREDITH V. PENCE: A LESSON IN INDIANA *UN*CONSTITUTIONAL LAW

LAUREN BEATY ZENTZ*

INTRODUCTION

Following Indiana's 2011 General Assembly session, then-Governor Mitch Daniels announced, "social justice has come to Indiana education"[1] after signing the School Scholarship Act into law.[2] Commonly known as the Choice Scholarship Program (CSP), the law was dubbed "the nation's most ambitious voucher program."[3] Shortly after the Act went into effect, the *Meredith* plaintiffs filed suit.[4] The plaintiffs asserted that the CSP violated three provisions of the Indiana Constitution: the Education Clause of Article 8, the Bill of Rights's compelled support provision under Section 4, and another Bill of Rights religious freedom provision in Section 6.[5] The lawsuit culminated around the CSP's payment of public tax dollars to religious institutions engaged in K-12 private education.[6]

The religious private schools received state tax revenues through what is known as a "voucher." Vouchers operate like an individual scholarship and cover a portion of the student's cost to attend a private, tuition-based school.[7] Voucher values are updated yearly, consistent with public school per-pupil allotments, and equal up to 90% of the public school amount.[8] In the CSP's first school year in effect, Indiana disbursed 3,911 vouchers.[9] Enrollments more than doubled in the second year, with 9,139 vouchers disbursed in the 2012–2013

---

* J.D. Candidate, 2026, Indiana University Robert H. McKinney School of Law; B.A. 2022, Butler University—Indianapolis, Indiana. I would like to thank Professor Cynthia Baker for her guidance on this Note and all the K-12 public school educators in Indiana for their unwavering support of Hoosier children, including myself. This Note is dedicated to Mary Ann Beaty, who passed shortly before its completion on February 20, 2025.

1. Cory Turner, Eric Weddle, & Peter Balonon-Rosen, *The Promise and Peril of School Vouchers*, WFYI INDIANAPOLIS (May 12, 2017), https://www.wfyi.org/news/articles/the-promise-and-peril-of-school-vouchers [https://perma.cc/B5G7-QEPM].

2. H.E.A. 1003, 117th Gen. Assemb., Reg. Sess. (Ind. 2011).

3. Sean Cavanagh, *Ambitious Voucher Program Signed into Law in Indiana*, EDUC. WK. (May 10, 2011), https://www.edweek.org/policy-politics/ambitious-voucher-program-signed-into-law-in-indiana/2011/05 [https://perma.cc/3A3D-XFKY].

4. Verified Complaint for Declaratory & Injunctive Relief, Meredith v. Daniels, 49D07-1107-PL-025402 (Ind. Super. Ct. July 1, 2011), 2011 WL 13077603 (trial pleading).

5. *Id.* at ¶ 1–2.

6. *Id.*

7. *Indiana Choice Scholarship Program*, EDCHOICE (Oct. 4, 2024), https://www.edchoice.org/school-choice/programs/indiana-choice-scholarship-program/ [https://perma.cc/X9QA-5JBT].

8. *Id.*

9. OFF. OF SCH. FIN., IND. DEP'T EDUC., 2015–2016 CHOICE SCHOLARSHIP PROGRAM ANNUAL REPORT: PARTICIPATION & PAYMENT DATA 7 (2016) (including CSP data from 2011 through 2016).

academic year.[10] The legislation capped the number of vouchers available in its first two years at 7,500 and 15,000, respectively.[11] After the total voucher caps expired, vouchers were only limited according to the law's income, residency, and prior public school attendance requirements.[12]

When Governor Daniels signed the CSP into law, he believed the voucher program was "not likely to be a very large phenomenon in Indiana . . . [and] exercised by a meaningful but not an enormous number of [] students."[13] State representatives lauded the program as a method to provide low-income families with the school choice already available for wealthier citizens who could afford to send their children to private schools.[14] The CSP also aimed to improve access to higher quality schooling while saving money since the state only paid up to 90% of the cost it would have paid to educate the student at a public school.[15] The Indiana Department of Education published reports on its website after each academic year, providing the number of voucher recipients, the schools involved, and the demographics of the students enrolled.[16]

Private school voucher programs often call for 'parental choice' and the freedom to choose where a child receives an education, whether by religious, secular, private, or public schools.[17] Choice is not a product of the CSP, as Hoosiers have always had the choice to educate their children in private schools rather than the public system.[18] The CSP only made a parent's choice of private education a *taxpayer* burden rather than a *personal* burden on the parents who elected to exercise the choice based on personal preferences or needs.[19]

This Note argues that the CSP is unconstitutional, and the Indiana Supreme Court wrongly decided the *Meredith v. Pence* case that challenged the voucher program's constitutionality. Part I of the Note outlines the history of school

---

10. *Id.*

11. IND. CODE § 20-51-4-2(b) (2011).

12. IND. CODE § 20-51-1-4.5(1) to (5) (2011) ("[A] household with an annual income of not more than one hundred fifty percent [] of the amount required for the individual to qualify for the federal free or reduced price lunch program").

13. Grace Salata, Cooper VanDriessche & Taylore Williams, *Voucher dilemma: Taxpayer cost jumped from $15.5 million to more than $300 million,* THE INDIANAPOLIS STAR (Sep. 5, 2024, 15:25 ET), https://www.indystar.com/story/news/investigations/2024/09/04/voucher-earning-limit-sta40000-a-year-today-the-same-family-could-qualify-while-making-222000-a-year/74042543007/ [https://perma.cc/K9G4-9CDQ].

14. Claire McInerny, *School Voucher Program Cost State $18 Million More Than Previous Year*, WFYI INDIANAPOLIS (July 19, 2016), https://www.wfyi.org/news/articles/school-voucher-program-cost-state-18-million-more-than-previous-year [https://perma.cc/2KSW-TUGG].

15. Salata, VanDriessche & Williams, *supra* note 13.

16. *Indiana Choice Scholarship Program*, IND. DEP'T OF EDUC., https://www.in.gov/doe/students/indiana-choice-scholarship-program/ [https://perma.cc/JV2D-ATRK] (last visited Mar. 8, 2025).

17. *E.g.*, *What are School Vouchers?*, EDCHOICE, https://www.edchoice.org/school-choice/types-of-school-choice/what-are-school-vouchers-2/ [https://perma.cc/M7KS-E75H] (last visited Mar. 8, 2025).

18. *See* RICHARD G. BOONE, A HISTORY OF EDUCATION IN INDIANA 22–23 (New York, D. Appleton & Co. 1892).

19. Salata, VanDriessche & Williams, *supra* note 13.

choice vouchers in the United States and the history of the CSP. Part II provides an overview of the *Meredith v. Pence* litigation and decision in the Indiana Supreme Court. Part III of the Note summarizes the Supreme Court's method of interpretation for constitutional questions and outlines the historical record necessary for a complete understanding of the provisions at issue in *Meredith*. Part IV analyzes the *Meredith* decision and highlights inconsistencies between the historical record and the *Meredith* Court's reasoning. Finally, Part V proposes the legislation's repeal and the overturning of *Meredith v. Pence*.

I. SCHOOL CHOICE VOUCHERS

A. History of the School Choice Movement

The first examples of 'school choice' and state-sponsored voucher programs for attending private schools appeared in the 1950s and 60s.[20] Private school vouchers originated as "primary tools for segregationists to preserve unequal education for African American and Hispanic children."[21] This history is widely forgotten, if not ignored, thus enabling current voucher proponents to employ anti-integration rhetoric absent widespread discredit.[22] The 1960s school choice programs ended only with a Supreme Court order indicating that the vouchers were "unconstitutional and [] 'evasive schemes' [that] could not be used to circumvent integration."[23]

Southern school voucher programs surfaced in anticipation of and soon after the Supreme Court's decision in *Brown v. Board of Education*.[24] The *Brown* decision mandated public school desegregation but said nothing of private education.[25] Before the Little Rock Nine entered the public school system in Arkansas, the Governor spearheaded a ballot measure asking whether the people of Arkansas wanted integrated public schools or to shut the schools down.[26] Faubus told the voters that if they "wanted to close the schools, a private corporation would take over the school buildings and open them as 'private' segregated schools."[27] With the voters' approval, Faubus closed Little Rock public schools and transferred responsibility for school operations to a private

20. Steve Suitts, *Segregationists, Libertarians, and the Modern "School Choice" Movement*, S. SPACES (June 4, 2019), https://southernspaces.org/2019/segregationists-libertarians-and-modern-school-choice-movement/ [https://perma.cc/4YKS-XCA6].

21. *Id.*

22. *Id.*

23. JUAN WILLIAMS, EYES ON THE PRIZE: AMERICA'S CIVIL RIGHTS YEARS 118 (Penguin Books 2013 ed.) (1988).

24. MARK V. TUSHNET, MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT 1955–1961, at 263 (Oxford U. Press 1994).

25. *Id.*

26. *Id.* at 266.

27. *Id.*

group.[28] Under the arrangement, white children continued their educations unscathed, and black children went without schooling that year.[29]

In 1960, freedom of choice had two meanings.[30] Throughout the South, the phrase described a process "allowing each county to decide whether to comply with desegregation rulings or close its schools."[31] Alternatively, Virginia used freedom of choice to refer to tuition "grants" parents could use at segregated private and public schools elsewhere after their public schools integrated or closed.[32] In Mississippi, Louisiana, Virginia, Alabama, North Carolina, South Carolina, and Georgia, state governments formed groups to develop strategies for blocking school desegregation.[33] All seven states adopted private school voucher programs (eight, counting Little Rock).[34] Fifteen years after *Brown*, the U.S. Supreme Court found that Mississippi continued to evade integration and "ordered every school district in the state 'to terminate dual school systems at once.'"[35] Southern states reacted by striking any laws with racial identifiers and replaced the laws with "race-neutral programs for advancing freedom of choice for parents."[36]

Thirty years later, the school choice movement re-emerged in the 1990s.[37] However, this time, the movement evaded the reprehensible race-based motivations, instead "treating schooling as a consumer good, not a civic responsibility."[38] The aim became to model and manage the education systems across the country as a business, following the suggestions of economist Milton Friedman for "a system of competition [and] innovation, [that] changes the character of education."[39] The constituency of this twenty-first century voucher movement is often made of wealthy families with state-subsidized tuition and billionaires who profit from privatization, like the Koch brothers.[40] The previous white supremacist organizations continued to support education choice, gaining new backing from Christian nationalists, the Alliance Defending Freedom, and the American Legislative Executive Council.[41]

---

28. *Id.*

29. *Id.*

30. GENE ROBERTS & HANK KLIBANOFF, THE RACE BEAT: THE PRESS, THE CIVIL RIGHTS STRUGGLE, AND THE AWAKENING OF A NATION 236 (2007).

31. *Id.*

32. *Id.*

33. Suitts, *supra* note 20.

34. *Id.*

35. *Id.* (quoting Alexander v. Holmes Cnty. Bd. of Educ., 396 U.S. 19, 20 (1969)).

36. *Id.*

37. ROBERTS & KLIBANOFF, *supra* note 30, at 236.

38. DIANE RAVITCH, SLAYING GOLIATH: THE PASSIONATE RESISTANCE TO PRIVATIZATION AND THE FIGHT TO SAVE AMERICA'S PUBLIC SCHOOLS 34 (2020).

39. *Milton Friedman on Vouchers*, EDCHOICE (2003), https://www.edchoice.org/about/legacy/articles/milton-friedman-on-vouchers/ [https://perma.cc/U3GZ-C7TZ].

40. RAVITCH, *supra* note 38, at 35–36.

41. *Id.* at 36.

The majority of CSP proponents likely fail to appreciate their sentiments' historical significance and would repudiate any allegation of racism behind school choice today. Indiana's CSP supporters would probably align their support with Friedman's justifications.[42] However, contrary to his economic justification, competition hardly emerged in the 2011 CSP legislation because Indiana private schools were not created in 2011.[43] In fact, private schools existed before public schools in Indiana, and Indiana's public schools were subject to private competition before they opened.[44]

B. The Facts Litigated: 2011–2012 CSP

The Indiana Supreme Court held oral arguments on the *Meredith v. Pence* litigation on November 21, 2012.[45] In late 2012, the available data would have shown only 13,235 voucher payments under the CSP.[46] At the time, the state offered "graded" vouchers for families with slightly higher incomes, valued at 50% of the per-student public school funding allotment.[47] Additionally, in 2012, eligibility for the CSP required that students attend at least one year of public school before transferring to private school with a voucher.[48] Consequently, the Court considered relatively minimal CSP data during oral arguments, as information was limited to the 2011–2012 academic year and some of the following fall semester's statistics.[49]

Participants seeking a CSP voucher first completed a form to verify the student's eligibility and then applied to a private school from the list of CSP-approved institutions.[50] After acceptance to an eligible school, the private school and the student's parent were required to complete paperwork that verified the student's enrollment before any CSP funds were disbursed.[51] The Indiana Department of Education reviewed the paperwork, and if approved, the

---

42. Grace Salata, Cooper VanDriessche & Taylore Williams, *Voucher dilemma Part 2: Unraveling impact of school choice program on education in Indiana,* THE INDIANAPOLIS STAR (Sep. 5, 2024, 14:32 ET), https://www.indystar.com/story/news/investigations/2024/09/05/unraveling-fiscal-impact-of-school-vouchers-on-education-in-indiana/75054166007/ [https://perma.cc/AG6G-854K].

43. *See* BOONE, *supra* note 18, at 22 (discussing Indiana's earliest private schools in the 1810s).

44. *See id.*

45. Oral Argument, Meredith v. Pence, 984 N.E.2d 1213 (Ind. 2013) (No. 49S00-1203-PL-00172), https://mycourts.in.gov/arguments/default.aspx?&id=1416&view=detail&yr=2012&when=&page=1&court=&search=meredith&direction=%20ASC&future=True&sort=&judge=&county=&admin=False&pageSize=20 [https://perma.cc/GN7B-TZ36].

46. IND. DEP'T OF EDUC., *supra* note 16.

47. IND. CODE § 20-51-4-4(2)(B) (2011).

48. IND. CODE § 20-51-1-4.5(5) (2011).

49. IND. DEP'T OF EDUC., *supra* note 16.

50. Brief of Appellants at *5, Meredith v. Pence, 984 N.E.2d 1213 (Ind. 2013) (No. 49S00-1203PL172), 2012 WL 3262456.

51. *Id.*

department would instruct the state auditor to make the voucher payment.[52] When the state auditor made a voucher payment, that payment was issued as a direct electronic transfer from the state to the private school's provided bank account.[53] CSP private schools were not asked to, let alone required to, maintain a separate bank account for CSP funds.[54] Because vouchers could not be directly disbursed to participating students, the CSP led to a routine practice of Indiana tax revenues being redirected to private school and church accounts.[55]

The CSP statute and the state government placed limited regulations on the program. Private school regulation in the CSP only prescribed a minimum curriculum required by the state and participation in statewide testing, the requirements for state accreditation, which most private schools already followed.[56] CSP funds lacked statutory restrictions regarding their use, and the funding came with no disclosure requirements to track the voucher's use (or lack thereof).[57] Similarly, eligible private schools were only prohibited from denying admission "on the basis of race, color, or national origin."[58] However, CSP institutions could deny or expel students for any other purported reason, including behavioral issues, disciplinary matters, the student's academic performance, or (at the time of litigation) disability.[59]

The CSP also did not require that private schools permit voucher students the choice to opt out of religious curriculum.[60] Therefore, a private school could legally base acceptances or retention on a student's refusal to participate in religious curriculum and expel students that did not comply with religious components.[61] This fact was particularly relevant because over 99% of voucher students in the 2011–2012 school year attended a religious school.[62] That year only six of the CSP schools were not religiously affiliated.[63]

Of the CSP participant schools in 2011, 97.7%, or 253 of the schools, were religiously affiliated and provided that religious instruction was *crucial* to the school's curriculum.[64] The vast majority of institutions were deeply committed to their religious identity and often defined the schools "as 'ministries' of the

52. *Id.*
53. *Id.*
54. *Id.* at *5 n.4.
55. *Id.*
56. *See* IND. CODE § 20-51-4-1(a)(1)–(3) (2011).
57. Meredith v. Pence, 984 N.E.2d 1213, 1220 (Ind. 2013) ("Once distributed, the voucher program places no specific restrictions on the use of the funds."); *see also* IND. CODE § 20-51-4-1(a)(1) ("[T]he department or any other state agency may not in any way regulate the educational program of a nonpublic eligible school that accepts a choice scholarship under this chapter, including the regulation of curriculum content, religious instruction or activities, classroom teaching, teacher and staff hiring requirements, and other activities carried out by the [] school.").
58. IND. CODE § 20-51-4-3(a) (2011).
59. Brief of Appellants, *supra* note 50, at *35.
60. IND. CODE § 20-51-4-1(a)(1) (2011).
61. Brief of Appellants, *supra* note 50, at *4–5.
62. *Id.* at *6.
63. *Id.*
64. *Id.* at *6–7.

parishes, churches, or religious faiths with which they [were] affiliated."[65] Private schools further underscored that commitment with sentiments warning parents and voucher students that the institutions were "Catholic first and schools second."[66]

The remaining 2.3% of CSP participant schools—six private schools in the entire state—were nonsectarian institutions.[67] Of those six nonsectarian, CSP approved institutions, "two [were] specialized institutions for children with special needs or behavioral problems, and one [was] a military boarding school."[68] By the time *Meredith v. Pence* reached the Supreme Court, only two nonsectarian, traditional schools were available under the CSP—a single K-12 school located in Evansville and a high school in Carmel, both of which, had school tuitions greatly exceeding the amount of a CSP voucher.[69] From these facts, the plaintiffs argued that the *only* schools available for traditional CSP students (given their low-income status) were religiously affiliated.[70]

C. Evolution of Vouchers in Indiana Post-Meredith

Today, the CSP's object of "help[ing] lower-income families escape failing public schools" is far from the program's reality.[71] In the 2023–24 academic year, CSP families earning more than $100,000 a year outnumbered the participants with yearly incomes below $50,000.[72] That year, the majority of CSP users never previously attended public school.[73] The conflict between the current CSP and the program *Meredith* considered is the result of a series of alterations to the program over the course of a decade.[74]

After the CSP received constitutional approval, the Indiana General Assembly began loosening the program's eligibility requirements.[75] Legislators initially modified the qualifying public-school districts and created an exception that extended eligibility for the sibling of a CSP user.[76] Legislators eventually eliminated graded vouchers (providing awards of 50%, 75%, or 90% of the per student costs by income level) and added to the list of program-eligible

65. *Id.* at *7.
66. *Id.*
67. *Id.* at *6.
68. *Id.*
69. *Id.*
70. *Id.*
71. Salata, VanDriessche & Williams, *supra* note 13.
72. *Id.*
73. *Id.*
74. Scott Elliott, *Did vouchers cost Indiana $16 million? Estimate sparks debate,* CHALKBEAT IND. (June 19, 2014, 17:40 ET), https://www.chalkbeat.org/indiana/2014/6/19/21107430/did-vouchers-cost-indiana-16-million-estimate-sparks-debate/ [https://perma.cc/NG56-HJAY].
75. *Id.*
76. *Id.*

districts.[77] In each year thereafter, the Indiana General Assembly further eased CSP eligibility requirements[78] until the 2021 legislative session.[79] That year, the General Assembly more than tripled the maximum household income eligibility required in prior years, allowing a family of four earning up to $147,075 a year to get a voucher.[80] When this increase occurred, Indiana's median household income was just $70,051 a year.[81] The Indiana General Assembly continued to increase the income eligibility amount each year,[82] culminating in universal eligibility beginning in the 2026–2027 academic year.[83]

In the 2024–25 academic year, a family of four, earning less than $237,910 a year, was eligible for a voucher under the program.[84] In practice, that threshold translated to near universal eligibility, with about 97% of Hoosier families qualifying.[85] There were 76,067 vouchers disbursed during the 2024–25 academic year.[86] Of the participants, over two-thirds had never attended a public school before receiving a voucher.[87] Indiana tax dollars paid an additional $58 million to fund vouchers in the 2024–25 academic year compared to the prior academic year's spending, and the program overall cost the state $497 million, despite educating a minimal number of Hoosier children compared to the public schools.[88]

Absent a requirement that the student first attend a public school, the CSP began to cover the cost of students who were never positioned to attend public schools.[89] Parents who always planned for their children to attend a private school and already paid full tuition to send their children to private schools could apply for vouchers.[90] Thus, the Hoosier tax dollars that fund the state's budget took on new educational expenditures that taxes never would have covered without the CSP.[91] Notably, in 2015 the Indiana Department of Education

77. Meredith v. Pence, 984 N.E.2d 1213, 1219 n.7 (Ind. 2013).

78. Elliott, *supra* note 74.

79. Salata, VanDriessche & Williams, *supra* note 13.

80. *Id.* The article's associated graphic is available at: https://perma.cc/R9JC-3JSH.

81. *Quick Facts: Indiana*, U.S. CENSUS BUREAU (2024), https://www.census.gov/quickfacts/fact/table/IN/INC110223 [https://perma.cc/9RG9-RUWG].

82. Salata, VanDriessche & Williams, *supra* note 13.

83. Caroline Beck, *Indiana spends $497 million on private school vouchers. Report shows who gets the money*, THE INDIANAPOLIS STAR, (July 10, 2025, 5:27 ET), https://www.indystar.com/story/news/education/2025/07/10/indiana-spends-497-million-on-vouchers-2-indy-schools-got-11-3-million/84517333007/ [https://perma.cc/S6BF-YFUF]; *See*, H.E.A. 1001, 124th Gen. Assemb., Reg. Sess. (Ind. 2025) (deleting the language in Ind. Code § 20-51-1-4.3(3) regarding the choice scholarship program income eligibility, effective June 29, 2026).

84. Beck, *supra* note 83.

85. Salata, VanDriessche & Williams, *supra* note 13.

86. OFF. OF SCH. FIN., IND. DEP'T EDUC., 2024–2025 CHOICE SCHOLARSHIP PROGRAM ANNUAL REPORT: PARTICIPATION & PAYMENT DATA 4 (2025).

87. Salata, VanDriessche & Williams, *supra* note 13.

88. Beck, *supra* note 83.

89. Salata, VanDriessche & Williams, *supra* note 42.

90. *Id.*

91. *Id.* "[T]he last Indiana budget [] directed 36% of new state tax funding for elementary and secondary education to private schools educating only about 7% of the students in Indiana.").

discontinued its practice of publishing CSP savings statistics, following the first academic year that showed equal numbers for voucher recipients that previously attended public schools to those who did not.[92]

Originally, all CSP voucher recipients were low-income Hoosiers in 'failing' public schools.[93] Today, the average CSP student is vastly different from the program *Meredith* considered; the average participant is a "white female, who [] never attended public school, from a family earning more than $99,000 a year."[94] In 2024 alone, the CSP cost the state an estimated $600 million, despite educating only 7% of K-12 students in Indiana.[95] The state's last budget allocated "36% of new state tax funding for [K–12] education to private schools" and allocated the remaining 64% of funds to the public schools that educate the other 93% of the state.[96]

The CSP today significantly exceeds the program's initial capacity and promise. Today the CSP covers more than seventeen times the number of students in the program's first year and seven and a half times the number of CSP participants enrolled in its second year.[97] *Meredith v. Pence* only contemplated the first two years of the CSP, but it is not the recent CSP data that renders the decision unconstitutional because any encroachment on constitutional rights is a violation, regardless of scale.

II. STATEMENT OF THE CASE

The Meredith plaintiffs initiated their challenge in July 2011 when the CSP went into effect.[98] Their challenge alleged that the CSP was unconstitutional under three different provisions of the Indiana Constitution: the Education Clause in Article 8, Section 1, and two religious freedom clauses of the Bill of Rights Article 1, Sections 4 and 6.[99]

A. Summary of the Precedent

The Education Clause precedent applicable to the CSP developed in *Bonner v. Daniels*.[100] *Bonner* arose from quality issues in Indiana public schools and sought to better the public school system, alleging that the Indiana General Assembly failed to carry out its duty to provide for public schools.[101] The

92. Salata, VanDriessche & Williams, *supra* note 13.
93. Elliott, *supra* note 74.
94. Salata, VanDriessche & Williams, *supra* note 13.
95. *Id.*
96. *Id.*
97. *Id.*
98. Meredith v. Daniels, No. 49D07-1107-PL-025402 (Ind. Super. Ct. Jan. 13, 2012), 2012 WL 2525426 (trial order).
99. *Id.*
100. 907 N.E.2d 516 (Ind. 2009).
101. *Id.* at 518.

Indiana Supreme Court interpreted the provisions in Article 8, Section 1 to determine whether the Constitution required minimum quality standards for the uniform common schools.[102] The Court interpreted the clause as providing two duties of the General Assembly.[103] However, neither of the duties created an affirmative responsibility regarding quality.[104] The Court stated that Article 8, Section 1 "assign[ed] [] a specific task with performance standards" on the Indiana General Assembly.[105] The task was to provide schools, and the performance standards were a limitation to the power, requiring "general and uniform" schools that were "free and open to all."[106]

The prominent Article 1, Section 6 precedent the *Meredith* Court applied, and both parties relied on, came from *Embry v. O'Bannon*.[107] The *Embry* decision considered the constitutionality of a system allowing for the dual enrollment of parochial school students in a nearby public school.[108] The system created a trade between the public and private institutions wherein "public schools agreed to provide various secular [instruction] to private school students . . . in return for securing those students' enrollment in their respective public school corporations."[109] The additional students meant more state funding would be sent to the public schools, while the parochial schools remained the students' primary educators.[110] The public-school instruction only supplemented the programs not offered at the parochial school.[111] Under the agreements, parochial schools did not receive any state funding.[112] However, the claimants argued that parochial schools still benefited greatly from the state funding as they saved money through their access to public-school teachers and services free of charge.[113]

The Court considered whether such funding constituted unconstitutional use of "money . . . drawn from the treasury, for the benefit of [a] religious or theological institution."[114] Justice Dickson authored the decision, though "no opinion [] commanded a majority of the court [on] the merits."[115] The majority agreed that the dual-enrollment system did not violate Article 1, Section 6 of the Constitution because the parochial schools received only "incidental benefits"

---

102. *Id.* at 520.
103. *Id.*
104. *Id.* at 521.
105. *Id.* at 520.
106. *Id.* at 521 (internal quotation omitted).
107. Meredith v. Pence, 984 N.E.2d 1213, 1227 (Ind. 2013) (citing Embry v. O'Bannon, 798 N.E.2d 157 (Ind. 2003) (plurality opinion)).
108. *Embry*, 798 N.E.2d at 158.
109. *Id.* at 159.
110. *Id.* at 158–59.
111. *Id.* at 159.
112. *Id.* at 166–67.
113. *Id.*
114. IND. CONST. art. I, § 6.
115. Brief of Appellants, *supra* note 50, at *18.

from the system.[116] However, a majority of the Court concurred in the decision, though expressing different justifications for the decision than those provided in Justice Dickson's opinion.[117]

Justice Dickson's opinion upheld the dual-enrollment agreements on other grounds, without Section 6, but still provided his dicta regarding the constitutional provision.[118] In his effort to ascertain whether the Section 6 "religious or theological institution" language encompassed parochial schools, Dickson wrote over three pages discussing the language's potential meaning at ratification.[119] However, the decision left the interpretation open and decided the case by asking "whether the dual enrollment . . . confer[red] substantial benefits upon the participating parochial schools or directly fund[ed] activities of a religious nature."[120] The opinion differentiated between incidental and substantial benefits, to support the Court's decision to uphold the program, as the Section 6 precedent did not prohibit incidental benefits to a religious institution.[121]

No *Embry* opinion commanded a majority for two reasons. The first related to issues of standing and was the subject of one concurrence.[122] Justice Boehm's concurrence provided the second reason for disagreement.[123] Boehm stated that he departed from Dickson's opinion where it "implie[d] that Article I, Section 6 of the Indiana Constitution has nothing to say about funding for parochial schools."[124] Although Justice Boehm found the dual enrollments constitutional, he noted that it was "an entirely different question [] whether all citizens of the state can be compelled to pay for religious education with tax dollars" and stated that Section 6 specifically prohibited that funding.[125] Boehm further denied the Dickson opinion's implication that parochial schools were not religious institutions, noting that parochial schools were plainly included in the provision's meaning.[126] Boehm provided a historical analysis that contradicted the dicta in Dickson's historical analysis.[127] The concurrence ended by highlighting that the Court "implicitly [left] the door open to public funding of

116. *Embry*, 798 N.E.2d at 167.

117. *See id.* at 167–69 (Sullivan, J., concurring in result); *see also id.* at 169–70 (Boehm, J., concurring in result).

118. *Embry*, 798 N.E.2d at 167; *see also* Brief of Appellants, *supra* note 50, at *18.

119. *Embry*, 798 N.E.2d at 161–64.

120. *Id.* at 164.

121. *Id.* at 164–65; *see also* State *ex rel.* Johnson v. Boyd, 28 N.E.2d 256, 265 (Ind. 1940) ("The fact that the church contributed the use of the buildings and equipment used for these schools does not make the schools conducted therein parochial schools. The acceptance of private donations to a public cause does not make the cause private."); Ctr. Twp. of Marion Cnty. v. Coe, 572 N.E.2d 1350 (Ind. Ct. App. 1991).

122. *Embry*, 798 N.E.2d at 167–69 (Sullivan, J., concurring in result).

123. *Id.* at 169 (Boehm, J., concurring in result).

124. *Id.*

125. *Id.*

126. *Id.* at 169–70 (Boehm, J., concurring in result).

127. *Id.* at 169.

sectarian schools" and noted that "[t]he Constitution stands squarely against [it]."[128]

B. Meredith v. Pence *at the Supreme Court*

The *Meredith* plaintiffs who challenged the CSP were a group of Indiana taxpayers, including public school teachers and parents of public school students, all of whom had proper standing under Indiana's public standing doctrine.[129] Defendants of the CSP included a number of state officials and Governor Mitch Daniels, who Mike Pence subsequently replaced upon his election.[130] The trial court decided the case on summary judgement in favor of the defendants' and plaintiffs appealed.[131]

The first constitutional question in *Meredith v. Pence* arose from Article 8, Section 1.[132] The plaintiffs claimed the CSP itself, along with the voucher program's future effect on public school funding, undermined the history and purpose of Article 8, thus violating "the duty to *provide* for a general and uniform system of open common schools without tuition."[133] The second part of the argument concerned the present and future impacts of the program because a majority of Indiana's school-aged children already qualified and voucher caps would expire the next year in 2013.[134] Therefore, the CSP would undermine the "uniform system of common schools" because the program siphoned public school funding and had the potential to take away the majority of students, constituting more than a supplement to public education.[135]

As an education law, the CSP necessarily had to fall under one of the General Assembly's two Article 8 duties, either the duty to encourage education or the duty to provide for the common schools.[136] Because the second duty, to provide, encompassed only the common schools, CSP private schools did not qualify as a legislative act under that duty.[137] The State argued that the CSP fell within the first duty, to encourage, because it was a separate form of state-sponsored education, outside education by the common schools.[138] However, the *Meredith* plaintiffs argued the CSP could not be a supplement to common school education when a majority of students qualified.[139] This argument

---

128. Id. at 170 (Boehm, J., concurring in result).

129. Meredith v. Pence, 984 N.E.2d 1213, 1217 n.4 (Ind. 2013).

130. *Id.* at 1216–17.

131. Meredith v. Daniels, No. 49D07-1107-PL-025402 (Ind. Super. Ct. Jan. 13, 2012), 2012 WL 2525426 (trial order).

132. *Meredith*, 984 N.E.2d at 1220–21; IND. CONST. art. VIII, § 1.

133. *Meredith*, 984 N.E.2d at 1221 (quoting Bonner v. Daniels, 907 N.E.2d 516, 520 (Ind. 2009)).

134. Brief of Appellants, *supra* note 50, at *4.

135. *Id.* at *37–38.

136. *Meredith*, 984 N.E.2d at 1221–22.

137. *Id.* at 1223.

138. *Id.* at 1221–22; Brief of Appellants, *supra* note 50, at *36.

139. Brief of Appellants, *supra* note 50, at *37.

highlighted the impossible nature of meeting the performance standards outlined in *Bonner* when facing low enrollment and minimal funding to share among schools across the state.[140]

The second constitutional arguments raised involved two of the religious freedom provisions in the Bill of Rights: Article 1, Section 4 and Article 1, Section 6.[141] The plaintiffs also argued the CSP violated the Court's decision in *Embry* by providing not only a substantial benefit, but a direct payment to the religious institutions.[142] The argument compared the CSP to the *Embry* program and highlighted major differences between the two pieces of legislation.[143] Plaintiffs further noted the lack of a majority opinion and disagreements in the *Embry* opinions, while building on Justice Boehm's concurrence.[144] Additionally, the plaintiffs' Section 4 arguments highlighted the relevant historical context for Indiana's compelled support clause, including the state's second constitutional convention.[145]

C. The Meredith *Decision*

The Indiana Supreme Court decided *Meredith v. Pence* on March 26, 2013, upholding the CSP under all three constitutional provisions.[146] The Court held the CSP legislation as "within the legislature's power under Article 8, Section 1, and that the enacted program d[id] not violate either Section 4 or Section 6 of Article 1 of the Indiana Constitution."[147] The decision was divided into five parts, one for the standard of review and burden of proof, another summarizing the CSP legislation, and then providing three separate parts to discuss each constitutional challenge raised.[148]

1. Education Clause.—The Court first addressed the plaintiffs' challenge under the Education Clause's two duties. The decision interpreted the plaintiffs' contentions as arguing that the "directive for a system of public schools supersede[d] the other directive of Article 8."[149] The Court then reiterated its *Bonner* precedent and that decision's understanding of the clause to include two distinct duties.[150] The decision held that the CSP legislation fell under the first Article 8 duty, the duty to encourage education.[151]

---

140. *Id.* at *35 ("[P]ublic schools are required to meet the needs of all such students, even if funding is inadequate to do so . . . .").

141. *Id.* at *12.

142. *Id.* at *9 (citing Embry v. O'Bannon, 798 N.E.2d 157, 164 (Ind. 2003)).

143. *Id.* at *20.

144. *Id.* at *19 (citing *Embry*, 798 N.E.2d at 169–70 (Boehm, J., concurring in result)).

145. *Id.* at *15–16.

146. Meredith v. Pence, 984 N.E.2d 1213, 1230–31 (Ind. 2013).

147. *Id.*

148. *Id.* at 1217.

149. *Id.* at 1220.

150. *Id.* at 1220–21 (quoting Bonner v. Daniels, 907 N.E.2d 516, 520 (Ind. 2009)).

151. *Id.* at 1224.

To reach its conclusion, the Court noted that the duty to encourage contained broad, discretionary language to fulfil that responsibility "by all suitable means."[152] The Court looked to the history of the 1816 and 1851 constitutions and discovered that each of the duties could be met separately and independently of the other.[153] Because the CSP fell under the duty to encourage, and the duty to provide common schools could be met independently of the other, the Court did not find the plaintiffs' arguments convincing.[154] The Court reasoned against the plaintiffs' argument about the CSP's capacity to educate 60% of Indiana's student population, and therefore outnumbering the public schools' enrollments, by rationalizing that a public school system would still exist and satisfy the constitutional command.[155] In that determination, the Court indicated that if the "'uniform' public school system, 'equally open to all' and 'without charge'" remained, the legislature's public school duty was met, regardless of the school's enrollment numbers.[156]

The CSP funding concerns were dismissed in a footnote of the decision where the Court noted how yearly school funding allotments previously changed according to the number of students enrolled, so risk was "equally [present] when a student transfers to another public or charter school, withdraws to attend a private school using personal funds, or withdraws to homeschool."[157] This observation was valid when the case was decided because the CSP only offered vouchers to students leaving a public school and would not increase the state's expense.[158] The same is not true today because the CSP no longer requires that a student previously attended public school to be eligible for a voucher.[159]

2. Article 1, Section 4.—The next question addressed Indiana's compelled support provision and briefly dispensed the plaintiffs' contentions.[160] The Court considered the provision's history and indicated that the historical context provided "little from the convention debates to amplify [] understanding of the language of Section 4."[161] As a result, the Court reasoned that the Section 4 text necessarily provided the "primary source for discerning the common understanding of the framers and ratifiers."[162] With only the text to guide it, the Court indulged the plaintiffs' arguments by providing a few definitions of words

152. *Id.* at 1222.
153. *Id.*
154. *Id.* at 1222–23.
155. *Id.*
156. *Id.* at 1223 (internal quotations omitted).
157. *Id.* at 1223 n.13.
158. *Id.*
159. IND. CODE § 20-51-1-4.5 (2011), repealed in 2013.
160. *Meredith*, 984 N.E.2d at 1225–26.
161. *Id.* at 1225 (quoting City Chapel Evang. Free Inc. v. City of South Bend, 744 N.E.2d 443, 448 (Ind. 2001)).
162. *Id.*

in the provision according to the 1856 Webster's dictionary to show how the language was understood at the time.[163]

The Court did not agree that the CSP compelled Hoosiers to support religious institutions.[164] It believed Section 4 did not aim to include compelled support by means of taxation and found that such an understanding of the provision "improperly expand[ed] the language of Section 4 and conflate[d] it with that of Section 6."[165] The Court reasoned that the text was written to avoid redundancy, with each provision "drafted to specify separate and distinct objectives."[166] Therefore, the opinion deduced that Section 4 restrained only the "government compulsion of individuals to engage in religious practices absent their consent."[167] However, the Court wrongly stated that the convention debates offered nothing to aid its understanding.[168] In fact, the convention transcripts contain a specific statement of the Section 4 provision's intended meaning, which applied the provision to taxation and explicitly prohibited compelling support with tax revenues.[169]

3. Article 1, Section 6.—The Court divided the Article 1, Section 6 inquiry into two parts, first asking "whether the program involve[d] government expenditures for benefits of the type [Section 6] prohibited" and, if so, asking "whether the [voucher] schools . . . are 'religious or theological institution[s]'" within the scope of the provision.[170] The first question prompted the Court to clarify its *Embry* rule, which referred to the benefits inquiry as a question of whether the religious institution's benefit constituted a "substantial" benefit.[171] The Court clarified that the *Embry* language should be understood as a "primary or *direct* beneficiary."[172] Thus, modifying the Court's first question to ask "whether the expenditure *directly* benefits such [religious] institution."[173]

In responding to the first question, the Court expressed doubt that the private schools represented the CSP's direct beneficiaries and concluded that the primary "actors and direct beneficiaries under the voucher program [were] . . . lower-income Indiana families with school-age children."[174] The reasoning

---

163. *Id.* at 1226.

164. *Id.*

165. *Id.* at 1225.

166. *Id.* at 1226.

167. *Id.*

168. *See, e.g.*, IND. CONST. CONVENTION, 1850 JOURNAL OF THE CONVENTION OF THE PEOPLE OF THE STATE OF INDIANA, TO AMEND THE CONSTITUTION 964 (1851), *reprinted in* IND. HIST. COLLECTIONS [hereinafter JOURNAL], https://iuidigital.contentdm.oclc.org/digital/collection/ISC/id/5217/rec/27 [https://perma.cc/84MR-VP5V].

169. *Id.* ("[T]o secure the rights of conscience and prevent the imposition, on the citizen, of any tax to support any ministry or mode of worship against his consent, it is provided . . . that no many shall be drawn from the treasury for the benefit of any religious or theological institution.").

170. *Meredith*, 984 N.E.2d at 1227.

171. *Id.* at 1227–28 (citing Embry v. O'Bannon, 798 N.E.2d 157, 160–67 (Ind. 2003)).

172. *Id.* at 1228 (emphasis added).

173. *Id.* at 1227.

174. *Id.* at 1228.

provided that, because low-income families could not afford private school tuitions before the CSP and because the CSP alleviated such barrier to their access, the low-income families were primary benefactors.[175] This necessarily made any other beneficiaries, including private religious schools, an "ancillary and incidental" CSP beneficiary as their benefits "derive[d] from [a] private, independent choice . . . not the decree of the State."[176]

On the second question of the Section 6 inquiry, the Court concluded the terms "religious or theological institution" in the provision did not limit expenditures for the institutions that provided education.[177] The Court's reasoning noted that, historically, "to the extent that primary and secondary education was available to Indiana children, it was predominantly provided by private or religious entities."[178] The Court noted how the Board of Education included the Bible in its recommended texts during the 1850s and 1860s.[179] Therefore, the Court asserted, "the framers did not manifest an intent to exclude religious teaching from [] publicly financed schools."[180]

Without a comprehensive understanding of the Court's precedent or conducting research of Indiana's historical records, the *Meredith v. Pence* opinion may seem reasonable.[181] However, understanding the Supreme Court's analytical approach to constitutional questions is vital to comprehending the nature of its decisions.[182] When reviewing the *Meredith* decision in its proper context, it becomes increasingly obvious how the Court misapplied or ignored critical history from the Indiana Constitution's drafting to locate approval for the CSP.

III. PUTTING *MEREDITH V. PENCE* IN ITS LEGAL & HISTORICAL CONTEXT

A. The Court's Analytical Approach

When the Court reviews a claim involving one or more provisions of Indiana's Constitution, it always employs the same method of review that searches history "for the common understanding of both those who framed [the Constitution] and those who ratified it."[183] The majority of the Court's decisions outline this search as one where "the intent of the framers of the Constitution is paramount in determining the meaning."[184] The Court's analytical approach aims "to give life to [the framers' and ratifiers'] intended meaning" by treating

175. *Id.* at 1229.
176. *Id.*
177. *Id.* at 1230.
178. *Id.* at 1229 (citing Embry v. O'Bannon, 798 N.E.2d 157, 162 (Ind. 2003)).
179. *Id.* at 1230 (citation omitted).
180. *Id.* (citing *Embry*, 798 N.E.2d at 163 n.5).
181. *See id.*
182. City Chapel Evang. Free Inc. v. City of South Bend, 744 N.E.2d 443, 447 (Ind. 2001).
183. *Id.*
184. *Id.*

the language of each provision "as though every word had been hammered into place."[185] To accomplish this analytical task, the Court discerns meanings from dictionary definitions and other documents from similar times.[186]

By this approach, the Court can uncover "the old law, the mischief, and the remedy" sought by including the provision.[187] Consistent with a provision's history and contextual meaning, the Court will assess "the language of the text . . . the purpose and structure of our constitution, and case law interpreting the specific provision[]."[188] Applicable precedents are primarily from Indiana's case law on the provision, though the Court may consider case law from other jurisdictions with a related provision and similar time of adoption.[189]

B. Introduction to Indiana Constitutional History

In ascertaining the meaning of a constitutional provision, the Court often begins its search by reviewing any differences in the text or location of the provision between Indiana's 1816 and 1851 Constitutions, as well as other possible origins.[190] Two of the three provisions at the center of the *Meredith v. Pence* litigation have roots dating back to the Northwest Ordinance of 1785.[191] The Northwest Ordinance was the governing body of law across Indiana, Ohio, Michigan, Illinois, Wisconsin, and portions of Minnesota for over thirty years before each attained statehood.[192] Accordingly, the Ordinance was influential for the drafting of Indiana's 1816 Constitution and much can be learned from what parts were added, modified, and removed between the two documents.[193]

1. The Education Clause.—It is in the Northwest Ordinance that Indiana's first education endorsement was written: "[r]eligion, Morality and knowledge being necessary to good government and the happiness of mankind, Schools and the means of education shall forever be encouraged."[194] The Ordinance provision guided the drafters of the 1816 Constitution, which adopted a similar provision:

---

185. *Id.*

186. *See, e.g.*, *id.* at 448.

187. *Id.* at 447.

188. *Id.*

189. *See, e.g.*, *id.* at 449.

190. *See, e.g.*, *id.* at 447 ("Sections 2, 3, and 4 of the 1851 Indiana Constitution's Bill of Rights did not differ substantially from their predecessor provisions in Indiana's first Constitution, adopted in 1816.").

191. IND. HIST. BUREAU, BROADSIDES: INDIANA, THE EARLY YEARS: RESOURCE GUIDE 138, 141 (1987).

192. *Id.*; *The Northwest Ordinance (1787)*, NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/historic-document-library/detail/the-northwest-ordinance#:~:text=thousand.%20.%20.%20.-,Art.,labor%20or%20service%20as%20aforesaid [https://perma.cc/9KHA-MTVM] (last visited Aug. 29, 2025).

193. *See, e.g.*, IND. HIST. BUREAU, *supra* note 191, at 141, 143.

194. *Id.* at 141.

> [k]nowledge and learning generally diffused, through a community, being essential to the preservation of a free Government . . . it shall be the duty of the General Assembly to provide, by law, for the improvement of such lands . . . for the use of schools, and to apply any funds which may be raised from such lands . . . to the accomplishment of the grand object for which they are or may be intended.[195]

Notably, the drafters dropped the first word of the clause, indicating an intent to exclude *religion* from state education and the Constitution's Education Clause.[196]

Following the first few decades of statehood, problems in the state government prompted a second constitutional convention to rewrite portions of the Indiana Constitution.[197] In 1851, the state ratified its second constitution, which remains the constitutional text still today.[198] The text drew much from the previous Education Clause while modifying parts of the text.[199] The revised clause states:

> Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly *to encourage*, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and *to provide*, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.[200]

The new textual provisions regarding the General Assembly's education duty included both a duty "to encourage, by all suitable means"[201] and a duty "to provide, by law" for the common schools.[202] After modifying the clause, the 1851 constitutional drafters provided a statement to the public regarding the formal differences and indicated its principal change as "the abolition of county

195. IND. CONST. of 1816, art. IX, § 1.
196. IND. HIST. BUREAU, *supra* note 191.
197. *Id.* at 143.
198. *Id.*
199. *Compare* IND. CONST. of 1816, art. IX, § 1, *with* IND. CONST. art. VIII, § 1.
200. IND. CONST. art. VIII, § 1 (emphasis added).
201. *Id.*
202. *Id.*

seminaries, and the application of the funds to common schools."[203] Subsequent case law determined the "uniform common schools" meant "public schools."[204]

2. The Religious Freedom Clauses.—The current language of Article 1, Section 4 is also traceable to the Northwest Ordinance but remained relatively similar to the first constitutional text.[205] In the 1816 Constitution, various parts of Article 1 were included in a single clause that was later divided into a few provisions in the current Indiana Bill of Rights.[206] The 1816 Indiana Constitution wrote these provisions, in part, stating that "no man shall be compelled to attend, erect, or support any place of Worship, or to maintain any ministry against his consent . . . [a]nd that no preference shall ever be given by law to any religious societies, or modes of worship."[207] The 1851 provision of Article 1, Section 4 similarly stated that "[n]o preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent."[208]

The 1851 Indiana Constitution provided, for the first time, the protections in Article 1, Section 6, which states "[n]o money shall be drawn from the treasury, for the benefit of any religious or theological institution."[209] Though not provided for in Indiana's 1816 Constitution, the convention and surrounding historical context may similarly provide guidance when interpreting the provision.[210] When the 1851 Constitution drafters announced their changes to the public, they noted Article 1, Section 6 as providing an additional guarantee in the Bill of Rights.[211]

C. The Framers' Constitutional Intentions

The 1851 Indiana Constitution's ratifiers often expressed their intentions through public announcements regarding a provision's purpose and what prompted an alteration.[212] To understand the meaning of a provision in the

---

203 . *Address to the Electors of the State February 8, 1951*, IND. HIST. BUREAU, https://www.in.gov/history/about-indiana-history-and-trivia/explore-indiana-history-by-topic/indiana-documents-leading-to-statehood/constitution-of-1851-as-originally-written/address-to-the-electors-of-the-state-february-8,-1851/ [https://perma.cc/7TM4-2UTZ] (last visited Aug. 29, 2025).

204. *E.g.*, Nagy *ex rel.* Nagy v. Evansville-Vanderburgh Sch. Corp., 844 N.E.2d 481, 489 (Ind. 2006) (noting "the term 'common school' was widely understood to mean 'public school'"); State v. O'Dell, 118 N.E. 529, 530 (Ind. 1918) (providing all public Indiana K-12 schools were included in the meaning of common schools).

205. IND. CONST. art I, § 4; IND. CONST. of 1816, art. I, § 3.

206. See *id.*

207. IND. CONST. of 1816, art. I, § 3.

208. IND. CONST. art. I, § 4. "Man" was amended to "person" in 1984.

209. IND. CONST. art. I, § 6.

210. IND. HIST. BUREAU, *supra* note 203.

211. JOURNAL, *supra* note 168, at 964.

212. *See, e.g.*, *id.*

context of the times, the Court often searches the transcript of the 1850–51 convention debates.[213] The convention report offers insight into the drafters' intentions through its comprehensive record, and thus, "is paramount in determining the [text's] meaning."[214]

Before Indiana's second constitutional convention began, the Indiana General Assembly hosted education-specific discussions "for the purpose of 'consulting and devising the best course to be pursued to promote common school education' in Indiana."[215] These meetings came to be known as "The Free Common School Debate" and consisted of six lectures before the General Assembly and the convention of delegates between 1846 and 1852.[216] Public education advocate and professor Caleb Mills spearheaded the debates and addressed the delegate meetings.[217]

Mills's advocacy for the free common schools during the lead-up to Indiana's second constitutional convention prompted his legacy as the "father of the Indiana common school system."[218] As a professor and founder of the private school Wabash College, Mills appeared both as an educator and Presbyterian minister.[219] Nevertheless, in Mills's advocacy, he consistently argued for creating the free common schools and offered less support to the idea that Indiana should continue to fund the existing private schools.[220]

Between the first and second constitutions, if a child attended school, the school was a private institution.[221] The cost of private school tuition often exceeded what Hoosiers could afford in the pioneer days, leading to disparate educational opportunities based on income.[222] Therefore, many Hoosier children went uneducated or joined homeschool groups with neighbors to receive an education, though minimal.[223] Before the second constitutional convention, the state legislature provided some funding to private education in an attempt to honor the 1816 Constitution's education provision.[224] However,

---

213. *See, e.g.*, Clinic for Women, Inc. v. Brizzi, 837 N.E.2d 973, 990 (Ind. 2005) (Dickson, J., concurring in result) ("There was no discussion at the 1850–51 Constitutional Convention suggesting or implying . . . ."); City Chapel Evang. Free Inc. v. City of South Bend, 744 N.E.2d at 447 ("The remarks of the delegates during the 1850–51 Constitutional Convention amplify our understanding of the framers' purposes . . . .").

214. *City Chapel Evang.*, 744 N.E.2d at 447.

215. Nagy *ex rel*. Nagy v. Evansville-Vanderburgh Sch. Corp., 844 N.E.2d 481, 486 (Ind. 2006) (internal citations omitted).

216. *Id.* at 485.

217. *Id.*

218. *Id.* (internal quotation omitted).

219. Embry v. O'Bannon, 798 N.E.2d 157, 162–63 (Ind. 2003) (plurality); Beth Swift, *Caleb Mills–Activist*, WABASH COLL. (Feb. 27, 2015), https://blog.wabash.edu/dearoldwabash/2015/02/27/caleb-mills-activist/ [https://perma.cc/JVN2-JJ9H].

220. *Embry*, 798 N.E.2d at 163 n.5.

221. BOONE, *supra* note 18.

222. *Id.* at 23.

223. *Id.* at 22, 121.

224. *Id.* at 122.

there were few funds to spare and minimal interest in childhood education, curtailing the state's efforts to support education.[225]

Unsurprisingly, the debate over the free common schools weighed the idea of increasing the funds appropriated for the existing private schools instead of the daunting task Mills sought.[226] Mills's advocacy both opposed state funding of private schools and called for the legislature's funding and creation of the free common schools, today known as the public school system.[227] By the end of his addresses, Mills successfully persuaded representatives in the thirtieth through thirty-sixth Indiana General Assemblies to establish a tuition-free system of public education.[228] However, the free common school movement was not without opposition.[229]

The problems facing common schools under the 1816 Constitution were not mere opposition to education but opposition to taxation to fund it.[230] The education budget was almost nonexistent from 1816 to 1851, and the available funds were ineffectively spent or poorly supervised.[231] As a result, state funding for the schools required increasing Hoosiers' taxes.

Many poor Hoosiers in the mid-nineteenth century opposed a tax for the schools because they were simply uninterested in education outside the home, let alone "pay[ing] for the education of wealthy children."[232] Lower-income Hoosiers saw potential taxation as helping fund education for the rich, who did not need free school as wealthy children already attended and paid private school tuition.[233] Meanwhile, the wealthiest Hoosiers similarly opposed free schooling because it would render education "too common, decreasing the value of [their] privately funded education."[234] Others took issue with a system of free common schools as it could be dangerous to religious freedom.[235] One Hoosier echoed that fearful sentiment at the time, which claimed, "[t]he bait is to give our children an education; the [] object is to religiously traditionalize them, and [] unite [c]hurch and state."[236]

Other efforts were made to support education before Indiana's second constitutional convention. The House of Representatives passed legislation similar to the 1851 constitutional language, though the Senate failed to act.[237]

---

225. *Id.* at 122–23.

226. Embry v. O'Bannon, 798 N.E.2d 157, 163 n.5 (Ind. 2003) (plurality).

227. *Id.* at 163.

228. Nagy *ex rel*. Nagy v. Evansville-Vanderburgh Sch. Corp., 844 N.E.2d 481, 486 (Ind. 2006) ("[Mills] addressed the Indiana General Assembly six times between 1846 and 1852 . . . .").

229. *Id.*

230. *Id.*

231. BOONE, *supra* note 18, at 89.

232. *Nagy*, 844 N.E.2d at 487.

233. *Id.*

234. *Id.* at 486.

235. *Id.* at 487.

236. *Id.* (citation omitted).

237. *Id.*

Instead, the Senate submitted the question to the people with an 1848 ballot referendum that only asked, "Are you in favor of free schools?"[238] Opposition to the referendum and the common schools was displayed in acts of voter intimidation at the polls during the 1848 election.[239] Despite the opposition, the 1848 referendum returned results with 56% of voters supporting the free common schools.[240] However, the battle continued as legislative enactments were either insufficient to support the financial needs of the common schools, or the laws were generally ineffective and had little impact on the problem.[241]

Richard Boone's book, *A History of Education in Indiana*, offers one of the more comprehensive records on Indiana's educational history.[242] Boone lauded Indiana's education article as "one of rare excellence" because "the basis of the free-schools idea was purely secular."[243] The book outlines every School Law from the General Assembly from Indiana's founding until a successful system formed.[244] Boone criticized the 1849 School Law, the last education law under the first constitution, as ineffective legislation because "the State adoption of private schools . . . frequently [made] the State [] only a follower, leaving the initiative to be taken by private and local enterprise."[245]

In the 1816 constitution's final years, Boone observed that out of the "nearly three hundred thousand children of school age in the State[,] less than fifty thousand were in any sort of school."[246] Like Caleb Mills, Boone rejected policies that provided unequal and inadequate funding to the common schools before 1851 and in the decade following the second Constitution's ratification.[247] He described the lack of state control that led to a far from uniform system as "one of the most vicious" problems of the educational endeavor.[248] Boone observed that the legislature's failures regarding the education system inevitably meant that "[t]here was no State system."[249]

Caleb Mills's common school advocacy ignited efforts in the General Assembly and highlighted a larger "evil" facing Indiana at the time—widespread illiteracy.[250] The second constitutional convention and redrafting of the Education Clause aimed to remedy "a lack of education and the subsequent problem of illiteracy among Indiana's citizens."[251] At the convention, one

238. BOONE, *supra* note 18, at 101–02.
239. *Nagy*, 844 N.E.2d at 486.
240. *Id.* at 487.
241. *Id.*
242. BOONE, *supra* note 18.
243. *Id.* at 12.
244. *Id.* at 1.
245. *Id.* at 121.
246. *Id.* at 87.
247. *Id.* at 120–21.
248. *Id.* at 121.
249. *Id.*
250. Nagy *ex rel.* Nagy v. Evansville-Vanderburgh Sch. Corp., 844 N.E.2d 481, 484 (Ind. 2006); BOONE, *supra* note 18, at 87–88.
251. *Nagy*, 844 N.E.2d at 484.

delegate referenced the 1840 census and noted that Indiana had the fifth largest population in the Union, yet it "was clearly proven to be the most ignorant *of all the free States*, and far, very far, *behind many of the slave States*."[252] The delegate then referenced the 1850 census that placed Indiana twenty-third out of the twenty-six states for literacy.[253] He noted how Indiana had fallen by six rankings in a decade to fully emphasize the futile nature of legislative efforts during the prior years and the state's inability to cure the illiteracy crisis with the existing Constitution.[254]

IV. WHAT WENT WRONG IN *MEREDITH V. PENCE*

A. Article 8, Section 1

The *Meredith* decision noted that both education duties appeared in the 1816 Constitution's text, though written as two separate sentences.[255] The current Article 8, Section 1 text provides the combination of the duties in a single sentence, joined with the word "and."[256] The *Meredith* Court reasoned that, based on the "use of the conjunction 'and' in the 1851 Constitution," the drafters strongly intended the provision to create nonetheless "separate and distinct duties."[257] By that reasoning, two separate sentences, each previously lacking influence on the other, could be made into a cohesive provision without significance.[258] The Court assumed that a combined text would not indicate the want of a combined understanding or purpose.[259] That reasoning necessarily meant that the ratifiers desired for the General Assembly to encourage education by all suitable means, though not *encourage* education in a system of common schools; the common schools were only to be *provided*.[260]

Additionally, the Court explained the importance of the common schools at ratification and highlighted the language that prevented the system's creation. The convention delegates determined that the words of qualification in the 1816 Education Clause, providing for the creation of uniform common schools "'as soon as circumstances will permit,' left [education's] promise unfulfilled by the

252. IND. CONST. CONVENTION, 2 REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF INDIANA 1890 (1850), *reprinted in* IND. HIST. COLLECTIONS, https://iuidigital.contentdm.oclc.org/digital/collection/ISC/id/7241/rec/31 [https://perma.cc/WN68-BH35].

253. *Id.* at 1889–90.

254. *Id.*

255. Meredith v. Pence, 984 N.E.2d 1213, 1221 (Ind. 2013); *see also* IND. CONST. of 1816, art. IX, § 1.

256. *Meredith*, 984 N.E.2d at 1221.

257. *Id.*

258. *See generally id.* at 1220–24.

259. *Id.* at 1224.

260. *Compare* IND. CONST. of 1816, art. IX, § 1, *with* IND. CONST. art. VIII, § 1.

General Assembly."[261] Therefore, the qualifying terms were removed to ensure the creation of common schools without delay.[262] The Court construed the similarities in the sentences of the old text as meaning the duties could be met separately from one another.[263] While history makes clear that the duties previously existed independently,[264] knowing that the legislature encouraged education without providing schools should not necessarily mean that changes to the provision intended no further change to the General Assembly's responsibilities.

Moreover, the Court did not mention removing a similar qualifying phrase preceding the words "to encourage" in the 1816 text.[265] The prior sentence provided that the legislature should "from, time to time" take legislative action to encourage its education goals.[266] After the second Constitution's ratification, this text became "it shall be the duty of the General Assembly to encourage, by all suitable means . . . and to provide, by law . . . ."[267] Thus, the ratifiers of the 1851 Education Clause removed two phrases of qualification, combined two sentences, and combined two duties regarding the General Assembly's previously neglected responsibility, yet the Court believed that the meanings should not merge.[268]

The *Meredith* Court's conclusion defied the very logic it employed to construe the constitutional text. It is inconsistent to claim a provision's text as being "hammered into place"[269] twice, once for each constitutional text, then interpret the new provision to have altogether the same meaning. One might sooner reason that the ratifiers' removals and additions of words or the drafters' restructuring of an entire provision sought something more than to delete a qualifying word. For example, a reader may take the combined view of this rephrasing to mean encouragement of education differently from the previous methods and instead to encourage education by *providing* a system of education.

Finally, the plaintiffs proffered an argument the Court omitted from its decision, which was indicative of the provision's understanding at the time. This argument raised the School Law of 1855, which was a piece of legislation aimed to promote education by a dual system and was quite applicable to the dual system created by the CSP legislation.[270] The 1855 dual system established two sets of schools: the common schools from the new Constitution and "public schools," though different from public schools today as they included privately

---

261. Nagy *ex rel*. Nagy v. Evansville-Vanderburgh Sch. Corp., 808 N.E.2d 1221, 1226 (Ind. Ct. App. 2004), *vacated*, 844 N.E.2d 481 (Ind. 2006).

262. *Id.* at 1228.

263. *Meredith*, 984 N.E.2d at 1221–22.

264. *Id.* at 1222.

265. IND. CONST. of 1816, art. IX, § 1.

266. *Id.*

267. IND. CONST. art. VIII, § 1.

268. *Meredith*, 984 N.E.2d at 1224.

269. City Chapel Evang. Free Inc. v. City of South Bend, 744 N.E.2d 443, 447 (Ind. 2001).

270. Brief of Appellants, *supra* note 50, at *39.

established schools, which were separately funded by only local tax revenues.[271] The dual system of schools was promptly struck down by the 1858 Supreme Court which stated:

> Under our former constitution, we had had two systems of common schools, the general and the local, and the local had broken down the general system, and neither had flourished . . . . This was an evil distinctly in the view of the convention . . . . [A]nd it was determined that the two systems should no longer coexist; that the one general system should be continued, strengthened by additional aids; and that the counteracting local system should go out of existence . . . .[272]

For the same reasons provided to strike the school law within a few years of the 1851 Constitution's ratification, the *Meredith* Court necessarily should have identified that the CSP was unconstitutional.[273]

B. Article 1, Section 4

The Court believed the plaintiffs' interpretation would lead to redundancy in the Constitution's text and that the ratifiers provided little indication of the provision's meaning. [274] However, there was testimony from the 1851 committee chair responsible for the provision's redrafting at the convention.[275] Not only was there testimony, but the testimony did, in fact, provide the purpose of the compelled support clause of the Indiana Bill of Rights.[276] The committee member described this modified provision in the new text as a means to prevent "the imposition, on the citizen, of any *tax to support* any ministry or mode of worship against his consent."[277] The Court's aim to prevent redundancy is a valid goal when construing the constitutional text, but this goal applies to the Court's interpretation and does not override the unequivocal statements of the Constitution's authors. If the compelled support clause is redundant by the framers, that is not for the Court to prevent. Moreover, redundancy is common when applying religious freedom clauses to a set of factual circumstances.[278]

The plaintiffs provided additional support for their understanding of Section 4, which the Court's decision did not consider. Compelled support provisions, like Section 4, have a long history in state constitutions.[279] This clause first

---

271. *Id.*
272. *Id.*
273. *Id.* at *29.
274. Meredith v. Pence, 984 N.E.2d 1213, 1225–26 (Ind. 2013)
275. JOURNAL, *supra* note 168, at 964.
276. *Id.*
277. *Id.* (emphasis added).
278. Brief of Appellants, *supra* note 50, at *16 n.14.
279. *Id.*

appeared in Thomas Jefferson's 1785 *Virginia Bill for Religious Liberty*.[280] The statute opposed another proposal that sought use of the state's tax revenues to support teachers of the Christian religion.[281] Jefferson wrote that:

> to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves *and abhors*, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern . . . .[282]

Virginia's Statute for Religious Freedom laid the foundation for the compelled support clause in the Indiana Constitution and opposed a similar concept to the CSP.[283] The redundancy reasoning provided in *Meredith* hardly disputes this provision's history, evidence of the compelled support clause's original purpose in Jefferson's proposal, or an express statement from the drafter of Section 4 indicating the clause's application to taxes. The possible redundancy of the compelled support provision in Section 4 may be indicative of the drafters' desire to be abundantly clear.

C. Article 1, Section 6

The Court's Section 6 reasoning is even more problematic, given the text's explicit prohibition, and the Court's untenable reasoning to justify the result. The Court's Section 6 holding illustrates this peculiarity by stating: "the prohibition against government expenditures to benefit religious or theological institutions does not apply to institutions [] providing primary and secondary education."[284] This holding frames the Constitution's text strategically where the entire provision states: "[n]o money shall be drawn from the treasury, for the benefit of any religious or theological institution."[285] The provision and the history of the constitutional convention do not indicate that a carve-out exists to approve differential treatment for "institutions and programs providing primary and secondary education."[286]

The *Meredith* Court seemed to require much more from the drafters to justify any opposing construction, reasoning that "the framers did not manifest

---

280. *Id.* at *15 (citing Chittenden Town Sch. Dist. v. Dep't of Educ., 738 A.2d 539, 556 (Vt. 1999)).

281. *Id.* at *15–16.

282. Committee of the Virginia Assembly, *A Bill for Establishing Religious Freedom*, FOUNDERS ONLINE NAT'L ARCHIVES (June 18, 1779) https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0082 [https://perma.cc/F9P4-7KK8].

283. Brief of Appellants, *supra* note 50, at *16–17.

284. Meredith v. Pence, 984 N.E.2d 1213, 1230 (Ind. 2013).

285. IND. CONST. art. I, § 6.

286. *Meredith*, 984 N.E.2d at 1230.

an intent to exclude religious teaching from such publicly financed schools."[287] Such a requirement, an ex post facto condition on the drafters to stipulate every conceivable result, distorts history. In an ever-changing Indiana, the *Meredith* Court requested that the pioneers who drafted the Constitution double as prophets. Likewise, the Court's reliance on a lack of hostility—*after* 1851—toward nonsecular texts in public schools, would not necessitate approval for the CSP's funding of private schools today.[288] The Court's interpretation similarly chooses to reject the precise statements of Indiana Hoosiers present for the second Constitution's ratification.[289]

Despite the Court's purported understanding, what the framers did not offer in announcements at the convention, the text of the provision unambiguously inscribed. While the Court highlighted the framers' use of broad language in construing the Education Clause's meaning earlier in the *Meredith* decision, it foreclosed any preference to broad language when it came time to construe Article 1, Section 6.[290] Notably, in most of the Court quotations or reiterations of Section 6's text, the word "any" is nowhere to be found.[291] Yet, the location of the word "any" in Section 6 clearly indicates the word's use as a modifier of the subsequent words: "religious or theological institution."[292] Handily, in the example provided to support the Court's understanding of a Section 6 benefit, it added this modifier, writing of "*any* benefit" where the constitutional text was silent.[293]

Under Article 1, Section 6, the CSP presents the clearest example of funds withdrawn from the treasury for a religious institution.[294] Not only does the CSP involve direct payment to religious institutions, the legislation also thwarts any accountability to the state or even for the school to create an alternate bank account for depositing voucher payments.[295] Rather than acknowledging this payment, the Court subscribed to the widely discredited "primary beneficiary" theory that tangentially connects the student as the ultimate benefactor of the CSP because the student chose to participate.[296] Despite the overwhelming majority of CSP private schools being religious, the Court ignored the data and the practical limitations on a low-income family.[297]

---

287. *Id.* (citing Embry v. O'Bannon, 798 N.E.2d 157, 163 n.5 (Ind. 2003)).

288. *Id.*

289. *See* Nagy *ex rel*. Nagy v. Evansville-Vanderburgh Sch. Corp., 844 N.E.2d 481, 487 (Ind. 2006).

290. *See Meredith*, 984 N.E.2d at 1222 ("[B]road legislative discretion appears to have been the framers' intent through the inclusion of the phrase 'by all suitable means.'").

291. *Id.* at 1230.

292. *Id.* at 1227–31; IND. CONST. art. I, § 6.

293. *Meredith*, 984 N.E.2d at 1227–29 (emphasis added) (citing Embry v. O'Bannon, 798 N.E.2d 157, 167 (Ind. 2003)) ("*Embry* was not intended . . . to denote a measurable line after which any benefit to a religious or theological institution becomes unconstitutional.").

294. Brief of Appellants, *supra* note 50, at *18–20.

295. *Id.* at *5 n.4.

296. *Meredith*, 984 N.E.2d at 1227.

297. *Id.* at 1227–29; *see also* Brief of Appellants, *supra* note 50, at *6.

Instead, the Court asserted that CSP schools were "not limited to religious schools" and participating families were "not limited to choosing religious schools" before stating that the program was not required, and therefore, the parental choice to participate in the CSP divorced the private school from direct benefit.[298] The high enrollment in religious schools should not be accredited to choice, as the Court indicated, "but rather the inevitable result of a program that, for nearly all participating parents, simply offers no realistic nonsectarian choices."[299] The CSP's tendency to include only religious schools offered a symbolic decision for parents, while rendering the state and private schools the actual decision-makers.[300] Therefore, across most of the state, parents had effectively *no* choice besides the religious private schools.[301]

Finally, the *Meredith* Court relied on Justice Dickson's plurality opinion dicta and did not rectify the issues between that dicta and Justice Boehm's concurrence.[302] Justice Dickson also wrote the *Meredith* decision, which was likely unanimous due to changes in the Court's composition, absent the two justices who disputed his *Embry* opinion.[303] Justices Sullivan and Boehm no longer served on the Supreme Court when it decided *Meredith v. Pence*, allowing Dickson's revisionist history complete control.

V. WHAT NOW? OVERTURN & REPEAL

"[T]he magnitude of the problem may not nullify the principle."[304]

A. Focus on the Public Schools

Indiana's voucher program neither resolved educational deficits as legislators promised, nor did it improve statewide financial burdens. At best,

298. *Meredith*, 984 N.E.2d at 1229.

299. Brief of Appellants, *supra* note 50, at *26.

300. *Id.* at *27; *see also* Ctr. Twp. of Marion Cnty. v. Coe, 572 N.E.2d 1350, 1360 (Ind. Ct. App. 1991) ("[T]he Trustee exercises no control over the missions and makes no effort to separate the missions' sectarian purpose from the statutory benefit to the Appellees . . . . [Therefore,] the payment of public funds to religious missions which they use for religious purposes violates Article I § 6 of the Indiana Constitution.").

301. Brief of Appellants, *supra* note 50, at *27.

302. *See* Embry v. O'Bannon, 798 N.E.2d 157, 170 (Ind. 2003) (Boehm, J., concurring in result) ("[T]o the extent there is significance in the selection of 'institutions' rather than 'seminaries,' I would think that difference in language supports the conclusion that the 1851 Constitution intended to expand, not contract, the type of religious entities for which public expenditure is prohibited. Surely a school or seminary is one form of 'institution' as the term was and is commonly understood.").

303. *Compare Embry*, 798 N.E.2d 157, *with Meredith*, 984 N.E.2d 1213. Justice Boehm retired from the Court in 2010. Justice Sullivan retired from the Court in 2012.

304. Bush v. Orleans Par. Sch. Bd., 138 F. Supp. 337, 342 (E.D. La. 1956).

voucher programs show slight improvements in student test scores.[305] However, voucher programs often show only neutral results, if not worsening test scores.[306] If the CSP presented clear testing improvement and positive learning results, it might be worth the financial burden it imposed.[307]

Improving education quality and access is a laudable goal that should continue, but not with a program that repeatedly fails at its purported goals. When considering the cost of public education in a vacuum, it appears expensive, and budget cuts may look appealing. However, the cost of public education proves a valuable investment, given that well-educated communities tend to reduce state burdens, leading to "lower unemployment rates, higher wages, and a more diverse economy."[308] Indiana would be wise to consider the long-term benefits of successful public education[309] under a more thoughtful lens. The framers of the Indiana Constitution wrote the foundation for this principal decades ago when they emphasized that "[k]nowledge and learning . . . [are] essential to the preservation of a free government."[310]

B. Choice of Remedy

The 2013 Indiana Supreme Court decided *Meredith v. Pence* wrongly. However, the 2025 Supreme Court is not to blame for the *Meredith* Court's failure. While there are similar ideological leanings in the Court today, if not the presence of the very justices who decided the *Meredith* case, the CSP is not the

---

305. Denise-Marie Ordway, *Private school vouchers: An explainer (with research) to help you navigate school choice policies*, THE JOURNALIST'S RES. (Jan. 31, 2024), https://journalistsresource.org/education/private-school-vouchers-school-choice-research-2/ [https://perma.cc/8DSR-2LUD].

306. Megan Austin, Joseph Waddington & Mark Berends, *Voucher Pathways and Student Achievement in Indiana's Choice Scholarship Program*, 5 RUSSELL SAGE FOUND. J. OF SOC. SCI. 20, 35–36 (2019).

307. *See* Megan Austin, Mark Berends & R. Joseph Waddington, *Indiana's Choice Scholarship: Participation & Impact on Achievement*, UCLA CIVIL RIGHTS PROJECT (Mar. 5, 2018), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/indiana2019s-choice-scholarship-participation-impact-on-achievement [https://perma.cc/GG9J-NVZ4].

308. *The Importance of Public Education*, LOC. EDUC. & ACTIVITIES FOUND. (Nov. 6, 2024), https://leaf742.org/blog/the-importance-of-public-education/#:~:text=Communities%20with%20a%20well%2Deducated,improved%20economic%20stability%20and%20growth.&text=Schools%20are%20where%20young%20people,world%0beyond%20their%20immediate%20circles [https://perma.cc/4UK4-GMSL].

309. *See* Terry Spradlin, *How tax dollars work in public schools*, IND. CAPITOL CHRONICAL, (Feb. 27, 2025, 7:00 ET), https://indianacapitalchronicle.com/2025/02/27/how-tax-dollars-work-in-public-schools/ [https://perma.cc/2K33-9BBJ] ("Adequate funding for schools helps perpetuate our democracy, benefits local communities, provides opportunities for our youngest citizens, and drives economic and job growth. Successful schools produce law-abiding, tax-paying citizens ready for postsecondary education, military enlistment, or high-wage careers.").

310. IND. CONST. art. VIII, § 1.

same piece of legislation today.[311] The readily available remedy to this constitutional issue is in the legal profession and its members who value education or religious freedom enough to mount a challenge.

The constitutional requirements on education are not impractical; the text's demand is simple. The text provides the General Assembly's prerogative: "to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."[312] The primary hurdle to achieving a constitutional system of K-12 education is undoing almost fifteen years of permissible violation. However, the CSP's timeline of existence does not indicate its validity; it merely indicates a lack of questioning.

In 2019, the Chief Justice of the Indiana Supreme Court, Loretta Rush, wrote that "new legislation may raise questions about its own constitutionality."[313] Chief Justice Rush wrote to encourage attorneys to embrace state constitutions and develop the undeveloped.[314] Rush also noted that the "laws that have been on the books for years may be subject to constitutional challenges induced by shifts in the population, governmental responses to those shifts, or escalating public awareness and concern for certain issues."[315] At minimum, the Chief Justice's words tend to undermine any claim that the CSP is constitutional under *Meredith*.

There is no reason to believe that the CSP, in its 2025 form, is without question or want of litigation. The *Meredith* decision stopped protecting the CSP from question two years later when the General Assembly passed new CSP legislation.[316] The aforementioned history should not indicate any unwillingness from the Court to hear arguments against the CSP in 2025; rather, it should encourage efforts for achieving a constitutionally permissible system.

The first step is to challenge the CSP in court. It is not easy to challenge the government. It is time-consuming, expensive, and requires legal assistance, but it remains possible. Despite the challenges that come with litigation, the path is already paved. The *Meredith* decision provides what not to argue and where to not waste time.[317] The litigation also outlines the opposition, who or what organizations are likely to write supporting the state's brief, and the anticipated arguments from the opposition. The *Meredith* decision, though opposing the former challengers' goal, nonetheless offers the future challenger's course of action. *Meredith* provided that "so long as" the uniform public school system

311. *See* Meredith v. Pence, 984 N.E.2d 1213, 1230 (Ind. 2013); *see also* IND. CODE § 20-51-4-1 to 20-51-4-12 (2025).

312. IND. CONST. art. VIII, § 1.

313. Loretta H. Rush & Marie Forney Miller, *A Constellation of Constitutions: Discovering & Embracing State Constitutions as Guardians of Civil Liberties*, 82 ALB. L. REV. 1353, 1380 (2019).

314. *Id.*

315. *Id.* at 1381.

316. *See* H.E.A. 1003, 118th Gen. Assemb., Reg. Sess. (Ind. 2013).

317. *See, e.g.*, Meredith v. Pence, 984 N.E.2d 1213, 1223–25 (Ind. 2013) (comparing the Florida and Wisconsin education provisions to Indiana's but disagreeing with the argument that the Florida provision, which prohibited school vouchers, was akin to Indiana's provision).

exists that is equally open, available to all, and free of charge, the legislative duty is done.[318] As a result, the Indiana General Assembly will not be questioned until the public schools are lost or a full-scale change in the electorate occurs.

Additional remedies may be found in the legislature. The Indiana General Assembly should repeal the CSP legislation in its entirety. The legislation's repeal will necessarily require a phase out period, allowing CSP enrolled families a reasonable time for adjustment and similarly allowing public and private schools affected to plan accordingly. Although this remedy is ideal for most parties involved, it is unlikely to occur anytime soon. The legislative and executive branches engage in active efforts to universalize the CSP, even with financial burdens challenging the ability to provide the funding.[319] Legislative remedies provide the most efficient solution to preserve the principles of religious freedom in the Indiana Constitution and to honor the almost 175-year-old educational system, even if sooner remedies could be found in the Court.

CONCLUSION

This Note has argued that the Indiana Supreme Court case, *Meredith v. Pence*, granting constitutional approval to the CSP, was wrongly decided and the program remains unconstitutional today. By following the Supreme Court's analytical approach to constitutional questions and properly contextualizing the history of education in Indiana, this Note has provided an alternate interpretation that showcases the Court's unconstitutional reasoning. The state's highest court failed to check or balance the CSP in 2013, but it is never too late to right a constitutional wrong.

318. *Id.* at 1223.

319. Salata, VanDriessche & Williams, *supra* note 13.