

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

COLUMBUS CITY SCHOOL
DISTRICT
270 E. State St.
Columbus, Ohio 43215

CASE NO.

JUDGE:

and

CLEVELAND HEIGHTS-
UNIVERSITY HEIGHTS CITY
SCHOOL DISTRICT
2155 Miramar Blvd.
University Hts., Ohio 44118

and

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

RICHMOND HEIGHTS LOCAL
SCHOOL DISTRICT
447 Richmond Rd.
Richmond Heights, Ohio 44143

and

LIMA CITY SCHOOL DISTRICT
755 St. Johns Ave.
Lima Ohio 45804

and

BARBERTON CITY SCHOOL
DISTRICT
633 Brady Ave.
Barberton, Ohio 44203

and

JEFFREY DONNELLY AND EVE
MCPHERSON
PARENTS AND NEXT FRIENDS OF

MALCOLM MCPHERSON AND
FERGUS DONNELLY, MINORS
2824 Scarborough Rd.
Cleveland Heights, Ohio 44118

and

OHIO COALITION FOR EQUITY
AND ADEQUACY OF SCHOOL
FUNDING
50 South Young Street
Suite M-102
Columbus, Ohio 43215

Plaintiffs,

v.

STATE OF OHIO
c/o Ohio Secretary of State
180 East Broad St., 16th Floor
Columbus, Ohio 43215

Also Serve:
David Yost
Ohio Attorney General
30 East Broad St., 14th Floor
Columbus, Ohio 43215

and

STEPHANIE K. SIDDENS
Interim Superintendent of Public
Instruction
Ohio Department of Education
25 South Front St.
Columbus, Ohio 43215

and

OHIO DEPARTMENT OF
EDUCATION

25 South Front St.
Columbus, Ohio 43215

and

STATE OF OHIO BOARD OF
EDUCATION
65 South Front St.
Columbus OH 43215

Defendants.

Plaintiffs, Columbus City School District, Cleveland Heights-University Heights City School District, Richmond Heights Local School District, Lima City School District, Barberton City School District, Malcolm McPherson and Fergus Donnelly, through their parents Jeffrey Donnelly and Eve McPherson, and the Ohio Coalition for Equity and Adequacy of School Funding, by and through the undersigned counsel, for their Complaint against Defendants, the State of Ohio, Interim Superintendent of Public Instruction Stephanie K. Siddens, the Ohio Department of Education, and the State of Ohio Board of Education, state as follows:

SUMMARY OF CLAIMS

The EdChoice Scholarship Program poses an existential threat to Ohio's public school system. Not only does this voucher program unconstitutionally usurp Ohio's public tax dollars to subsidize private school tuitions, it does so by depleting Ohio's foundation funding – the pool of money out of which the state funds Ohio's public schools – otherwise available to already-struggling school districts for the education of their students. The public funds, moreover, do not follow the student; instead, private school tuitions are subsidized at significantly higher rates as compared to the per pupil foundation funding allocated for Ohio's public school students. The discrepancy in per pupil foundation funding is so great that some districts' private school pupils

receive, as a group, more in funding via EdChoice vouchers than Ohio allocates in foundation funding for the entire public school districts where those students reside. This voucher program effectively cripples the public school districts' resources, creates an "uncommon", or private, system of schools unconstitutionally funded by taxpayers, siphons hundreds of millions of dollars of taxpayer funds into private (and mostly religious) institutions, and discriminates against minority students by increasing segregation in Ohio's public schools. Because private schools receiving EdChoice funding are not subject to Ohio's Sunshine Laws or most other regulations applicable to public schools, these private facilities operate with impunity, exempt from public scrutiny despite the public funding that sustains them. Due in large part to the hundreds of millions of dollars diverted to funding private school tuition through the EdChoice Program, the General Assembly has failed in its constitutional obligation to fully fund Ohio's public school districts at the level which the General Assembly has, itself, determined to be required.

INTRODUCTION

1. This is a lawsuit for declaratory and injunctive relief whereby Plaintiffs challenge the constitutionality of the EdChoice Scholarship Program ("EdChoice Program"), codified at R.C. Chapter 3310, *et seq.* This lawsuit presents both a facial and an as-applied challenge to the EdChoice Program under the Ohio Constitution.

2. The EdChoice Program entitles eligible families to receive publicly-funded vouchers to be applied only towards payments of private school ("Private School" or "Chartered Nonpublic School") tuition.

3. The EdChoice Program includes both "Performance-Based" Vouchers and "Income-Based" Vouchers. Eligibility for Performance-Based Vouchers depends on the

performance rating of the public school building the recipient student is assigned to attend, along with the low-income status of the community where the recipient student resides, among other factors. Eligibility for Income-Based Vouchers is solely dependent on the recipient family's income. Eligibility for Performance-Based vouchers precludes eligibility for Income-Based vouchers.

4. Under House Bill 110 ("H.B. 110"), the state budget bill recently passed by the General Assembly, effective June 30, 2021, the EdChoice Program has been greatly expanded, both in terms of eligibility for the EdChoice Program and its scope. Indeed, H.B. 110 eliminates previous limits on the number of EdChoice Program vouchers the Ohio Department of Education can approve, meaning the state can now issue EdChoice Program vouchers to as many students as it deems eligible under the expanded eligibility criteria.

5. The Ohio Department of Education funds EdChoice Program Vouchers from the budget appropriation designated for public schools. Because public funds are finite, funding EdChoice Program Vouchers out of the foundation funding designated for public school districts inevitably depletes the resources designated by the legislature for educating Ohio's public school students.

6. H.B. 110 initially incorporated the salient features of the Cupp-Patterson Fair School Funding Plan, a bipartisan effort to fund Ohio's public schools adequately and equitably, as required by the Ohio Supreme Court in *DeRolph v. State*, 78 Ohio St.3d 193, 677 N.E.2d 733 (1997). However, due to the ballooning effects of the EdChoice Program, the enacted version of H.B.110 funded only up to one-third of the increases required by the proposed Fair School Funding Plan over the next two fiscal years.

7. The Cupp-Patterson Fair School Funding Plan cannot be fully and promptly funded by the State of Ohio due to the hundreds of millions of taxpayer dollars the state currently expends on private school tuitions via the EdChoice Program. In other words, Ohio's public school districts cannot be adequately and equitably funded as required by the Ohio Constitution *under the school funding formula adopted by the Legislature* due to the General Assembly's clear interest in funding private school education instead.

8. Accordingly, due to the implementation of the EdChoice Program, the General Assembly has failed to implement its constitutional directive to provide funding to secure a thorough and efficient system of common schools throughout the state, as required by Article VI, Section 2 of the Ohio Constitution.

9. In addition, H.B. 110 expands eligibility for EdChoice Program vouchers even to students who have attended private schools throughout their educational careers. This expansion alters the ostensible original intent of the EdChoice Program from one of providing additional educational options to students attending low-performing schools to one where the state is increasingly paying for private school education for large numbers of students, even those whose families have already demonstrated they can afford to do so themselves.

10. H.B. 110 further expands eligibility for the EdChoice Program to siblings of previous voucher recipients, even if those students are not assigned to low-performing schools. Accordingly, even when a public school building is no longer categorized as low-performing, that district will continue to lose students and funding due to the General Assembly's interest in subsidizing private school education.

11. H.B. 110 permits a disproportionate share of Ohio’s public tax dollars designated for education funding to be used for educating private school students, who make up a small fraction of Ohio’s school-age children.

12. Indeed, virtually all growth in school funding authorized by the General Assembly in the past five years has gone to fund voucher programs, including EdChoice, rather than to the public school system—which the General Assembly is constitutionally mandated to fund thoroughly and efficiently.

13. The General Assembly’s dedication to the rapid expansion of the EdChoice Program is especially curious considering the demonstrably poorer academic performance of private schools receiving funding via EdChoice vouchers in comparison with their public school district counterparts. The Cincinnati Enquirer conducted a review of nearly 2.5 million student scores on proficiency tests issued by the state of Ohio during the 2017-18 and 2018-19 school years, covering approximately 150 Ohio municipalities. The study found that in 88% of the municipalities in the analysis, a public school district achieved better state testing results than those private schools with an address in the same municipality. Hence, the notion that private schools present a better educational opportunity to Ohio’s students than the “failing” public school building those students would otherwise attend – the ostensible reason for the Performance-Based Voucher program in the first place – is a myth.

14. Private schools receiving EdChoice Vouchers are subjected to few statutory and regulatory obligations towards students, communities, and taxpayers at large. Private schools receiving EdChoice Program vouchers are not subject to any public fiscal accountability, such as audits, of the public funding they receive. Further, private schools are permitted, under R.C. §

3310.17(B), to discriminate against families and students based on various protected categories, such as religion, sex, sexual orientation, and disability. Hence, the EdChoice Program enables state-funded discrimination by private entities, further allowing private entities to escape accountability to voters and taxpayers.

15. Accordingly, the rapid expansion of the EdChoice Program has created multiple state-wide systems of publicly-funded, uncommon, private schools, thereby violating Article VI, Section 2 of the Ohio Constitution, which authorizes the state only to fund a thorough and efficient system of common, i.e., public, schools.

16. The vast majority of private schools that receive public funding via the EdChoice program are parochial, or religiously-connected, schools. In Fiscal Year 2022¹ alone, these parochial institutions will have exclusive control of at least \$250 million in state public funds, money for which they bear no accountability to the State once it enters their coffers and which they are free to spend however they see fit, even if they fail to spend those funds on education.

17. This is the exact scenario the framers of Ohio's Constitution precluded when they enacted Article VI, Section 2, which mandates that "no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state." Accordingly, the EdChoice Program violates Article VI, Section 2 of the Ohio Constitution by placing hundreds of millions of dollars in school funds within the exclusive, unfettered control of private (mostly religious) institutions.

¹ In this Complaint, the designation "Fiscal Year 20XX" refers to the 365 calendar days ending on June 30, 20XX. For example, Fiscal Year 2022 refers to the 365-day period starting on July 1, 2021 and ending on June 30, 2022.

18. The amounts of the EdChoice Program vouchers are fixed depending on the recipient's grade level. Under H.B. 110, the Ohio Department of Education must pay \$5,500.00 for each EdChoice voucher recipient in grades K-8, and \$7,500.00 for each EdChoice voucher recipient in grades 9-12. In contrast, the average per pupil foundation funding allotted to public school districts is an average of about \$4,008.00 per pupil for FY22.² This amount is less than the least expensive EdChoice Voucher.

19. This disparity in funding is even more pronounced for the students attending schools in many of the Plaintiff Districts, where those students receive thousands of dollars less in state foundation funding on a per-pupil basis than their similarly situated voucher recipient counterparts.

20. As a result, the EdChoice Program violates Article I, Section 2 of the Ohio Constitution, which entitles Ohio's public school students to equal protection under the law.

PLAINTIFFS

21. The Ohio Coalition for Equity and Adequacy of School Funding ("OCEASF") is a council of governments, comprised of school districts and boards of education across Ohio, organized pursuant to Chapter 167 of the Ohio Revised Code. OCEASF files this suit together with, and on behalf of, eight named Plaintiffs, who are Ohio school districts, students and their families harmed by the unconstitutional EdChoice Program.

22. The Columbus City School District Board of Education ("Columbus District") is a body corporate and politic organized under Ohio Revised Code Chapter 33 to provide educational

² These numbers are based on the most recent available data released by the Ohio Department of Education in the weeks before the Complaint was filed.

instruction for students attending its public schools. The Columbus District is expected to receive approximately \$2,800.00 per counted pupil in foundation funding. Over 6,800 students residing within the Columbus District's geographical boundaries are expected to receive over \$40 million in EdChoice Program Vouchers to attend private schools in Fiscal Year 2022. Without the EdChoice Program Vouchers, some or all of these students would attend public schools in the Columbus District instead. Further, some or all of the \$40 million would be available for the Columbus City School District's students. The Columbus District is located in Franklin County, Ohio.

23. The Cleveland Heights-University Heights City School District Board of Education ("CH-UH District") is a body corporate and politic organized under Ohio Revised Code Chapter 33 to provide educational instruction for students attending its public schools. The CH-UH District will receive approximately \$1,100.00 from the Ohio Department of Education in per pupil foundation funding for Fiscal Year 2022. Over 1,800 students residing within the CH-UH District's geographical boundaries are expected to receive over \$11 million in EdChoice Program Vouchers to attend private schools. Without the EdChoice Program Vouchers, some or all of these students would attend the CH-UH District instead. Further, some or all of the \$11 million would be available for CH-UH District students. The CH-UH District is located in Cuyahoga County, Ohio.

24. The Richmond Heights Local School District Board of Education ("RHLSD") is a body corporate and politic organized under Ohio Revised Code Chapter 33 to provide educational instruction for students attending its public schools. The RHLSD will receive approximately \$340.00 from the Ohio Department of Education in per pupil foundation funding for Fiscal Year

2022. Over 100 students residing within the RHLSD's geographical boundaries are expected to receive over \$675,000.00 in EdChoice Program Vouchers to attend private schools. Without the EdChoice Program Vouchers, some or all of these students would attend the RHLSD District instead. Further, some or all of the \$675,000.00 would be available for RHLSD District students. The RHLSD District is located in Cuyahoga County, Ohio.

25. The Lima City School District Board of Education ("Lima District") is a body corporate and politic organized under Ohio Revised Code Chapter 33 to provide education instruction for students attending its public schools. Over 600 students residing within the Lima District's geographical boundaries are expected to receive over \$3.5 million in EdChoice Program Vouchers to attend private schools. Without the EdChoice Program Vouchers, some or all of these students would attend the Lima District. Further, some or all of the \$3.5 million would be available for Lima District students. The Lima District is located in Allen County, Ohio.

26. The Barberton City School District Board of Education ("Barberton District") is a body corporate and politic organized under Ohio Revised Code Chapter 33 to provide education instruction for students attending its public schools. Over 60 students residing within the Barberton District's geographical boundaries are expected to receive over \$340,000 in EdChoice Program Vouchers to attend private schools. Without the EdChoice Program Vouchers, some or all of these students would attend the Barberton District. Further, some or all of the \$340,000 would be available for Barberton District students. The Barberton District is located in Summit County, Ohio.

27. The McPherson-Donnelly family resides in Cleveland Heights. Their older son, Malcolm McPherson, is a sophomore at Cleveland Heights High School, while their younger son, Fergus Donnelly, is a seventh grader at Roxboro Middle School.

DEFENDANTS

28. The state of Ohio is a Defendant in this action.

29. Defendant David Yost is the Attorney General of the state of Ohio and, in his official capacity, is a necessary nominal party to this action, pursuant to R.C. § 2721.12(A).

30. Stephanie Siddens is Ohio's Interim Superintendent of Public Instruction. In her official capacity, Stephanie Siddens is responsible for the implementation of law and policies, including those relating to the EdChoice Program, established by the General Assembly and Ohio State Board of Education.

24. The Ohio State Board of Education is an institution and instrumentality of the state of Ohio, established pursuant to R.C. § 3301.01 to oversee the state's public education system. The State Board is authorized, under R.C. § 3301.07(C), to administer and supervise the allocation and distribution of all state and federal funds for public school education, and prescribe such systems of accounting as necessary and proper.

25. The Ohio Department of Education is an administrative unit created by the state of Ohio, pursuant to R.C. § 3301.13, through which the policies, directives, and powers of the Ohio State Board of Education, and the duties of the Ohio Superintendent of Public Instruction, are administered. The Ohio Department of Education consists of the Ohio State Board of Education and the Ohio Superintendent of Public Instruction, in addition to administrative support staff. Among its responsibilities, the Ohio Department of Education is tasked with administering Ohio's

school funding system (R.C. § 3301.07(C)), collecting school fiscal and performance data (R.C. § 3301.07(B)(2), R.C. § 3301.07(B)(3), and R.C. § 3301.07(I)), issuing district and state report cards (R.C. § 3302.03), and administering Ohio’s voucher programs, including the EdChoice Program (R.C. § 3310.02(A) and R.C. § 3310.032(B)).

**OHIO CONSTITUTIONAL PROVISIONS AND OHIO REVISED CODE SECTIONS AT
ISSUE**

26. Article VI, Section 2 of the Ohio Constitution states that “The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State; but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.”

27. Article I, Section 2 of the Ohio Constitution states that “All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.”

28. Revised Code § 3310.02 establishes the EdChoice Program and requires the Department of Education to annually “pay scholarships to attend chartered nonpublic schools....”

29. Revised Code § 3310.01(A) defines a “chartered nonpublic school” as a “nonpublic school that holds a valid charter issued by the state board of education under section 3301.16 of the Revised Code and meets the standards established for such schools in rules adopted by the state board.”

30. Revised Code § 3310.03 delineates eligibility requirements for Performance-Based Vouchers.

31. Revised Code § 3310.03(D) permits students who received an EdChoice Program scholarship voucher to “continue to receive scholarships in subsequent school years until the student completes grade twelve...”

32. Revised Code § 3310.032 delineates eligibility requirements for Income-Based Vouchers. A student is only considered eligible for an Income-Based Voucher if the student is not eligible for a Performance-Based Voucher.

33. Revised Code § 3310.17(B) provides that “The state board and the department of education shall not require chartered nonpublic schools to comply with any education laws or rules or other requirements that are not specified in sections 3310.01 to 3310.17 of the Revised Code or in rules necessary for the administration of the program, adopted under division (A) of this section, and that otherwise would not apply to a chartered nonpublic school.”

34. Revised Code § 3302.21 requires the Ohio Department of Education to develop a system to rank all school districts and assign performance index scores for each public school district and each building within that district.

35. Revised Code § 3317.011, as revised by H.B. 110, establishes a formula to calculate each public school district’s per pupil base cost to educate their students.

36. Revised Code § 3317.017, as revised by H.B. 110, establishes each public school district’s per-pupil local capacity amount in accordance with a delineated formula.

37. Revised Code § 3317.017, as revised by H.B. 110, also defines the state share for most districts as the difference between the district’s base cost and its per pupil local capacity.

38. Revised Code § 3317.022(A)(1), as revised by H.B. 110, sets forth the core foundation payment for each public school district depending upon that district's state share as calculated above.

39. Section 265.215 of H.B. 110 states that "the general phase-in percentage for fiscal year 2022 shall be 16.67 per cent and the general phase-in percentage for fiscal year 2023 shall be 33.33 per cent." This means that public school districts will receive only a fraction of the base cost funding referenced in Paragraph 35 above. Any funding beyond Fiscal Year 2023 must be determined by the next General Assembly.

40. Revised Code § 3317.022(A)(10), as revised by H.B. 110, increases the EdChoice Program voucher payments to either \$7,500.00 or \$5,500.00 annually per student.

41. Section 733.70 of H.B. 110 expands EdChoice Program eligibility to students who were homeschooled, attended private middle schools, or are siblings³ of any EdChoice Program voucher recipient.

42. Revised Code § 3310.02, as revised by H.B. 110, no longer limits the number of EdChoice Program vouchers the Ohio Department of Education is permitted to fund on an annual basis.

43. Revised Code § 3310.16(A)(1), as revised by H.B. 110, requires the Department of Education to award an EdChoice Program voucher to each eligible applicant.

³ "Sibling" is defined under H.B. 110 as: (1) a brother, half-brother, sister, or half-sister by birth, marriage, or adoption; (2) a cousin by birth, marriage, or adoption residing in the same household; (3) a foster child residing in the same household, including a child who is subsequently adopted by the child's foster family; (4) a child residing in the same household who is placed with a guardian or legal custodian; (5) a child residing in the same household who is being cared for by a kinship caregiver; or (6) any other child under 18 years old who has resided in the same household for at least 45 consecutive days within the last calendar year. R.C. § 3310.033(A)(4).

FACTS COMMON TO ALL CLAIMS

A Thorough and Efficient System of Common Schools

44. The common schools movement of the mid-nineteenth century advocated for the establishment of non-sectarian, publicly-funded schools where children of all classes and backgrounds would be educated together.

45. Specifically, the common school was expected to bring together diverse people and to serve as an engine of social mobility and economic opportunity, as well as producing virtuous citizens for self-government.

46. Diversity was critical to the common schools movement, as heterogeneity was understood to engender a spirit of equality, amity, and mutual respect critical to a unified and informed populace.

47. Limiting common school admissions to one race or ethnicity was a suggestion specifically debated – and summarily rejected – by the delegates to the Ohio Constitutional Convention of 1850-1851, as they debated the proposed constitutional provisions regarding common schools. The framers of Ohio’s Constitution specifically envisioned racially and ethnically diverse classrooms in mandating the establishment of a system of common schools.

48. The framers’ vision also emphasized that this system of common schools would be thorough and efficient, meaning that the public school system would be uniformly well-funded and capable of delivering an equal opportunity for a full and complete high-quality education to every child in the state, regardless of background or circumstance.

49. The delegates considered education as the fundamental right upon which all other fundamental rights rested.

50. In adopting Article VI, Section 2 of the Ohio Constitution, the framers specifically refused to provide public support for private and sectarian schools, as they recognized the disparities, conflicts, and segregation these institutions can perpetuate. For the framers of Ohio's Constitution, the only education worthy of public support was one that would bring diverse people together for comprehensively-funded, high-caliber instruction.

51. The EdChoice Program chisels away at all of the above aspects of the framers' intent to secure a thorough and efficient system of common schools: i.e., it promotes and exacerbates segregation of students by race and class, depletes public resources otherwise available for the public education of Ohio's children, and hampers public school districts' ability to provide high-quality instruction regardless of each pupil's circumstance or background.

History of EdChoice Program Expansion and the State's Increasing Funding of Private School Tuitions

52. The history of the EdChoice Program is one of continual expansion. In June of 2005, the state of Ohio enacted the EdChoice Program and created a system of Performance-Based Vouchers to be issued to eligible students to pay for their private school tuition, also known as the Traditional EdChoice Scholarship Program.

53. The EdChoice Program first took effect during the 2006-2007 school year, and provided vouchers only to students assigned to schools in academic emergency or under academic watch that year, as determined by the state.

54. Over the next several years, the Ohio General Assembly expanded eligibility criteria for the EdChoice Performance-Based Vouchers, allowing students to receive vouchers if they were assigned to a school in academic emergency or under academic watch for two of the last three years.

55. During this time period, the maximum number of EdChoice Program vouchers awarded could not exceed 30,000 each school year.

56. In December of 2012, the Ohio legislature enacted House Bill 555 (“H.B. 555”), which created an academic performance rating system for school districts and assigned each district or school a letter grade of A-F reflecting its performance on various metrics. H.B. 555 also expanded EdChoice Program Performance-Based Voucher eligibility for students attending school buildings that received a D or F rating in two of the last three years (a “Low Performance School”). The state of Ohio’s method of classifying public school buildings via the academic performance rating system devised under H.B. 555 is wholly irrational, and has received substantial criticism from numerous stakeholders in Ohio’s public education sphere. This “report card” system rewards school districts that primarily serve economically and socially privileged students, and disadvantages districts that serve substantial populations of low-income (and, not coincidentally, often minority) students. That eligibility for Performance-Based Vouchers under the EdChoice Program is tied to this irrational state report card system further exacerbates the harm inflicted on Ohio’s school districts and public school children by the unconstitutional EdChoice Program, and infects the EdChoice Program with the economic and racial discrimination the report card system promotes.

57. In later years, the EdChoice Program was further expanded to be available to economically-disadvantaged students regardless of assigned school quality measures or status as a Low Performance School, thereby creating a system of Income-Based Vouchers.

58. Over the last decade, the EdChoice Program continued to expand, increasing the value of the vouchers and the maximum number of vouchers to be awarded throughout the state.

Eligibility likewise continued to expand as well. For example, the legislature qualified initial voucher recipients as continually eligible for Performance-Based Vouchers through grade 12, even if the building they had been assigned to was no longer rated as a Low Performance School.

59. In November of 2020, the Ohio legislature enacted Senate Bill (“S.B. 89”) which changed the eligibility criteria for first-time Performance-Based Voucher recipients to students assigned to a school building ranked in the bottom fifth of all district school buildings for specified years, provided that the recipient student’s district of residence had an average of 20% or more of school-age residents qualify for Title I funding.

60. S.B. 89 also expanded the criteria for Income-Based vouchers, increasing the eligibility threshold for student recipients’ family income from 200% of the federal poverty level to 250% of the federal poverty level.

61. This means that a family of four can make up to \$66,250.00 annually and remain eligible for an Income-Based Voucher for the 2021-2022 school year.

62. As expected, the number of EdChoice Program vouchers has ballooned over the last three years:

- a. In fiscal year 2019, approximately 23,500 vouchers were issued, resulting in approximately \$113 million intended for public schools diverted to private schools.
- b. In fiscal year 2020, approximately 30,000 vouchers were issued, resulting in approximately \$149 million intended for public schools diverted to private schools.

- c. In fiscal year 2021, approximately 32,600 vouchers were issued, resulting in approximately \$163 million intended for public schools diverted to private schools.

63. In June of 2021, the Ohio legislature enacted H.B. 110, which further expanded the EdChoice Program, both in eligibility and scope. Specifically, H.B. 110:

- a. Eliminates previous caps on the number of EdChoice Program vouchers the Ohio Department of Education can approve;
- b. Requires the Ohio Department of Education to award a voucher to each eligible applicant;
- c. Expands eligibility to any students who were previously homeschooled;
- d. Expands eligibility to students who are no longer eligible for a previously-received special needs scholarship;
- e. Expands EdChoice Program eligibility to students who previously attended private schools, including those whose families fully afforded tuition;
- f. Expands eligibility to any students who are “siblings” of EdChoice Program voucher recipients, which includes any child under the age of 18 who has resided in the same household for 45 consecutive days within the last calendar year;
- g. Eliminates the EdChoice Program application windows and deadlines, meaning that parents can apply at any time during the year.

64. H.B. 110 further increased the EdChoice Program voucher payments from \$6,000.00 per high school student under prior law to \$7,500.00 per high school student, and from \$4,650.00 per grade school student under prior law to \$5,500.00 per grade school student.

65. As a result, Ohio's private schools are now statutorily guaranteed to receive an unlimited number of EdChoice vouchers annually, at either \$7,500.00 or \$5,500.00 per qualifying student. And qualifying students include even those children who have attended private schools throughout their entire educational careers and those whose eligibility hinges solely on being related to – or merely residing in the same household as – an EdChoice voucher recipient.

History of Concomitant Reductions in the State's Funding of Public School Districts

66. The rapid expansion of the EdChoice Program parallels the equally swift reduction in state funding for Ohio's public schools during the same years. After the underfunding of Ohio's public schools was found to be unconstitutional by the Ohio Supreme Court in *DeRolph*, Ohio was legally obligated to implement a sustainable formula to fund its public schools adequately and equitably.

67. The above mandate was never met, largely due to the General Assembly's interest in funding private school education via the ever-expanding EdChoice Program.

68. Over the last decade, the formulas implemented by the General Assembly for funding Ohio's public schools reflected the amount the General Assembly was willing to spend on public education, rather than the realistic cost of providing a thorough and efficient education to all of Ohio's students.

69. Due to budget freezes or minimal increases over the last decade, state funding to Ohio's public school districts has not even kept pace with inflation since Fiscal Year 2011.

Additionally, because the funding formula was frozen in Fiscal Year 2020-21 at the 2019 level, but vouchers and “community schools” (which is what Ohio calls charter schools) were funded by way of deductions from total school funding, affected public school districts lost approximately \$193 million in state funding during these formula freezes.

70. In contrast, the per pupil EdChoice Program Voucher payments rose by 15% for a grade K-8 voucher and by 25% for a grade 9-12 voucher for Fiscal Year 2022 alone.

71. In drafting the biennial state budget bill in the Spring of 2021, the General Assembly initially considered the Cupp-Patterson Fair School Funding Plan, a bipartisan effort to fund Ohio’s public schools adequately and equitably, as required by the Ohio Supreme Court in *DeRolph*.

72. This Fair School Funding Plan was intended to fund Ohio’s public school districts through a combination of state funds (also termed “state share”) and local sources (also termed “local capacity”), each of which is calculated through a formula to result in a per-pupil base cost sufficient to educate a typical student. This base cost represents the amount of funding that *the General Assembly has determined* satisfies its obligation to provide a thorough and efficient system of common schools pursuant to Article VI, Section 2 of the Ohio Constitution.

73. However, the Fair School Funding Plan was not fully funded due to the ballooning costs of the EdChoice Program. Only 16.67% of the Fair School Funding Plan is being funded through Fiscal Year 2022 and 33% of the Fair School Funding Plan will be funded through Fiscal Year 2023, as specifically delineated in H.B. 110. This means the General Assembly will meet only a fraction of its constitutional obligation *by the standards it has adopted* to provide a thorough and efficient system of common schools for Fiscal Year 2022.

74. The average per pupil foundation funding allotted to public school districts for Fiscal Year 2022 is \$4,008.00, less than the lowest EdChoice Voucher amount.

75. Many of the Plaintiff School Districts expect to receive considerably less than the average per pupil payment referenced in Paragraph 74. For example, the Cleveland Heights-University Heights City School District will receive approximately \$1,100.00 from the Ohio Department of Education in per pupil foundation funding for Fiscal Year 2022. The Columbus City School District will receive approximately \$2,800.00 from the Ohio Department of Education in per pupil foundation funding for Fiscal Year 2022. The Richmond Heights Local School District is expected to receive only approximately \$340.00 from the Ohio Department of Education in per pupil foundation funding for Fiscal Year 2022.

76. In contrast to the above-named public school districts, private schools receiving EdChoice Program vouchers are guaranteed – every year – to receive from the state at least \$5,500.00 for each recipient in grades K-8 and \$7,500.00 for each recipient in grades 9-12.

77. Hence, the legislature unconstitutionally guarantees considerably more funding for private school students than their public school counterparts, and prioritizes funding private entities over the public schools system it is mandated by the Ohio Constitution to fund thoroughly and efficiently.

Effects of EdChoice Program Expansion at the Expense of Public School Districts

78. The number of private schools receiving EdChoice Program vouchers has grown exponentially from the enactment of EdChoice through the present time. Using hundreds of millions of taxpayer dollars, private schools have constructed new campuses, opened additional

branches, hired additional staff, and implemented new programming, without any state oversight on how these voucher funds are spent.

79. Some private schools specifically advertise the EdChoice Program on a national basis as a way to incentivize out-of-state families to move to Ohio and pay their private school tuition with EdChoice Program vouchers. As a result, millions of dollars of public funds intended for Ohio public school students are diverted to private school pupils from other states, students who never once set foot in a public school building in the district where they now reside.

80. Incredibly, private schools in some districts receive more in state funding (via the EdChoice vouchers) than those public school districts receive in core foundation funding for all students attending their schools.

81. The Cleveland Heights-University Heights City School District, for example, is expected to receive from the state of Ohio a total of approximately \$5.6 million in foundation funding for Fiscal Year 2022 to educate the 5,000 students who attend its schools. The state of Ohio, however, will pay out over \$11 million for private school tuition to the approximately 1,800 EdChoice Voucher recipients residing within the Cleveland Heights-University Heights City School District in Fiscal Year 2022. In other words, approximately twice as much public funding will be paid in Fiscal Year 2022 for private school tuition for CH-UH residents as the foundation funding allotted to the entire student body of the Cleveland-Heights University-Heights District.

82. Likewise, the Richmond Heights Local School District is expected to receive from the state of Ohio a total of approximately \$287,444.00 in foundation funding to educate its approximately 700 students in Fiscal Year 2022. The state of Ohio, however, will pay over \$675,000.00 to educate the approximately 100 EdChoice Voucher recipients residing within the

Richmond Heights Local School District in Fiscal Year 2022. In other words, over twice as much public funding will be paid in Fiscal Year 2022 for private school tuition for Richmond Heights residents as the foundation funding allotted to the entire student body of the Richmond Heights Local School District.

83. Public school districts, which have yet to be funded adequately and equitably, are faced with insufficient operating funds to provide adequate educational programming to students who reside in these districts and attend their public schools.

84. Public school students are increasingly faced with overcrowded facilities, inadequate materials, and insufficient learning supports to perform their legal obligations and educate their students. Their private school counterparts, funded by the General Assembly at double and triple the rate per student, enjoy smaller class sizes, newer facilities, and a plethora of extracurricular activities.

85. Communities comprised of minority families and low-income residents are less likely to be able to close the funding gaps caused by the EdChoice Program.

86. As demonstrated above, the funding inequities identified in the Ohio Supreme Court's decision in *DeRolph v. State*, 78 Ohio St.3d 193, 677 N.E.2d 733 (1997), are further exacerbated and amplified through the unconstitutional implementation of the EdChoice Program.

Private Schools Are Neither Accountable for the Public Funds They Receive in EdChoice Program Vouchers, Nor Are They Held to the Same Standards as Public Schools

87. After an eligible EdChoice Program student applies for and receives a Performance-Based Voucher, the Ohio Department of Education issues a check for up to \$7,500.00, which is then endorsed by the private school's representatives and the student's parent or guardian.

88. The Ohio Department of Education transfers the aggregate funds of all students receiving EdChoice Program vouchers directly to the private school from the state budget allocated for public schools; the funds never enter the parents' bank accounts.

89. As EdChoice Program eligibility has expanded, private schools subsidized by Ohio's taxpayers have hired more staff, opened additional campuses, constructed additional facilities, and implemented more programming using the EdChoice Program funding, without the approval of, or supervision by, Ohio's taxpayers or their elected officials.

90. Upon information and belief, neither the Ohio Department of Education nor any other state administrative body requires private schools receiving EdChoice Program funding to account for the expenditure of the taxpayer dollars they receive. Unlike public school districts, which are subject to R.C. § 149.43, private schools are not required to respond to public record requests by providing records that document their policies, decisions, procedures, operations, or other activities. Likewise, private schools are not subject to R.C. § 121.22 – the Ohio Open Meetings Act – and are not required to conduct deliberations or make decisions, including financial ones, at meetings open to the public. In short, there is no current mechanism under the Revised Code to hold private schools accountable to the public for how EdChoice Program funding is spent. Indeed, there is no requirement by the state that the public funds received by these private schools even be spent on education.

91. Private schools receiving EdChoice Program funding must hold a valid charter from the State Board of Education and must administer various state tests to students receiving EdChoice Vouchers. The Revised Code does not impose any additional educational requirements or fiscal accountability provisions upon private schools receiving EdChoice Program funding. For

example, private schools receiving EdChoice Program funding do not need to be accredited by any association nor are they required to ensure their students meet any particular standard, even on the aforementioned state tests they are obliged to administer. In contrast to Ohio's public school districts, which are evaluated on an annual basis under R.C. § 3302.03, the private schools absorbing much of the education funding provided by the State are not subject to any such performance assessments, evaluations, or rankings.

92. In fact, under R.C. § 3310.17(B), those chartered nonpublic schools which receive EdChoice Program funding are not made subject to any laws that do not apply to all chartered nonpublic schools generally, reflecting the State's failure to supervise the schools receiving increasing percentages of the State's education spending. The Ohio Department of Education is unable even to track socio-economic data about many voucher recipients, and, therefore, to keep track of the effects of the EdChoice Program.

93. Private schools are generally exempt from most other statutes relating to public school districts, including, as noted above, laws and regulations governing public records and open meetings. Private schools are also largely exempt from laws and regulations relating to teacher performance, professional development, student discipline, student achievement, educational standards, employment discrimination, bullying and harassment, civil rights, special education, and truancy. For example, administrators and teachers at private schools receiving EdChoice Program funding are permitted to inflict corporal punishment upon students, pursuant to R.C. § 3319.41(B).

94. As a result, private schools funded by EdChoice vouchers may legally engage in various questionable practices, including not only corporal punishment, but also discrimination in

admissions, programs, and activities based on disability, religion, gender, sexual orientation, family status, and other protected categories. For example, private schools funded by EdChoice vouchers may reject applications from students with disabilities altogether and, if students with such challenges are admitted, private schools are under no obligation to meet their educational or socioemotional needs.

95. The above-described absence of rules or requirements stands in stark contrast to public school districts, which are required to comply with numerous federal and state laws and regulations in the education of children with disabilities pursuant to 20 U.S.C. § 1401 *et seq*, and Chapter 3323 of the Revised Code.

96. Accordingly, the EdChoice Program permits the use of taxpayer dollars to sponsor or allow discrimination based on a number of protected characteristics of students.

97. As private schools continue to expand and grow, with additional campuses and branches funded by taxpayer dollars through the EdChoice Program, the reach and breadth of their discriminatory policies increase correspondingly.

COUNT ONE:
DECLARATORY JUDGMENT – CREATION OF ONE OR MORE SYSTEMS OF
UNCOMMON SCHOOLS IN VIOLATION OF THE OHIO CONSTITUTION,
ARTICLE VI, SECTION 2

98. Plaintiffs restate the allegations of Paragraphs 1 through 97 and incorporate them as if fully rewritten here.

99. Article VI, Section 2 of the Ohio Constitution requires the General Assembly to “secure a thorough and efficient system of common schools throughout the State.”

100. The above constitutional requirement of a “thorough and efficient system of common schools” was intended to guarantee a system of public schools with common standards and resources to all of Ohio’s taxpayers, parents, and students.

101. As implemented and administered by the State Board of Education, the Ohio Department of Education, and the State Superintendent, the EdChoice Program establishes multiple systems of private schools that siphon taxpayer funds from public school districts and their students.

102. Specifically, H.B. 110 has enlarged the EdChoice Program in a way that exceeds all previous expansions and lays bare the General Assembly’s apparent intent to use taxpayer funds eventually to pay for a private school education for every interested Ohio student. For example, H.B.110:

- (a) No longer limits the number of EdChoice Program vouchers the Ohio Department of Education funds annually;
- (b) Expands EdChoice Program eligibility to homeschooled students;
- (c) Expands EdChoice Program eligibility to students who attended – and whose families paid for – private schools throughout their education careers;
- (d) Expands EdChoice Program eligibility to the siblings of any EdChoice Program voucher recipient, even if the school those children attend is not categorized as low performing;
- (e) Guarantees \$5,500.00 for each voucher recipient in grades K-8 and \$7,500.00 for each voucher recipient in grades 9-12, as compared to a fraction of those funds allotted for the State’s per pupil funding of Plaintiff Districts’ public school students.

103. As a result, the General Assembly has altered the ostensible intent of the EdChoice Program from one of providing additional educational options to students attending low performing schools, to one where the state is increasingly paying for private school educations for all interested students.

104. H.B. 110 permits a disproportionate share of Ohio's public tax dollars designated for education funding to be used for educating private school students, who make up a small percentage of Ohio's school-age children.

105. Extrapolating from current trends, the majority of private school students in Ohio will be eligible to have their private school tuitions subsidized by the state via the EdChoice Program by the year 2025.

106. Even in Fiscal Year 2022, the state of Ohio will provide more taxpayer funding for some private schools than foundation funding for the public school districts where those private school students reside.

107. Private schools are not legislatively created nor are they publicly governed. As distinguished from public school districts and community (or charter) schools, chartered nonpublic schools are privately owned and subject to minimal governmental oversight.

108. Private schools, for example, are not obligated to comply with federal and state laws relating to the education of students with disabilities, in contrast to community schools under R.C. § 3314.06(D) and public schools under Chapter 3323 of the Revised Code.

109. In further contrast to public school districts and community schools, private schools may condition admission on a student's religious faith, intellectual ability, athletic skill, measures of achievement or other characteristics that permit discrimination against many students.

110. In further contrast to public school districts and community schools, private schools are not held accountable for how they expend taxpayer dollars, including EdChoice Program vouchers.

111. By enacting, implementing, and expanding the EdChoice Program in the aforementioned ways, the General Assembly and the Ohio Department of Education have created multiple uncommon, nonpublic systems of schools funded by the state in violation of Article VI, Section 2 of the Ohio Constitution.

112. No constitutional provision empowers the General Assembly to create and fund an uncommon or nonpublic system or systems of schools, particularly at the expense of adequately funding the public schools the General Assembly is constitutionally obligated to fund thoroughly and efficiently.

113. Based on the foregoing Plaintiffs are entitled to a declaration, pursuant to R.C. § 2721.03, that the EdChoice Program, codified in Revised Code Chapter 3310 *et seq.*, violates Article VI, Section 2 of the Ohio Constitution and, consequently, the Ohio Department of Education's implementation and administration of the EdChoice Program is invalid and void.

114. Plaintiffs are also entitled to permanent injunctive relief barring further EdChoice Program payments to subsidize private school tuition made from the state's foundation school fund.

COUNT TWO:
DECLARATORY JUDGMENT – FAILURE TO SECURE A THOROUGH AND
EFFICIENT SYSTEM OF COMMON SCHOOLS IN VIOLATION OF THE
OHIO CONSTITUTION, ARTICLE VI, SECTION 2

115. Plaintiffs restate the allegations of Paragraphs 1 through 114 and incorporate them as if fully rewritten here.

116. The Ohio Constitution, Article VI, Section 2, requires the Ohio Legislature to provide sufficient funding to Ohio’s public school systems to permit them to offer students a “thorough and efficient” education. The General Assembly’s failure to do so has previously been established by the Ohio Supreme Court’s decisions in the *DeRolph* cases.

117. Even though the cost of providing such an education has continued to rise during recent years, including but not limited to salaries for teachers, administrators and other school staff increasing, costs for heating and cooling rising, and maintenance and costs of construction of facilities for additional students burdening many districts, the amount of per pupil funding authorized by the Ohio Legislature for public school systems has failed **even to keep up with basic inflation**.

118. At the same time, funding for the EdChoice Program, including both the Performance Based Vouchers and the Income Based Vouchers, has continued to increase. A comparison of the state’s funding for public schools, and its funding for the EdChoice voucher program, makes this clear.

119. Indeed, virtually all growth in school funding authorized by the General Assembly in the past five years has gone to fund voucher programs, including EdChoice, rather than to the public school system—which the Legislature is constitutionally mandated to fund thoroughly and efficiently.

120. The expansion of EdChoice under S.B. 89 and H.B. 110 only exacerbates the aforementioned inequities. The Ohio Department of Education now funds EdChoice Program vouchers from the state budget allocation for public schools. Because public funds are finite,

funding EdChoice Program Vouchers from the budgetary allocations designated for public school districts inevitably depletes the resources designated for educating Ohio's public school students.

121. The Fair School Funding Plan was designed to fund Ohio's public schools adequately and equitably in compliance with the Ohio Supreme Court's directive in *DeRolph*. However, the Plan could be only fractionally funded by the state due largely to the state's commitment to subsidize private school tuition instead. The EdChoice Program payments, even further expanded by the enactment of H.B. 110, limited the General Assembly to funding only up to 33% of the Fair School Funding Plan through Fiscal Year 2023. This means public school districts will receive a mere fraction of the amount, *as determined by the Ohio General Assembly*, necessary to educate students attending public, or common, schools adequately and equitably, while private schools receive double and even triple the per student funding allotted to many of the Plaintiff districts' public school pupils.

122. Due to the numerous EdChoice Program enlargements and expansions delineated above, Ohio's public schools have not been – and cannot be – adequately funded. This results in inadequate and inequitable funding of Ohio's public schools, an outcome that causes the most harm to Ohio's most vulnerable students, including minority children, disabled pupils, and those from less affluent communities.

123. By underfunding public schools in favor of subsidizing private school education, the General Assembly, State Board of Education, and the Ohio Department of Education have created an incomplete and inefficient system of schools whereby public schools struggle to provide adequate educational programming and staffing to their students while private schools expand, build, and grow. The EdChoice Program, in its previous and current iterations, continues to

damage the ability of local school boards to provide a thorough and efficient system of common schools within their districts.

124. As the EdChoice Program increasingly drains taxpayer funds intended for public school districts, those districts, including Plaintiff Districts, are, as a result, forced to rely more heavily on local property taxes, in further violation of Article VI, Section 2 of the Ohio Constitution, as already held unconstitutional in *DeRolph*.

125. Based on the foregoing, pursuant to R.C. § 2721.03, Plaintiffs are entitled to a declaration that the EdChoice Program, as codified in Revised Code Chapter 3310 *et seq.*, violates Article VI, Section 2 of the Ohio Constitution and, consequently, the Ohio Department of Education's administration of the EdChoice Program is invalid and void.

126. Plaintiffs are also entitled to permanent injunctive relief barring further EdChoice Program payments to subsidize private school tuition made from the state's foundation school fund.

COUNT THREE:
SEGREGATION IN VIOLATION OF THE THOROUGH AND EFFICIENT
SYSTEM OF COMMON SCHOOLS AS PROVIDED IN ARTICLE VI, SECTION
2 OF THE OHIO CONSTITUTION

127. Plaintiffs restate the allegations of Paragraphs 1 through 126 and incorporate them as if fully rewritten here.

128. The concept of common schools, as enshrined in Ohio's Constitution, represents the state's duty to provide a universally-available education to a diverse population, without regard to wealth, religion, race, ethnicity, or other immutable characteristics.

129. Student diversity was a central feature of the common schools ideology, because the framers of the Ohio Constitution expected that heterogeneity in class, creed, ethnicity, and

background would result in the development of mutual respect and amity, which are critical to an informed and cohesive citizenry capable of self-governance.

130. Moreover, limiting common school admissions to one race or ethnicity was a suggestion specifically debated – and summarily rejected – by the delegates at the Ohio Constitutional Convention 1850-1851, as they debated the proposed constitutional provisions regarding common schools. The framers of Ohio’s Constitution specifically envisioned racially and ethnically diverse classrooms in mandating the establishment of a system of common schools.

131. Accordingly, a thorough and efficient system of common schools is fundamentally antithetical to the segregation of schoolchildren by race and economic status. To be clear: a segregated system of schooling cannot be considered common, thorough, or efficient.

132. A disproportionate percentage of non-minority students have used EdChoice vouchers for years, even though the program was touted as purportedly offering more school options for low-income and minority students.

133. As a result, the percentage of minority students in many of Ohio’s public school districts has increased disproportionately relative to the communities where they reside.

134. For example, the Richmond Heights School District was comprised of approximately 26% white students and 74% students of color before the EdChoice Program was first implemented. Today, the Richmond Heights School District is comprised of approximately 3% white students and 97% students of color, although approximately 40% of Richmond Heights’ residents are white.

135. Likewise, the Lima City School District was comprised of approximately 46% white students and 54% students of color before the EdChoice Program was first implemented.

Today, the Lima City School District is comprised of approximately 35% white students and 65% students of color, although approximately 64% of Lima City residents are white.

136. The EdChoice Program has also exacerbated segregation in previously desegregated school districts. For example, the Columbus City School District has experienced nearly a 10% drop in the percentage of white students attending its schools since the initial implementation of EdChoice. The Columbus School District is comprised of approximately 21% white students and 79% students of color, whereas approximately 58.6% of Columbus City's residents are white.

137. Various features of the EdChoice Program cause and exacerbate this segregative effect, including provisions of the Revised Code that permit private schools receiving vouchers to discriminate in admissions based on disability, disciplinary records, academic standing, religion, and financial status. Because these factors are often proxies for, or closely correlated with, race, private schools use public funds to engage in what essentially amounts to state-sponsored discrimination in admissions and retention, leading to increased segregation or re-segregation of Ohio's public school districts.

138. The segregative effect of the EdChoice program has been widely-acknowledged for at least five years. The recent expansions of this voucher program through H.B. 110 are expected to exacerbate this segregative effect, a result that the General Assembly cannot plausibly deny it knew would occur.

139. A segregated system of schools is anathema to the common schools ideology and can never be thorough or efficient. As the EdChoice Program causes or exacerbates class and

race-based segregation in Ohio's public schools, it violates the Thorough and Efficient Clause of Article VI, Section 2 of the Ohio Constitution.

140. Based on the foregoing, pursuant to R.C. § 2721.03, Plaintiffs are entitled to a declaration that the EdChoice Program, as codified in Revised Code Chapter 3310 *et seq.*, violates Article VI, Section 2 of the Ohio Constitution and, consequently, the Ohio Department of Education's implementation and administration of the EdChoice Program is invalid and void.

141. Based on the foregoing, Plaintiffs are also entitled to permanent injunctive relief barring further EdChoice Program payments to subsidize private school tuition made from the foundation school funds.

COUNT FOUR:
DIVERSION OF FUNDING IN VIOLATION OF THE "NO RELIGIOUS OR OTHER SECT SHALL EVER HAVE ANY EXCLUSIVE RIGHT TO OR CONTROL OF, ANY PART OF THE SCHOOL FUNDS OF THIS STATE" CLAUSE OF ARTICLE VI, SECTION 2 OF THE OHIO CONSTITUTION

142. Plaintiffs restate the allegations of Paragraphs 1 through 141 and incorporate them as if fully rewritten here.

143. As explicitly stated by the framers of Ohio's Constitution, no part of the state's school funding may be diverted to parochial schools.

144. Article VI, Section 2 mandates that "no religious or other sect, or sects, shall ever have any exclusive rights to, or control of, any part of the school funds of this state."

145. During the Third Ohio Constitutional Convention of 1873-1874, the delegates debated whether public funding could be allocated to support parochial schools and moved to strike the aforementioned provision of Article VI, Section 2, which was interpreted to prohibit

diversion of state funding to sectarian institutions. This motion failed by a sweeping margin as the consensus remained that parochial schools should be supported entirely by private contributions.

146. In particular, the framers did not want the state's school funding to be divided among the different religious bodies at the expense of the common school system, which is exactly what the EdChoice Program has wrought.

147. With few exceptions, most private schools receiving EdChoice funding are parochial institutions.

148. The General Assembly's continuing efforts to expand the EdChoice Program have been undertaken with full knowledge that these state funds would overwhelmingly benefit parochial schools, at the expense of Ohio's public school students.

149. These private sectarian institutions will receive exclusive and unfettered control of approximately \$250 million of Ohio's school funding in Fiscal Year 2022, according to the Ohio Department of Education and projections issued by the Legislative Budget Office.

150. Diverting almost a quarter of a billion dollars of taxpayer funding to the exclusive control of parochial schools violates the framers' intent in retaining the full text of Article VI, Section 2 to ensure that public education funds would not be used to support religious sects, including parochial schools.

151. Based on the foregoing, Plaintiffs are entitled to a declaration, pursuant to R.C. § 2721.03, that the EdChoice Program, codified in Revised Code Chapter 3310 *et seq.*, violates Article VI, Section 2 of the Ohio Constitution and, consequently, the Ohio Department of Education's implementation and administration of the EdChoice Program is invalid and void.

152. Based on the foregoing Plaintiffs are also entitled to permanent injunctive relief barring further EdChoice Program payments to subsidize private school tuition made from the state's foundation school funds.

COUNT FIVE:
DECLARATORY JUDGMENT – VIOLATION OF OHIO CONSTITUTION,
ARTICLE I SECTION 2
(Asserted by Malcolm McPherson and Fergus Donnelly Only)

153. Plaintiffs restate the allegations of Paragraphs 1 through 152 and incorporate them as if fully rewritten here.

154. As intended by the framers of Ohio's Constitution, and as expressly codified in Article VI, Section 2 of the Ohio Constitution, education is a fundamental right upon which all other fundamental rights rest.

155. Article I, Section 2 of the Ohio Constitution states that "all political power is inherent in the people. Government is instituted for their equal protection and benefit." This is Ohio's counterpart to the federal Equal Protection Clause and it requires that similarly-situated individuals be treated equally under the law.

156. Pursuant to R.C. § 3317.022(A)(10), Ohio's students in grades K-8 are entitled to receive vouchers from the Ohio Department of Education of at least \$5,500.00 to pay for their private school education, and students in grades 9-12 are entitled to receive vouchers of at least \$7,500.00 to pay for their private school education.

157. However, similarly-situated students attending most of the Plaintiff School Districts are not receiving comparable amounts from the state to pay for their public education.

158. Students attending the Cleveland Heights-University Heights City School District will receive approximately \$1,100.00 from the Ohio Department of Education in per pupil

foundation funding for Fiscal Year 2022, **about one-fifth** of the lowest EdChoice Program voucher payment.

159. Fergus Donnelly, as a seventh-grade student in the Cleveland Heights-University Heights City School District, and Malcolm McPherson, as a tenth-grade student in the Cleveland Heights-University Heights City School District, are being denied equal protection of the law by the statutes enabling the EdChoice Program, since the District receives substantially less on their behalf from the Ohio Department of Education than EdChoice Program voucher recipients who live in the District.

160. Students attending the Columbus City School District will receive approximately \$2,800.00 from the Ohio Department of Education in per pupil foundation funding for Fiscal Year 2022, which is **about half** of the lowest EdChoice Program voucher payment.

161. Students attending the Richmond Heights Local School District will receive only approximately \$340.00 from the Ohio Department of Education in per pupil foundation funding for Fiscal Year 2022, **less than one-twelfth** of the cost of the lowest EdChoice voucher amount.

162. Statewide, the average per pupil foundation funding allotted to public school districts for Fiscal Year 2022 is approximately \$4,008.00, less than the least expensive EdChoice Voucher.

163. Some Ohio school districts, including some of the Plaintiffs herein, have sought and, in some cases, received authorization from their residents to charge extraordinarily high local property taxes in an effort to protect their students from the pernicious and discriminatory treatment described above. Those efforts, whether successful or not, do not in any way obviate or render less discriminatory the treatment of those districts' students.

164. No compelling or legitimate state interest can account for this discriminatory treatment of Plaintiff Students in comparison with their private school counterparts. No valid government explanation can justify spending two to ten times more per pupil to subsidize private school tuition than the per-pupil amounts paid by the state to educate Ohio's public school students.

165. Based on the foregoing, pursuant to R.C. § 2721.03, Plaintiff Students are entitled to a declaration that the EdChoice Program, as codified in Revised Code Chapter 3310 *et seq.*, violates Article I, Section 2 of the Ohio Constitution.

166. Based on the foregoing, Plaintiff Students are also entitled to permanent injunctive relief barring further EdChoice Program payments to subsidize private school tuition made from the state's foundation school fund.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court grant judgment in their favor and against Defendants as follows:

- A. Pursuant to Counts One through Four herein, a declaration that the EdChoice Program, as enacted and codified in Ohio Revised Code Chapter 3310 *et seq.*, and as applied and implemented by the State Board of Education and the Ohio Department of Education, violates Article VI, Section 2 of the Ohio Constitution;
- B. Pursuant to Count Five herein, a declaration that Ohio's current method of funding the EdChoice Program, as enacted and codified in Ohio Revised Code Chapter 3310 *et seq.*, and as applied and implemented by the State Board of Education and the Ohio Department of Education, violates Article I, Section 2 of the Ohio Constitution;
- C. A preliminary and permanent injunction barring Defendants and all persons and entities acting under Defendants' direction, or in concert with them, from continuing to fund and/or implement the EdChoice Program, as codified in Ohio Revised Code Chapter 3310 *et seq.*;
- D. Such other relief as the Court deems just and proper.

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