IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DIST., *et al*,	:	
	:	
Plaintiffs,	:	
	:	Case No. 22 CV 67
-vs-	:	Judge Page
	:	
STATE OF OHIO, *et al.*,	:	
	:	
Defendants.	:	

DECISION AND ENTRY ON THE PARTIES' MOTIONS FOR SUMMARY JUDGMENT

This case involves a constitutional challenge by the Plaintiffs to Ohio's EdChoice voucher program codified in R.C. Chapter 3310 and in other parts of the Ohio Revised Code and Ohio Administrative Code. The Plaintiffs ask this Court to determine whether the EdChoice voucher program is constitutional under the thorough and efficient clause in Article VI Section 2 of the Ohio Constitution and the equal protection clause contained in Article I Section 2 of the Ohio Constitution.

The following motions raising the questions of constitutionality are pending before the Court: (1) 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, Jeffrey and Eve McPherson, Parents and Next Friends of Malcom McPherson and Fergus Donnelly, Minors, Mathew Hales and Catherine Crawford Hales, Parents and Next Friends of Savanna Hales and Chase Hales, Minors, and the Ohio Coalition for Equity and Adequacy of School Funding's (together "Plaintiffs") Motion for Summary Judgment with Incorporated Memorandum in Support, filed on June 6, 2024; (2) Intervenor Defendants Christopher and Chelsea Boggs, Brian Ellis, Kathryn Sliwinski, Marc Omelsky, and Benjamin

Highley (hereafter the "Boggs Intervenors") and Intervenor Defendants Pamela and Clifton Jemison, Mariam Moussa, Rudie Wright, Paige and Christopher Fay, and Miguel and Yecencia Marquez (hereafter the "Catholic School Family Intervenors) (all together the "Intervenor Defendants") Motion for Summary Judgment, filed on June 7, 2024; and (3) Defendants State of Ohio, Stephanie K. Siddens, and Ohio Department of Education's (together the "State Defendants") Motion for Summary Judgment, filed on June 7, 2024.

For the reasons set forth in this opinion, the Court grants in part the Plaintiffs' motion for summary judgment and grants in part the Defendants' motions for summary judgment.

I. PROCEDURAL HISTORY

On January 4, 2022, the Plaintiffs filed their complaint alleging that the EdChoice Voucher Program (EdChoice) violated Article VI, Section 2 and Article I, Section 2 of the Ohio Constitution. (Complaint, Jan. 4, 2022, generally).

The Intervenor Defendants filed motions to intervene on January 7 and March 14, 2022. (Motion to Intervene as Defendants, Jan. 7, 2022: Motion to Intervene as Defendants, Mar. 14, 2022). After hearing oral argument on these motions on March 30, 2022, the Court granted the Intervenor Defendants' motions on May 12. (Decision and Entry on Non-Party Applicants' Motion to Intervene, May 12, 2022).

Subsequently, the State Defendants filed their motion to dismiss pursuant to Civ.R. 12(B)(6). (Motion to Dismiss, May 18, 2022). The Intervenor Defendants simultaneously filed a motion for judgment on the pleadings. (Intervenor-Defendants' Motion for Judgment on the Pleadings, May 19, 2022).

In response, the Plaintiffs filed an amended complaint, leading to a new round of dispositive motions. (First Amended Complaint for Declaratory Judgment and Injunctive Relief,

May 26, 2022: Defendants' Motion to Dismiss Amended Complaint, Jun. 8, 2022: Intervenor-Defendants' Motion for Judgment on the Pleadings, Jun. 10, 2022: Catholic School Family Intervenor-Defendants' Motion for Judgment on the Pleadings, Jun. 10, 2022).

After allowing the parties to make oral argument, the Court denied the Defendants' dispositive motions. (Notice of Hearing, Sep. 29, 2022: Decision and Entry on Defendants' Motion to Dismiss, Dec. 16, 2022: Decision and Entry on Defendants' Motion for Judgment on the Pleadings, Dec. 16, 2022).

During discovery, the Court addressed motions to quash filed by Senate President Matthew Huffman (Huffman), who was President of the Ohio Senate at that time, and the Intervenor Defendants. (Plaintiffs' Notice of Deposition of Matthew Huffman, Mar. 30, 2023: Intervenor-Defendants' Motion to Quash 42 Non-Party Subpoenas: Motion of Non-Party Senate President Matthew Huffman to Quash Plaintiffs' Subpoena, Apr. 26, 2023). The Court denied the Intervenor Defendants' motion to quash and granted in part Huffman's motion to quash, requiring Huffman to submit to questioning by written deposition. (Decision and Entry on the Boggs Intervenor Defendants' Motion to Quash, Jun. 27, 2023: Decision and Entry on Non-party Senate President Matthew Huffman's Motion to Quash, Dec. 21, 2023).[1]

In August of 2023, the Intervenor Defendants filed their Joint Motion to Dismiss First Amended Complaint. The Court denied that motion and allowed the Plaintiffs leave to file a supplemental complaint to account for changes made to the EdChoice program by House Bill 33. (Decision and Entry on the Defendants' Motion to Dismiss and to Stay Discovery and On

[1] After Huffman's appeals to the 10th District Court of Appeals and to the Ohio Supreme Court, the Plaintiffs eventually withdrew their subpoena. *Columbus City Sch. Dist. v. State*, 2024-Ohio-1217 (10th Dist.); *Columbus City School Dist., et al. v. State of Ohio, et al*., Ohio Sup. Crt. No. 2024-0563 (Motion to Dismiss, Aug. 19, 2024); Notice of Withdrawal of Subpoena to Matthew Huffman, Aug. 15, 2024.

Plaintiffs' Motion for Leave to File a Supplemental Complaint Instanter, Mar. 11, 2024).

Thereafter, the parties each filed summary judgment motions. During the week of April 28, 2025, the Court held a multi-day oral argument on the parties' motions for summary judgment.

II. FACTUAL RECORD

The record in this case is unquestionably voluminous. The parties have referenced materials from before Ohio's statehood up to the General Assembly's modification of EdChoice in H.B. 33. The breadth of this material necessitates a brief history of school funding legislation and jurisprudence in Ohio.

A. SCHOOL FUNDING BEFORE EDCHOICE

i. Legislative History

The State of Ohio has a history of valuing and encouraging education. As early as 1787, the chartered government, that included the territory that would later become the State of Ohio, recognized education as indispensable to the success of its people. *Ordinance of 1787*, Jul. 13, 1787, Article III, (Accessed June 23, 2025)[2], https://perma.cc/6FD4-674Y ("Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."). When the State of Ohio moved towards establishing statehood, similar language valuing education was included in the first constitution. The Ohio Historical Society Ohio Fundamental Documents Searchable Database*, Constitution of the State of Ohio, 1802*, Article VIII Section 3, https://guides.law.csuohio.edu/ld.php?content_id=75330645 (Accessed June 23, 2025), https://perma.cc/SYX8-8FMA ("[S]chools and the means of instructions shall forever be encouraged by legislative provision not inconsistent with the rights of conscience.").

[2] For formatting reasons, this URL link and others may be provided in footnotes: https://www.law.csuohio.edu/sites/default/files/lawlibrary/ohioconlaw/nwordinance.pdf

In furtherance of uplifting and supporting the education of Ohioans, the first law in support of common schools was passed in 1821. It was permissive in nature and merely set up a method by which local communities could establish schools. Ohio History Journal, *An Early Proposal for a State Polytechnic School*, (accessed Jun. 23, 2025)[3] [https://perma.cc/M9PV-BZFT]. Then in 1825, a second law was passed. It was the first that allowed for taxation to support public education and created a half-mil tax to be collected to fund schools in the state. Cincinnati & Hamilton County Public Library, *Education in Ohio*, (accessed Jun. 23, 2025)[4] [Permalink unavailable]; *See also Derolph v. State*, 78 Ohio St. 3d 193, 217 (Providing a brief history of public-school funding in Ohio.).

The education of its people remained at the forefront of Ohio's leaders' decision making during the Constitutional Convention of 1850. The delegates considered an amendment to address the State's obligation to educate its people, including whether or not to put public education funds within the reach of private religious schools. *Official Reports of the Debates and Proceedings of the Ohio State Convention, Called to Alter, Revise or Amend the Constitution of the State* (hereafter the "Constitutional Debates of 1850"), May 6, 1850, and December 2, 1850, Reported by J.V. Smith, at pg. 688. In rejecting this amendment, Delegates Mason and Nash offered the following commentary

> This amendment proposes to extend the provisions of the section which provides that all religious denominations, the whole religious community in fact, shall be forever excluded from any participation in the school fund of the State; and that because they are religious.
>
> Every citizen has, and will have a right to participate in the means of education; but the intention of the provision merely is, that no organized body of Christians, as such, shall be entitled to lay its hand

[3]https://resources.ohiohistory.org/ohj/search/display.php?page=73&ipp=20&searchterm=array&vol=39&pages=400-410

[4] https://digital.cincinnatilibrary.org/digital/collection/p16998coll15/id/45103 and https://digital.cincinnatilibrary.org/digital/collection/p16998coll15/id/45104

> upon the school funds of the State, and appropriate it to the furtherance of their own peculiar views. *** There is in the section no exclusion of any individual. It means merely, that neither the Presbyterian, the Episcopalian, or the Catholic church, shall have the power to seize upon the public funds and appropriate them to suit itself.

Constitutional Debates of 1850, pg. 688. Ultimately, the delegates settled on the following language

> 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 through-out 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.

The Second Constitution of the State of Ohio Done in Convention at Cincinnati, March 10, 1851, Article VI Section 2, (Accessed June 23, 2025)[5], [https://perma.cc/7WAW-BUPQ].

At the Constitutional Convention of 1873, a proposal was made that would remove the following language from Article VI, Section 2 of the Ohio Constitution, "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." Official Report of the Proceedings and Debates of the Third Constitutional Convention of Ohio, Volume II- Part 2, J.G. Agel, December 2, 1873 (hereafter the "Constitutional Debates of 1873"); Plaintiffs' Exhibit ZZ, pg. 2. That proposal was met by harsh criticism from Delegate Cook, who described it as

> It is section two, of Article VI, of the present Constitution, with the most important part left out, namely, "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." *** [T]he object of the amendment becomes apparent;- it is to leave the Constitution so crippled that the various religious denominations may divide the common school fund among them, for the support of sectarian schools. *** The

[5] https://www.law.csuohio.edu/sites/default/files/lawlibrary/ohioconlaw/1851constitution.pdf

> purpose of this amendment is to reduce the standard of education in the common schools, and nearly, if not quite, legislate the high schools out of existence.

Constitutional Debates of 1873, pg. 2188; Plaintiffs' Ex. ZZ, pg. 4. Delegate Miner agreed, stating

> I am utterly opposed to a constitutional provision, or to any legislation, having in view the allotment of any part of the common school fund to any schools except those established, maintained and controlled by, or under the authority of the State. The moment we consent to do so, we deal the death blow to the system of common schools, upon which expanded and improved by increasing experience and wisdom, more than upon anything else, it is my profoundest conviction, depends the perpetuity and efficiency of our American institutions and government.

Constitutional Debates of 1873, pg. 2246; Plaintiffs' Ex. ZZ, pg. 5-6. The delegates final proposal for Article VI Section 2 was

> The General Assembly shall make such provision, by taxation or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools through-out the State. No religious or other sect shall ever have exclusive right to, or control of any part of the school funds of the State.

The Proposed Constitution of 1874, Article VI, Section 2, (Accessed Jun. 23, 2025)[6], https://perma.cc/C3RW-CL9P. The Proposed Constitution of 1874 was ultimately defeated by Ohio voters and the constitutional language from 1851 remained as the governing document for the state.

When Ohio's Constitution was revisited again in 1912, no changes to Article VI Section 2 were made, leaving the language that was approved by Ohioans in 1851 in place to this day. *The Constitution of the State of Ohio With Amendments Proposed by the Constitutional Convention of*

[6] https://www.law.csuohio.edu/sites/default/files/lawlibrary/ohioconlaw/PropConst1874.pdf

1912 and Approved by the People, Appendix Section VIII, pg. 2131-2132, (Accessed Jun. 23, 2025)[7], permalink unavailable.

ii. Jurisprudence

The framers did not provide guidance as to what constituted a "system of common schools," nor did they define what characteristics would make that system "thorough and efficient." The Ohio Supreme Court has interpreted the thorough and efficient clause of Article VI Section 2 of the Ohio Constitution to include a system of common schools where school districts are not starved for funds, nor where any lack teachers, buildings, or equipment. *Miller v. Korns*, 107 Ohio St. 287, 298 (1923). Stated differently, "[a] thorough and efficient system of common schools includes facilities in good repair and the supplies, materials, and funds necessary to maintain these facilities in a safe manner, in compliance with all local, state, and federal mandates." *Derolph v. State*, 78 Ohio St. 3d 193, 213 (1997).

The parties draw our attention to other legal challenges that have been made to Ohio's method of funding public schools. The *Derolph* court specified that the State is responsible for maintaining a thorough and efficient school system. *Derolph v. State*, 78 Ohio St. 3d 193, 210 (1997). In doing so, the General Assembly has exceedingly broad powers to tax, organize, administer, and control the common school system. *State ex rel. Core v. Green*, 160 Ohio St. 175, 180 (1953). However, those broad powers do not include unlimited discretion. *Bd. of Educ. v. Walter*, 58 Ohio St. 2d 368, 387 (1979) (Finding no abuse of discretion by the General Assembly in enacting a statute that funds public education through the Equal Yield Formula.). The courts may be compelled to intervene to ensure that the General Assembly is functioning according to its constitutional directive. *State ex rel. Cong. Of Parents & Teachers v. State Bd. of Educ*., 2006-

[7] https://www.supremecourt.ohio.gov/docs/LegalResources/LawLibrary/resources/appendix.pdf

Ohio-5512, ¶ 29.

In *State ex rel. Cong. Of Parents & Teachers*, the Ohio Supreme Court held that R.C. Chapter 3314, which allows for community schools in Ohio, did not violate the thorough and efficient clause by creating a system of uncommon private schools because community schools were funded entirely by the State and because they are heavily regulated by the State. *State ex rel. Cong. Of Parents & Teachers v. State Bd. of Educ*., 2006-Ohio-5512, ¶ 26, 38-39. However, in recognizing the General Assembly's latitude in creating differing standards for community schools, the Ohio Supreme Court noted that the General Assembly must still function according to its constitutional directive. *Id*. at ¶ 29.

The *Goff* court stated, "[w]e fail to see how the School Voucher Program, at the current funding level, undermines the state's obligation to public education." *Simmons-Harris v. Goff*, 86 Ohio St. 3d 1, 11 (1999). Though it found no violation of Article VI Section 2 of the Ohio Constitution, *Goff* observed that private schools' "success should not come at the expense of our public education system or our public school teachers." *Id*.

In *Zelman*, the United States Supreme Court held that a voucher program allowing students to attend a participating public or private school of their parent's choosing or to obtain tutorial aid while remaining enrolled in a public school did not violate the Establishment Clause because it was a program of true private choice. *Zelman v. Simmons-Harris*, 536 U.S. 639, 645-646, 661, 663 (2002). The program at issue required that: (1) participating schools not discriminate on the basis of religion; (2) public schools in a school district adjacent to the covered district be allowed to participate; (3) participating adjacent public schools receive funding above the full per-pupil amount; and (4) all participating schools, whether public or private, must accept students in accordance with rules and procedures established by the state superintendent. *Id*. at 645-646.

B. THE EDCHOICE VOUCHER PROGRAM

R.C. Chapter 3310 contains the current legislation that is the EdChoice voucher program. The parties do not dispute that EdChoice has expanded since its inception in 2005. (Compare Plaintiffs' Mot. Summary Judgment Ex. U, pg. 1-2 to *Id*. Ex. P). Changes made in a recent expansion of EdChoice through H.B. 33 were examined in a prior decision. (See Decision and Entry on the Defendants' Motion to Dismiss and to Stay Discovery and on Plaintiffs' Motion for Leave to File a Supplemental Complaint Instanter, Mar. 11, 2024, pg. 4-5).

In EdChoice's current state, chartered non-public schools that wish to participate in the program must complete a registration form and make certain representations. (Plaintiffs' Mot. Summary Judgment Ex. C, pg. 8-9). They may then create an account using the Ohio Department of Education's website. (Plaintiffs' Mot. Summary Judgment Ex. A). This online application allows participating schools to submit applications for students they have approved. *Id*. Once per year, ODE requires that these participating schools submit additional documentation. (Christine Burns Depo., pg. 28-29, 34). ODE does not conduct site visits for chartered non-public schools participating in the EdChoice program other than during the chartering process. *Id*. at pg. 30-31. ODE has no system in place to verify that participating schools are following EdChoice's regulations. *Id*. at pg. 34.

Students who wish to receive an EdChoice voucher to attend an approved private school must first contact and complete the enrollment process for a participating private school. (Plaintiffs' Mot. Summary Judgment Ex. C, pg. 7). Once they have been accepted by the participating private school, they may apply for an EdChoice Scholarship through that private school. *Id*.; Ohio Admin. Code 3301-11-05(B)(4). If the student qualifies for EdChoice participation, the State pays the voucher amount directly to the student's chartered non-public

school. Ohio Admin.Code 3301-11-10(A); Plaintiffs' Mot. Summary Judgment Ex. NN[8], QQ.

R.C. 3317.022 contains the mandate to compute and distribute funding for both state core foundation funding and for EdChoice. R.C. 3317.022(A)(1), (10)(a), (E). Though state core foundation funding and EdChoice have separate funding formulas, their funding comes from the same line item within the State's budget. (Plaintiffs' Mot. Summary Judgment Ex. O, Req. for Admiss. No. 38).

C. EDCHOICE RECIPIENT SCHOOLS

In fiscal year 2022, over 300 million dollars were distributed to approximately 575 chartered non-public schools through the EdChoice program. (Plaintiffs' Mot. Summary Judgment Ex. O, Req. for Admiss. No. 37: Christine Burns (Burns) Depo., pg. 31). Of the schools that received those funds, 154 received EdChoice funds for more than 75% of their enrolled students in fiscal years 2022 and/or 2023. (Plaintiffs' Mot. Summary Judgment Ex. M, Interog. No. 21). Some of those schools received over 60% of their funding from EdChoice vouchers. (Plaintiffs' Mot. Summary Judgment Ex. L (Receiving over 99% of funding from EdChoice.), K (Over 80%), J (Over 75% for FY 2022.), I (Over 60% for FY 2022.), H (Over 65% for FY 2022.).

A significant proportion of the non-public schools receiving EdChoice funding are religious schools. (Plaintiffs' Mot. Summary Judgment Ex. M, Interog. No. 21 (Chart attached with Bates Nos. STATE_000053-000056). Many of these religious schools reserve the right to reject applicants, including those seeking admittance with assistance from an EdChoice voucher because of: (1) behavioral or academic problems; (2) sexual preference; (3) religious or moral beliefs; (4) physical or emotional disability. (Plaintiffs' Mot. Summary Judgment Ex. R).

[8] Some of these exhibits contain sensitive information and were thus filed under seal.

D. THE PLAINTIFF DISTRICTS AND STUDENTS

The Plaintiffs in this case include the Ohio Coalition for Equity and Adequacy of School Funding (the "Coalition"), which is a group comprised of and representing the Ohio school districts, students and families that are allegedly harmed by the EdChoice Program. (Plaintiffs' Supp. Complaint, Dec. 21, 2023, ¶ 21). Several individual school districts are also plaintiffs.

The Columbus City School District (CCSD) enrolls 45,000 students annually, the majority of which are economically disadvantaged. (Plaintiffs' Mot. Summary Judgment Ex. BB, ¶ 5). CCSD suffers from a lack of funding in many areas, including: (1) the inability to purchase updated textbooks and other quality learning materials; (2) translation services for students; (3) hiring and retaining teachers, bus drivers, and other staff members; (3) repairing and/or maintaining their 130 plus buildings; (4) construction of new facilities. *Id*. at ¶ 6-8, 11-13. It has also been the subject of several investigations by the Ohio Office for Exceptional Children and the City of Columbus Public Health determining that CCSD: (1) assigned too many students with disabilities to service specialists; (2) failed to transport students to school; and (3) had not adequately controlled insects and rodents inside their facilities. *Id*. at Ex. B-D. CCSD alleges that it only received $2,800 from the Ohio Department of Education per pupil in core foundation funding for the Fiscal Year of 2022 compared to over $40 million going to 7,400 students participating in the EdChoice program within CCSD's geographical boundaries. (Plaintiffs' Supp. Complaint, ¶ 22: Plaintiffs' Mot. Summary Judgment Ex. GG).

The Cleveland Heights-University Heights City School District (CH-UHCSD) enrolls about 5,000 students, 99% of which are disadvantaged. (Plaintiffs' Mot. Summary Judgment Ex. AA, ¶ 5). In 2015-2016 and 2018-2020, it was notified of budget deficits resulting from EdChoice program deductions and requiring it to place levies on the ballot in March and November of 2020.

Id. at ¶ 6; *Id*. at Ex. A. Inadequate funding has caused CH-UHCSD to lay off or suspend teachers and other staff members resulting in overcrowded classrooms and insufficient support for special education and English as a second language children. *Id*. at ¶ 7. CH-UHCSD cannot afford to repair its many facilities and most of its buildings operate with no air conditioning and inadequate roofs, doors, windows and masonry. *Id*. at ¶ 11-13; *Id*. at Ex. AA, pg. 21-34. CH-UHCSD alleges that it only received $1,700 from the Ohio Department of Education per pupil in core foundation funding for the Fiscal Year of 2022 compared to $11 million going to 2,000 students participating in the EdChoice program within CH-UHCSD's geographical boundaries. (Plaintiffs' Supp. Complaint, ¶ 23: Plaintiffs' Mot. Summary Judgment Ex. GG).

The Richmond Heights Local School District Board of Education (RHLSD) alleges that it only received $1,529.09 from the Ohio Department of Education per pupil in core foundation funding for the Fiscal Year of 2022 compared to $675,000 going to 100 students participating in the EdChoice program within RHLSD's geographical boundaries. (Plaintiffs' Mot. Summary Judgment Ex. O, Request for Admission No. 93).

The Lima City School District Board of Education (LCSD) enrolls about 3,400 students annually, all of whom are considered economically disadvantaged. (Plaintiffs' Mot. Summary Judgment Ex. FF, ¶ 5). LCSD has been running a deficit for the fiscal year 2023-2024. *Id*. at ¶ 6; *Id*. at Ex. A. This deficit has prevented LCSD from attracting and hiring qualified staff members and providing the necessary services for their students. *Id*. at ¶ 7-8. It has also been forced to defer necessary repairs to its facilities, including new roofs, HVAC repairs, and new boilers. *Id*. at ¶ 9. LCSD alleges that despite its lack of funding, the state has given $3.5 million to approximately 600 students participating in the EdChoice program within LCSD's geographical boundaries. (Plaintiffs' Supp. Complaint, ¶ 23: Plaintiffs' Mot. Summary Judgment Ex. GG).

The Barberton City School District Board of Education (Barberton) serves 3,500 students, 62% of which are considered economically disadvantaged. (Plaintiffs' Mot. Summary Judgment Ex. HH, ¶ 5). Barberton has struggled to purchase textbooks and other supplies, some of which have not been updated for 10-15 years. *Id*. at ¶ 6: *Id*. at Ex. A. It has not been able to repair or replace critical infrastructure including roofs and buses. *Id*. at ¶ 8-9. Barberton alleges that despite its lack of funding, the state has given $440,000 to approximately 80 students participating in the EdChoice program within Barberton's geographical boundaries. (Plaintiffs' Supp. Complaint, ¶ 26: Plaintiffs' Mot. Summary Judgment Ex. GG).

The Dayton City School District Board of Education (DCSD) enrolls about 12,000 students annually, over 96% of which are considered economically disadvantaged. (Plaintiffs' Mot. Summary Judgment Ex. EE, ¶ 5). A lack of funding has caused DCSD to struggle to provide its students with: (1) bus transportation; (2) technology and educational materials; (3) qualified teachers; and (4) adequate facilities. *Id*. at ¶ 7-12: *Id*. at Ex. A-D. DCSD alleges that despite its lack of funding, the state has given over $16.5 million to approximately 3000 students participating in the EdChoice program within DCSD's geographical boundaries. (Plaintiffs' Supp. Complaint, ¶ 27: Plaintiffs' Mot. Summary Judgment Ex. GG).

The individual Plaintiffs include minors: (1) Malcolm McPherson, who attends Cleveland Heights High School; (2) Fergus Donnelly, who attends Roxboro Middle School in Cleveland Heights: (3) Chase Hales, who attends Richmond Heights Elementary School; and (4) Savanna Hales, who also attends Richmond Heights Elementary School. (Plaintiffs' Supp. Complaint, ¶ 28-29).

III. THE PARTIES' MOTIONS FOR SUMMARY JUDGMENT

The parties have each moved for summary judgment as to the five counts contained in the Plaintiffs' Supplemental Complaint. The Court will address each segment of these motions in turn.

A. LEGAL STANDARD

Summary judgment may be granted under Civ.R. 56(C) when there remains no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to but one conclusion, that conclusion being adverse to the party opposing the motion. *Franks v. Ohio Dept. of Rehab. & Corr.*, 2013-Ohio-1519, ¶ 5 (10th Dist.). "[T]he moving party bears the initial burden of demonstrating that there are no genuine issues of material fact concerning an essential element of the opponent's case." *Dresher v. Burt*, 75 Ohio St.3d 280 (1996). A party moving for summary judgment on the basis that the non-moving party has no evidence to prove its claim(s) must point to some evidence that affirmatively demonstrates that the non-moving party has no evidence to support each element of the stated claims. *Franks v. Ohio Dep't of Rehab. & Corr.*, 2013-Ohio-1519, ¶ 5 (10th Dist.). The Court may not weigh the evidence and must resolve all reasonable inferences in favor of the non-moving party. *Saha v. Research Inst. At Nationwide Childrens Hosp.*, 2013-Ohio-4203, ¶ 20 (10th Dist.). If any doubt exists, the issue must be resolved in favor of the nonmoving party. *Chase Home Fin., LLC v. Dougherty*, 2013-Ohio-1464, ¶ 10 (10th Dist.).

The nonmoving party must then rebut with specific facts showing the existence of a genuine probable issue and may not rest on the mere allegations in their pleadings. *Id*. Only factual disputes that might affect the outcome of the suit under the governing law will preclude the entry of a summary judgment. *Havely v. Franklin County*, 2008-Ohio-4889, ¶ 32 (10th Dist.).

Each count of the Plaintiffs' supplemental complaint challenges the constitutionality of a statute. (Plaintiffs' Mot. Leave Ex. A, Dec. 21, 2023). Courts must presume the constitutionality of legislation, and parties so challenging must carry a heavy burden. *City of Dayton v. State*, 2017-Ohio-6909, ¶ 12. Before analyzing the propriety of the Plaintiffs' claims, the Court must first determine whether the Plaintiffs are challenging the EdChoice legislation on its face or as applied to a particular set of facts. *Yajnik v. Akron Dep't of Health, Housing Div*., 2004-Ohio-357, ¶ 14.

"A facial challenge alleges that a statute, ordinance, or administrative rule, on its face and under all circumstances, has no rational relationship to a legitimate government interest." *Wymsylo v. Bartec, Inc*., 2012-Ohio-2187, ¶ 21. In such a challenge, the challenger must establish that no set of circumstances exists under which the act would be valid. *Id*. "To prevail on a facial constitutional challenge, the challenger must prove the constitutional defect, using the highest standard of proof, which is also used in criminal cases, proof beyond a reasonable doubt." *State ex rel. Ohio Cong. Of Parents & Teachers v. State Bd. of Educ*., 2006-Ohio-5512, ¶ 21. "Reference to extrinsic facts is not required to resolve a facial challenge." *Wymsylo* at ¶ 21.

Alternatively, the proponent of an "as applied" challenge must show that the application of the statute in a particular context is unconstitutional by clear and convincing evidence. *Yajnik* at ¶ 14; Ohio Cong., 2006-Ohio-5512, ¶ 21. If a statute is held to be unconstitutional "as applied," it cannot be so applied in that context in the future but is not wholly invalidated. *Id*.

B. PLAINTIFFS' COUNT ONE: CREATION OF ONE OR MORE SYSTEMS OF UNCOMMON SCHOOLS

In this claim, the Plaintiffs submit that the EdChoice program unconstitutionally creates a second system of uncommon, private schools in violation of Article VI Section 2 of the Ohio

Constitution. They argue that because EdChoice is a complex, state-run system that funds private schools, it amounts to an uncommon system of schools funded by the State. The Plaintiffs' allegations within this claim are a facial challenge to the EdChoice voucher program because any legislation that creates a second system of uncommon, private schools could never be valid under Article VI Section 2 of the Ohio Constitution.

The Defendants' arguments covering this claim do not seem to dispute the complex nature of the EdChoice legislation or the amount of funding EdChoice receives. (See R.C. 3310.01-3310.033: Plaintiffs' Mot. Summary Judgment Ex. A-C, P, U, GG: See also Ohio Admin.Code 3301-11-01 et seq.). The Defendants also do not dispute that the schools receiving EdChoice voucher funding are non-public schools that are not being managed or run by the State. (State Defendants' Memo. Contra, Jul. 5, 2024, pg. 9). Instead, they argue: (1) EdChoice establishes scholarships, not a system of schools (Intervenor Defendants' Mot. Summary Judgment, pg. 6-7); (2) the Ohio Constitution and Ohio Supreme Court precedent allow scholarships like those offered by EdChoice (Intervenor Defendants' Mot. Summary Judgment, pg. 7-10: State Defendants' Mot. Summary Judgment, pg. 20-23); and that (3) Ohio has always funded private schools (Intervenor Defendants' Mot. Summary Judgment, pg. 10-13).

In support of their first two arguments, the Intervenor Defendants point to *Simmons-Harris v. Goff*, 86 Ohio St. 3d 1 (1999) to support their proposition that EdChoice establishes constitutionally permissible scholarships, not a system of schools. (Intervenor Defendants' Mot. Summary Judgment, pg. 6-7). They assert that *Goff's* holding necessitates that: (1) the Plaintiffs' claim fails because EdChoice did not create any schools; (2) the General Assembly is not prohibited from establishing a second system of schools; and (3) even if the State were prohibited from establishing a second system, no violation has occurred, because the State has merely funded

private schools, and did not establish them. (Intervenor Defendants' Mot. Summary Judgment, pg. 5-13: State Defendants' Mot. Summary Judgement, pg. 20-23: State Defendants' Memo. Contra, pg. 7-12).

Goff primarily involved a challenge to Article VI Section 2's prohibition on religious control of school funds of the state within the Cleveland City School District. *Goff* at 11. The constitutional challenge was rejected because "no money flows directly from the state to a sectarian school and no money can reach a sectarian school based solely on its efforts or the efforts of the state." *Id*. Though the Defendants argue that *Goff* hinged on the fact that the school voucher program at issue did not actually create any schools, the Court disagrees with this interpretation. *Goff* recognized the history and value of private schools but cautioned that their success should not come at the expense of public education, nor should the state be allowed to finance a system of nonpublic schools. *Goff* at 11. The Ohio Supreme Court interpreted Article VI Section 2 of the Ohio Constitution to prohibit the establishment of a system of uncommon (or nonpublic) schools financed by the state. *Id*. As to the thorough and efficient challenge, the court ultimately held, "[w]e fail to see how the School Voucher Program, *at the current funding level*, undermines the state's obligation to public education." (Emphasis added.) *Id*. From this language, the Court concludes that the *Goff* court foresaw a renewed challenge to a larger scholarship or voucher program like EdChoice as an unconstitutional state supported system of private schools. *Goff* warned that a system that does not create but supports nonpublic schools in a way that jeopardizes the thoroughness and efficiency of the State's system of public schools violates Article VI Section 2 of the Ohio Constitution.

Additionally, the present case differs from *Goff* in several ways. First, EdChoice funding is paid directly from the state to chartered non-public schools across the state. Ohio Admin.Code

3301-11-10(A); Plaintiffs' Mot. Summary Judgment Ex. NN, QQ. The voucher program in *Goff* involved the State providing funds directly to parents in the Cleveland City School District, who then paid the voucher to a school of their choice. *Goff* at 11.

Second, the voucher program in *Goff* contained a statutory requirement that participating private schools do not discriminate based on race, religion, or ethnic background. *Goff* at 7-8 (Striking down a portion of the statute that gave priority to the admission of students whose parents financially supported the school.), citing R.C. 3313.976(A)(4)[9]. Chartered non-public schools participating in the EdChoice program are not subject to anti-discrimination laws, giving them complete control over whether to enroll a prospective student, and allowing them to turn students away based on their religion, sexual orientation, or disability. (Plaintiffs' Mot. Summary Judgment Ex. R: Burns Depo., pg. 34, 73: R.C. 3310.17(B)). In addition, the chartered non-public school, not the student or parent, applies to the state for an EdChoice voucher. (Plaintiffs' Mot. Summary Judgment Ex. A: Plaintiffs' Mot. Summary Judgment Ex. C, pg. 7: Ohio Admin. Code 3301-11-05(B)(4)). By bestowing participating private religious schools with complete control over prospective students' participation, the "school choice" here is made by the private school, not "as the result of independent decisions of parents and students." *Goff* at 11. These differences in the underlying legislation make the Defendants' arguments tenuous at best.

The idea that EdChoice establishes scholarships, not a system of schools, and that it funds students, not private schools, is mere semantics. Unlike in *Goff*, where payments made to parents were considered an indirect benefit to private schools, EdChoice procedure mandates that payments be made directly from the State to private schools. Compare Ohio Admin.Code 3301-11-10(A); Plaintiffs' Mot. Summary Judgment Ex. NN, QQ to *Goff* at 11. More importantly,

[9] This statute has been amended several times since *Goff*. The relevant section is currently numbered as R.C. 3313.976(A)(3).

private schools participating in EdChoice receive substantially more state funding per student than public schools. (Compare Plaintiffs' Mot. Summary Judgment Ex. O, No. 80 to *Id*. at No. 93, 96, 99, 102). Where EdChoice participating private schools are inexplicably receiving double the per pupil state funding than public schools, it is difficult to say that EdChoice is simply a scholarship that follows and/or benefits the student as opposed to a system that benefits private schools.

Finally, the Defendants argue that EdChoice is not unconstitutional because the State has always funded private schools. Though this may be true, the State may not fund private schools at the expense of public schools or in a manner that undermines its obligation to public education. *Goff* at 11. This sentiment is clearly expressed *supra* both through the debates at Ohio's constitutional conventions warning that giving private religious schools access to state funding would trigger the downfall of the public education system and by enshrining a prohibition against this within Article VI Section 2 of the Ohio Constitution. Where, as here, the State provides hundreds of millions of dollars in funding to private schools through EdChoice while at the same time Plaintiffs are unable to educate their students because the General Assembly decided not to fully fund public schools, it is difficult not to conclude that the fears of the *Goff* court have come to pass. (Plaintiffs' Mot. Summary Judgment Ex. O, No. 35-36, 37: *Id*. Ex. P, AA-CC, EE-HH).

The current iteration of EdChoice expands eligibility to any student residing outside of Cleveland and entering kindergarten through grade twelve. R.C. 3310.032(A). As of April of 2024, almost 75% of EdChoice vouchers were awarded for the maximum amount of $6,166 for students in grades K-8 or $8,408 for students in grades 9-12. (Plaintiffs' Mot. Summary Judgment Ex. AAA). The estimated total award for EdChoice vouchers to private schools during the 2024 fiscal year is over $700 million. (Plaintiffs' Mot. Summary Judgment Ex. P). EdChoice mandates that the State pay these funds directly to participating private schools. R.C. 3310.02,

3317.022(A)(10): Ohio Admin.Code 3301-11-10(A)-(B). Conversely, the voucher system in *Goff* directly awarded approximately two thousand students a total of five million dollars in scholarships. *Simmons-Harris v. Goff*, 1997 Ohio App. LEXIS 1766, * 5 (10th Dist.). This comparison further illustrates that *Goff* is not determinative of count one of the Plaintiffs' complaint.

In addition, many EdChoice participating private schools rely on public funds. In the fiscal years 2022 and 2023, 154 private schools receiving EdChoice funds collected them for more than 75% of their enrolled students. (Plaintiffs' Mot. Summary Judgment Ex. M, Interog. No. 21). Many of these schools received over 60% percent of their total funding from EdChoice Vouchers. (See e.g., Plaintiffs' Mot. Summary Judgment Ex. L (Receiving over 99% of funding from EdChoice.), K (Over 80%), J (Over 75% for FY 2022.), I (Over 60% for FY 2022.), H (Over 65% for FY 2022.). The expansion of EdChoice eligibility has also encouraged private schools to claw back their own scholarships in reliance on public taxpayer funds. (Plaintiffs' Reply, Jul. 29, 2024, Ex. LLL, pg. 3).

Taken together, the evidence presented by the Plaintiffs supports their assertion that, in expanding the EdChoice program to its current form, the General Assembly has created a system of uncommon private schools by directly providing private schools with over $700 million in funding. This evidence proves beyond a reasonable doubt that EdChoice violates Article VI Section 2 of the Ohio Constitution. Therefore, Plaintiffs' motion for summary judgment is **GRANTED** as to count one of their complaint. The Defendants' motions for summary judgment are **DENIED** as to this claim.

C. PLAINTIFFS' COUNT TWO: FAILURE TO SECURE A THOROUGH AND EFFICIENT SYSTEM OF COMMON SCHOOLS

In this count, the Plaintiffs allege that the State Defendants' failure to adequately fund public schooling by not fully funding the Fair School Funding Plan while simultaneously spending large sums on the EdChoice program has resulted in a system of common schools that is not thorough and efficient. (Plaintiffs' Supp. Complaint, ¶ 138-150). The Plaintiffs' claim is limited to State funding. *Id*., generally. This claim is also a facial challenge to the EdChoice voucher program.

In support, the Plaintiffs point to changes to EdChoice from House Bills 110 and 33 that significantly expanded prospective students' eligibility for EdChoice vouchers. Am. Sub. H.B. No. 110, §3310.02: Am. Sub. H.B. No. 33, §3310.032. Those changes led to increased participation in EdChoice and drastically increased the State's voucher spending. (See Am. Sub. H.B. No. 110, § 3310.02 (Removing caps for EdChoice voucher participation.): Am. Sub. H.B. No. 33, §3310.032(A) (Removing income and sibling participation-based restrictions.): Compare Plaintiffs' Mot. Summary Judgment Ex. P (Estimating a cost of over $700 million for EdChoice vouchers in fiscal year 2024) to Plaintiffs' Mot. Summary Judgment Ex. U (State funding for EdChoice was over $315 million in the fiscal year 2022 and over $353 million in the fiscal year 2023).

At the same time, the General Assembly decided not to fully fund the Cupp-Patterson Fair School Funding Plan (FSFP), a plan initiated by the General Assembly to comply with *Derolph's* holding that the State of Ohio had unconstitutionally underfunded the public education system, in fiscal years 2023 through 2025. See Am. Sub. H.B. No. 110, §3317.022(A): R.C. 3317.022(A): Fleeter Depo., pg. 51: *See also Derolph v. State*, 78 Ohio St. 3d 193, 212 (1997). The decision not

to fully fund the FSFP was based on the General Assembly's unwillingness to do so and its perception that fully funding it was not financially feasible. (Fleeter Depo. at pg. 51). Instead, the General Assembly decided to phase-in the FSFP during fiscal years 2022 through 2024 at 16.6%, 33.33%, and 50% respectively. (Rausch Depo., pg. 32). The General Assembly's failure to fully fund the FSFP resulted in Ohio's public schools receiving $6,480,686,315.96 instead of $7,239,568,032.61 for the fiscal year 2022. (Plaintiffs' Mot. Summary Judgment Ex. 0, Nos. 35-36: Rausch Depo., pg. 37-38). This difference of about $300 million dollars is close to the amount of State funding for EdChoice that same fiscal year. (Plaintiffs' Mot. Summary Judgment Ex. O, No. 37: Rausch Depo., pg. 38).

The Plaintiffs argue that taken together, these undisputed facts demonstrate that EdChoice is an unconstitutional barrier to the FSFP, an act that was undertaken by the legislature to fix an unconstitutional system of public-school funding, albeit twenty years late. They submit that the General Assembly cannot ignore legislation that it enacted to fund public schools while simultaneously funding private schools.

The State and Intervenor Defendants respond with several arguments: (1) the "thorough and efficient" clause only applies to the use of funds appropriated into the "school trust fund;" (2) enjoining the EdChoice program would not result in more funding for public schools because funding for EdChoice and public schools are calculated through two separate formulas; (3) though enjoining EdChoice would free-up a significant amount of monies, there would be no requirement for the General Assembly to spend those monies on public education; and (4) there is no evidence in the record that public school students are leaving their schools to use EdChoice vouchers at private schools. (Intervenor Defendants' Mot. Summary Judgment, pg. 13-18: State Defendants' Mot. Summary Judgment, pg. 26-29: State Defendants' Memo. Contra, pg. 12-17).

As to the "enrollment fluctuation" portion of the Defendants' arguments, the Plaintiffs clarify that this claim is not related to diversion of funds from fluctuations in student enrollment. (Plaintiffs' Reply, Jul. 29, 2024, pg. 9-10). Their claim is instead that the General Assembly's failure to perform their legislative duty to fund public education pursuant to the FSFP, and instead fund EdChoice, violates its constitutional duty to secure a thorough and efficient system of common schools. (Plaintiffs' Reply, pg. 18-20). They submit that when the State spends significantly more funds per student on EdChoice while purposely underfunding legislation setting the constitutional minimum state funding for public schools, the result is a system of common schools that is not thorough or efficient. *Id*.

The Intervenor Defendants argue that because the "school trust fund" referenced in Article VI Section 2 of the Ohio Constitution was liquidated in the late 1960s, Plaintiffs' count two cannot succeed. (Intervenor Defendants' Mot. Summary Judgment, pg. 14-15). The "school trust fund" was included in the Second Constitution of Ohio

> The principal of all funds arising from the sale or other disposition of lands or other property granted or entrusted to this state for educational or religious purposes, shall forever be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

The Second Constitution of the State of Ohio Done in Convention at Cincinnati, March 10, 1851, Article VI Section 1, (Accessed Aug. 26, 2024)[10], [https://perma.cc/7WAW-BUPQ]. This section was amended on July 1, 1968, to allow the General Assembly to spend these monies. Ohio Const., Art. VI, § 1. The parties agree that after the 1968 amendment, the "school trust fund" was liquidated by the General Assembly. (Compare Intervenor Defendants' Mot. Summary Judgment,

[10] https://www.law.csuohio.edu/sites/default/files/lawlibrary/ohioconlaw/1851constitution.pdf

pg. 15, FN 5 to Plaintiffs' Memo. Contra, Jul. 8, 2024, pg. 14).

However, this argument is not persuasive, particularly because *Derolph* was decided in 1997, decades after the liquidation of the "school trust fund." Ohio Courts have interpreted Article VI Section 2 of the Ohio Constitution to obligate State funding of public education, "by taxation, or otherwise." *Simmons-Harris v. Goff*, 86 Ohio St. 3d 1, 11 (1999) (Noting "the state's obligation to public education."); *Derolph*, 78 Ohio St. 3d 193, 254 (1997) (Recognizing the General Assembly's constitutional obligation to ensure a thorough and efficient system of common schools.). Therefore, the defunct "school trust fund" is not the only means by which the State must fund public education.

The Defendants also argue that the elimination of EdChoice would not provide the Plaintiffs with the relief they seek, *i.e.*, use of EdChoice funds for public schools, and therefore the Plaintiffs have not met the redressability requirement to have standing. They submit that were EdChoice enjoined, the General Assembly could decide to spend those funds on something other than public schools. However, the Director of Education and Workforce can, with the approval of the Director of Budget and Management, transfer excess funds among appropriation items without approval by the legislature. (Plaintiffs' Mot. Summary Judgment Ex. N, pg. 4). More importantly, "redressability means that a plaintiff is '*likely* to be redressed by the requested relief,'" not that it is a certainty. (Emphasis added.) *Cronin v. Governor of Ohio*, 2022-Ohio-829, ¶ 25 (8th Dist.), *quoting Moore v. City of Middletown*, 2012-Ohio-3897, ¶ 22. It is not unreasonable to believe that if the EdChoice voucher program were struck down, some of its funding would be shifted to distressed public schools like the Plaintiff districts. Notwithstanding, and even recognizing the legislature's authority and latitude to determine how any unburdened funds are spent, the General Assembly must still function according to its constitutional directive. *State ex rel. Ohio Cong. of*

Parents & Teachers v. State Bd. of Educ., 2006-Ohio-5512, ¶ 29. In *Derolph*, the Ohio Supreme Court determined that the then-existing system for public school funding was unconstitutional. *Derolph* at 212-213. The General Assembly later passed the FSFP to fulfill its constitutional directive and address *Derolph*. Yet, it has shirked that responsibility, by: at best, (1) claiming that the FSFP, a plan of its own creation, is too expensive; or, at worst (2) simply refusing to fund it.

Instead, the General Assembly chose to expand their system of private school funding by about the same amount as Ohio's public schools lost through the General Assembly's failure to fully fund the FSFP. Despite receiving more funding in each successive year, the Plaintiffs' public-school districts struggle to educate their students with inadequate funding, *e.g*., they cannot: (1) keep necessary positions filled; (2) repair or replace critical building infrastructure; (3) provide students with updated and quality learning materials; (4) provide students with adequate and reliable transportation; nor can they (5) construct additional necessary facilities. (Plaintiffs' Mot. Summary Judgment Ex. AA, ¶ 7, 11-13: *Id*. Ex. BB, ¶ 6-13: *Id*. Ex. EE, ¶ 7-12: *Id*. Ex. FF, ¶ 7-9: *Id*. Ex. HH, ¶ 6-9). Meanwhile, private religious schools receive EdChoice funding in addition to unknown amounts of non-public revenue. Such a system is not thorough and efficient. Thus, the Court finds that the Plaintiffs have proven beyond a reasonable doubt that the EdChoice voucher program violates Article VI Section 2 of the Ohio Constitution. Therefore, the Plaintiffs' motion for summary judgment is **GRANTED** as to count two of its' complaint. The Defendants' motions for summary judgment are **DENIED** as to this claim.

D. PLAINTIFS' COUNT THREE: SEGREGATION IN VIOLATION OF THE THOROUGH AND EFFICIENT SYSTEM OF COMMON SCHOOLS

The Plaintiffs argue that by funding private schools that are permitted to discriminate based on a variety of criteria, the result is that more white students will attend private schools using EdChoice vouchers and leave public school districts more segregated. (Plaintiffs' Reply, Jul. 29, 2024, pg. 28). The Intervenors and State Defendants respond that: (1) the Plaintiffs lack evidence of actual segregation; (2) a segregation claim cannot be made through the thorough and efficient clause; and, even if it could (3) the Plaintiffs' have no evidence to show discriminatory intent; and (4) such a claim would violate the federal Equal Protection Clause. (Boggs Intervenors Mot. Summary Judgment, Jun. 7, 2024, pg. 23-33).

Addressing the Defendants' legal arguments first, the Court must determine whether this count may proceed as one alleging a violation of Article VI Section 2. The Defendants submit that a segregation claim has historically been addressed under equal protection and argue that Ohio's legislative and constitutional history do not support framing this claim using the "thorough and efficient" clause of Article VI Section 2 of the Ohio Constitution. (Boggs Intervenors Mot. Summary Judgment, Jun. 7, 2024, pg. 29-31:). The Plaintiffs respond that an educational system that supports racial isolation cannot be thorough and efficient. (Plaintiffs' Memo. Contra, Jul. 8, 2024, pg. 19-20).

Historically, courts have analyzed the issue of segregation in school systems through the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See Brown v. Bd. of Educ*., 347 U.S. 483, 495 (1954); U.S. Const., amend. XIV, § 1. The Court is not aware of, nor have the parties cited to any Ohio precedent whereby a party or school district has brought a segregation claim under the thorough and efficient clause.

Other state courts have found violations to their applicable thorough and efficient clauses where a racial imbalance has resulted from segregation. New Jersey has allowed this claim. *Latino Action Network v. State*, 2023 N.J. Super. Unpub. LEXIS 1721, * 82-83 (Merc. Sup. Crt. Oct. 6, 2023) ("The courts of this State have long recognized that racial and ethnic segregation in the schools operated by a school district contravenes and frustrates the constitutional imperative of a thorough and efficient education."), *quoting In re North Haledon School Dist*., 363 N.J. Super. 130, 139 (Sup. Crt. App. Div. May 15, 2003). The "thorough and efficient education clause" of the New Jersey Constitution states, "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." N.J. Const., art. VIII, § 4, ¶ 1.

The Supreme Court of Minnesota recently recognized a segregation claim under its thorough and efficient clause. *Cruz- Guzman v. State*, 998 N.W.2d 262 (Dec. 13, 2023). The Minnesota Constitution's Education Clause states

> The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

Minn. Const., art. XIII, § 1. In *Cruz-Guzman*, the court determined that such a claim required the plaintiffs to establish: (1) that the State's actions directly caused the challenged racial imbalances: (2) a causal connection between the racial imbalances and the inadequate education; and (3) a causal connection that may be established using a substantial factor test. *Id*. at 275-277.

The Plaintiffs' briefing of this claim clarifies that it is not seeking an order addressing racial balancing, but instead to terminate "state-sponsored discrimination." (Plaintiffs' Reply, Jul. 29,

2024, pg. 21). They submit that because some of the private schools funded by EdChoice have admission policies that allow them to discriminate based on race, religion, sexual orientation, etc., that funding those private schools violates the thorough and efficient clause of the Ohio Constitution. *Id*. This is an as applied challenge to the funding of specific private schools. Additionally, this clarification negates several of the Defendants' arguments and makes the above New Jersey and Minnesota authority less applicable, except that it supports the idea that the Plaintiffs can generally pursue a segregation claim pursuant to Ohio's thorough and efficient clause.

The Defendants submit that because the thorough and efficient clause of the Ohio Constitution was ratified in 1850, followed by a period of state sponsored segregation in Ohio public schools, the thorough and efficient clause could not be the proper mechanism to advance a segregation claim. (Intervenor Defendants' Mot. Summary Judgment, Jun. 7, 2024, pg. 29-31:).

Ohio's history of segregated school districts began as early as 1838 when separate schools were created for communities with more than twenty school aged African American or Mulatto children. Public Statutes at Large of the State of Ohio, 46 Laws 81, Chapter 849-850 (Passed Mar. 7, 1838: Amendments Passed Feb. 24, 1848). Though the law at the time allowed for integration where a city or town had less than twenty school aged black or colored children, integration was dependent on the lack of written objection by any other person with a child in that school or any legal voter within the district. *Id*. at § 5. These statutes were revised in 1849 but still provided for segregated schools for black or mulatto children. Ohio 47th General Assembly, General Acts 3, § 1-6 (Feb. 10, 1849). The racial segregation of schools continued through the latter half of the 17th century. *See The State of Ohio, ex rel, William Garnes v. John W. McCann, et al*., 21 Ohio St. 198 (Dec. 1871) (Denying mandamus and observing that racial segregation in Ohio schools does not

violate the Fourteenth Amendment to the United States Constitution.). In 1886, the General Assembly enacted legislation that prohibited segregation in Ohio's public schools. 1886 H.B. 71 (Repealing prior legislative acts that together have been referred to as the "Black Laws."): Stephen Middleton, *The Black Laws, Race and the Legal Process in Early Ohio*, 2005.

Here, the Defendants' historical argument is not convincing. Though segregation in Ohio's public schools continued after the addition of the thorough and efficient clause to the Ohio Constitution, it also continued after the ratification of the Fourteenth Amendment to the United States Constitution in 1868. *Compare McCann* to U.S. Const., amend. XIV, § 1 (Ratified on July 9, 1868.) and to the Arnett Act of 1887 (Requiring equal educational opportunities for children of all races.). Of course, the equal protection clause of the U.S. Constitution was the mechanism for federal prohibition of segregation in public schools in the United States. *See Brown v. Bd. of Educ*., 347 U.S. 483, 495 (1954). Even if the sequence of events relied upon by the Defendants could be interpreted as they suggest, they cite to no legal precedent prohibiting the theory advanced by the Plaintiffs in Count Three of their amended complaint, nor would any necessarily prohibit reconsideration of the issue. *See Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 264 (Recognizing that *stare decisis* is "not an inexorable command," and referencing *Brown* as an example of a properly overruled prior precedent.). Though this type of claim has generally been analyzed in the context of equal protection, the Court is not aware of any authority prohibiting the Plaintiffs' claim through the thorough and efficient clause. At least two other states have allowed such a claim. So too will this Court.

The Plaintiffs cite to *Norwood v. Harrison*, 413 U.S. 455, 466 (1973) to argue that EdChoice violates the thorough and efficient clause because it supports private discrimination by private schools. (Plaintiffs' Memo. Contra, Jul. 8, 2024, pg. 19-20: Plaintiffs' Reply, Jul. 29, 2024,

pg. 21-23). *Norwood* involved textbook loans to Mississippi private schools that were excluding students based on race and/or religion. *Id*. at 457. The U.S. Supreme Court noted that a State may not provide financial aid that has a tendency to facilitate, reinforce, or support private discrimination. *Id*. at 466; *See also Magill v. Avonworth Baseball Conference*, 516 F.2d 1328, 1334 (3rd Cir.1975) (Distinguishing *Norwood* where the aid is *de minimis*.); *See also Writers Guild of America, West, Inc. v. FCC*, 423 F.Supp. 1064, 1137 (Cent. Dist. Cali. Nov. 4, 1976) ("[T]he relief in *Norwood* was to terminate the impermissible aid *** whether or not a precise causal relationship existed."). It ordered the district court to evaluate these private schools on a case-by-case basis as to the number of racially and religiously identifiable minority students and the discriminative nature of their admission policies. *Norwood* at 471.

Here, the discrimination that the Plaintiffs allege is being aided by EdChoice funding is certain private schools rejecting students based on "disability, academic standing, test scores, disciplinary history, ability to pay fees and tuition, religion, gender, and juvenile justice system involvement" as a proxy for race. (Plaintiffs' Reply, Jul. 29, 2024, pg. 21-22). As stated above, the EdChoice program is not subject to anti-discrimination laws and participating private schools can turn prospective students away based on religion, sexual orientation, or disability. (Plaintiffs' Mot. Summary Judgment Ex. R: Burns Depo., pg. 34, 73: R.C. 3310.17(B)).

The Plaintiffs have submitted evidentiary materials demonstrating that at least some private schools receiving EdChoice funding have admission policies that discriminate based on disability, religion, sexual orientation, disciplinary history, financial soundness, and justice system involvement. (Plaintiffs' Mot. Summary Judgment Ex. R). They argue that the fact that private schools with discriminatory policies are receiving EdChoice funding is enough to meet their burden and prevail on their as applied constitutional challenge. The Court disagrees.

To establish that the State Defendants are facilitating, reinforcing, or supporting private discrimination by providing EdChoice funding to these private schools, there must be evidence of actual discriminatory conduct, not just of discriminatory policies. As *Norwood* suggested, the Plaintiffs' success requires the presentation of evidence of student demographic compositions within these schools or of instances where minority students were rejected, accompanied by direct or indirect evidence that their nonacceptance resulted from the private schools' discriminatory admission policies. *Norwood* at 471. The Plaintiffs have not pointed to any such evidence. Therefore, their motion for summary judgment must be **DENIED** as to this claim. However, the evidence in the record also does not demonstrate that these instances of discrimination are not occurring. This specific issue does not appear to have been developed in discovery. Because there is no affirmative evidence in the record demonstrating that the Plaintiffs cannot succeed on this claim, the Defendants' motions for summary judgment are **DENIED** as to Count Three of the Plaintiffs' complaint.

E. PLAINTIFFS' COUNT FOUR: UNCONSTITUTIONAL STATE FUNDING OF RELIGIOUS SCHOOLS

In this count, the Plaintiffs submit that the expansion of the EdChoice program provides private religious schools with approximately one billion dollars in public school funds and violates Article IV Section 2 of the Ohio Constitution by giving a religion or other sect the exclusive right to, or control of, a part of the school funds of Ohio. (Plaintiffs' First Amend. Complaint, ¶ 147-150: Plaintiffs' Mot. Leave Ex. A, Dec. 21, 2023, ¶ 112).

In support of their motion, the Plaintiffs point to evidentiary materials that indicate: (1) EdChoice payments are made with checks from the State of Ohio Department of Education directly to private religious schools (Plaintiffs' Mot. Summary Judgment Ex. PP); (2) private religious

schools receiving EdChoice funding acquire a power of attorney from parents of admitted students that allows the Department of Education to make payment directly to the school and for the school to endorse the checks on behalf of the parents (*Id*. at Ex. NN, QQ); (3) private religious schools can deposit EdChoice checks from the Department of Education directly into their own accounts without any endorsement by a student's parents (Burns Depo., pg. 47-49); (4) no law or regulation would prevent these private religious EdChoice funded schools from using EdChoice funds for religious materials or instruction, or for personal gain (*Id*. at pg. 50-52). These materials and argument are sufficient to satisfy the Plaintiffs' initial burden to move the evidence and establish beyond a reasonable doubt that the EdChoice program cannot operate without violating Article IV Section 2 of the Ohio Constitution.

The Defendants respond by arguing: (1) the Plaintiffs' Count Four is foreclosed by the *Simmons-Harris* decision; (2) the EdChoice program does not use "school funds"; (3) a ruling in favor of the Plaintiffs on this claim would violate the Defendants' rights under the Free Exercise Clause of the First Amendment to the United States Constitution; and (4) the EdChoice program does not give the exclusive right to school funds to any religious or other sect or sects. (Defendants' Briefs, generally).

Addressing the Defendants' first argument first, the Court has already distinguished the program at issue in *Goff* from the current EdChoice voucher system. EdChoice involves direct payments to private religious schools, no State oversight to prevent racial, religious, or other discrimination, and the involvement of exponentially more private religious schools and funds. For these reasons, the Court rejects this argument.

Next, the Defendants argue that the EdChoice program does not use "school funds." Integral to this argument is whether the "school funds" mentioned in Article VI Section 2 of the

Ohio Constitution includes EdChoice funds. In *Knab*, the Ohio Supreme Court laid out the procedure for interpreting language in the Ohio Constitution

> In construing constitutional text that was ratified by direct vote, we consider how the language would have been understood by the voters who adopted the amendment. *Castleberry v. Evatt*, 147 Ohio St. 30, 33, 67 N.E.2d 861 (1946); *see also State ex rel. Sylvania Home Tel. Co. v. Richards*, 94 Ohio St. 287, 294, 114 N.E. 263, 14 **Ohio** L.Rep.266(1916) (when interpreting the Ohio Constitutio n, "[i]t is the duty of the court to ascertain and give effect to the intent of the people"). The court generally applies the same rules when construing the Constitution as it does when it construes a statutory provision, beginning with the plain language of the text, *State v. Jackson*, 102 Ohio St.3d 380, 2004-Ohio-3206, 811 N.E.2d 68, ¶ 14, and considering how the words and phrases would be understood by the voters in their normal and ordinary usage, *District of Columbia v. Heller*, 554 U.S. 570, 576-577, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). But in ascertaining the intent of the voters who approved the amendment, our inquiry must often include more than a mere analysis of the words found in the amendment. *State ex rel. Swetland v. Kinney*, 69 Ohio St.2d 567, 570, 433 N.E.2d 217 (1982). The purpose of the amendment and the history of its adoption may be pertinent in determining the meaning of the language used. *Id.* When the language is unclear or of doubtful meaning, the court may review the history of the amendment and the circumstances surrounding its adoption, the reason and necessity of the amendment, the goal the amendment seeks to achieve, and the remedy it seeks to provide to assist the court in its analysis. *Id.*, citing *Cleveland v. Bd. of Tax Appeals*, 153 Ohio St. 97, 103, 91 N.E.2d 480 (1950), *overruled in part on other grounds*, *Denison Univ. v. Bd. of Tax Appeals*, 2 Ohio St.2d 17, 205 N.E.2d 896 (1965), paragraph two of the syllabus; *City of Cleveland v. State*, 157 Ohio St.3d 330, 2019-Ohio-3820, 136 N.E.3d 466, ¶ 17 (lead opinion).

City of Centerville v. Knab, 2020-Ohio-5219, ¶ 22; See also Justice R. Patrick DeWine, *Ohio Constitutional Interpretation*, Forthcoming 86 Ohio St. L.J., pg. 7-8 (2025).

"School funds" are not defined in the Ohio Constitution nor by any act of legislation. In 1831, the Ohio General Assembly enacted legislation creating "the common school fund." J.R. Swan, *Statutes of the State of Ohio, of a General Nature, in Force December 7, 1840*, Chapter 101,

Section 1, An act to establish a fund for the support of common schools, effective Jun. 1, 1831. The "common school fund" consisted of "income of which shall be appropriated to the support of common schools in the state of Ohio, in such manner as shall be pointed out by law." *Id*. at Section 1. The principle for this fund was accumulated from sales of public property and donations. *Id*. at § 2, 5. The interest from the fund was used to finance Ohio's public schools until the "common school fund" was liquidated in or around 1968. (Compare Intervenor Defendants' Mot. Summary Judgment, pg. 15, FN 5 to Plaintiffs' Memo. Contra, Jul. 8, 2024, pg. 14).

Property taxes were also used to support public schools. *Derolph v. State*, 78 Ohio St. 3d, 193, 217 (1997) (Douglas, J., concurring). In 1935, the General Assembly enacted the first Foundation Program, which, by 1965, was funding about one-third of the total operating costs of local school districts. *Id*. The State briefly used the "Equal Yield Formula," providing equal state and local funds to qualifying school districts, before moving to the School Foundation Program in R.C. 3317.01 et seq. *Id*. at 218. Though it has been amended several times since *DeRolph*, R.C. 3317.022 still provides the authority for appropriating funds for public schools using the "Core foundation funding formula," and for EdChoice vouchers. R.C. 3317.022(A)(1)-(10).

The Defendants argue that because the common school fund has been depleted and no longer exists, that funds appropriated by the General Assembly pursuant to R.C. 3317.022(A)(10) cannot meet the definition of "school funds" that was contemplated at the Constitutional Convention of 1851. However, the school trust fund is merely one of several means by which the State can fund public schools. The thorough and efficient clause allows for the General Assembly, "by taxation, or otherwise," to secure common schools throughout the state. Ohio Const., art. VI, § 2. The Defendants' argument proposes that the General Assembly can only fund schools through two means, by taxation or the school trust fund and further that school funds of this state are

specific to the now depleted school trust fund. This interpretation ignores the use of "otherwise" in the text of Article VI, Section 2 of the Ohio Constitution. The "school trust fund" is merely one enumerated example. R.C. 3317.022 is another form of funding.

A further review of the debates surrounding that convention indicate that the delegates did not want religious or other sects to have exclusive control of public-school funds. *Constitutional Debates of 1850*, pg. 688. Though no changes were made to Article VI Section 2 of the Ohio Constitution in 1873, there was still strong opposition to allowing any private or religious entity to control any public-school funds. *Constitutional Debates of 1873*, pg. 2246; Plaintiffs' Ex. ZZ, pg. 5-6.

Additionally, the plain language of the term "school funds" would include EdChoice funding. A "fund" is a sum of money or other resources whose principal or interest is set apart for a specific objective. Merriam-Webster Dictionary, (accessed Apr. 21, 2025)[11] [https://perma.cc/S8GK-6L2F]. R.C. 3317.022 contains specific formulas for calculating both core foundation funding for public schools and for EdChoice vouchers. EdChoice monies are used for tuition, a form of school funding. Additionally, both core foundation funding and EdChoice vouchers are appropriated by the General Assembly using the same line item. (Plaintiffs' Mot. Summary Judgment Ex. O, Req. for Admiss. No. 38).

After reviewing the history and plain language of Article VI Section 2 of the Ohio Constitution, the Court concludes that its language, "school funds," or, "school funds of this state," means any State monies appropriated for the purpose of paying for schools and includes EdChoice voucher funding. Accordingly, the Court rejects the Defendants' first argument.

The Defendants next assert that a ruling in favor of the Plaintiffs would violate the Free

[11] https://www.merriam-webster.com/dictionary/fund

Exercise Clause of the First Amendment to the United States Constitution. They assert that doing so would punish particular religious groups based on their viewpoints. The Plaintiffs respond that the First Amendment is not implicated because the language, "no religious or other sect, or sects," applies to all religious groups and private organizations regardless of the content of their beliefs.

The Defendants cite several cases voiding policy decisions offending the First Amendment. Each is distinguishable from the facts of this case.

In *Trinity*, a church-run non-profit daycare was denied the ability to compete for a grant to subsidize a playground because it was owned or controlled by a church, sect, or other religious entity. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 454-456 (Jun. 26, 2017). The denial was rooted in the Missouri Constitution, which had a clause prohibiting public money from being given to any "church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof." *Id*., citing Missouri Const., article I, Section 7. The court's reversal of *Trinity's* exclusion turned on its finding that Trinity's operation as a religious institution came at the cost of automatic and absolute exclusion from the benefits of a public program, to help entities servicing children purchase rubber playground surfaces, for which it was otherwise fully qualified. *Id*. at 462. *Trinity* is distinguishable from the present case because the issue of whether the funds being received by the government were being used for religious, educational, or other religious purposes was not determinative. *See Dumont v. Lyon*, 341 F. Supp. 3d 706, 749-750 (Mich. E.D. Sep. 14, 2018) (Distinguishing *Trinity* from a situation where the plaintiffs sought an order prohibiting the state from partnering with faith-based agencies that allegedly use the money to discriminate based on religious criteria, something that the government could not do itself.).

In *Espinoza*, the Montana legislature created a scholarship program for students attending private schools. *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 468-469 (Jun. 30, 2020). The

program allowed tax credits to any taxpayer who donated to a participating scholarship organization. *Id*. Those funds were then awarded to children for tuition at a private school. *Id*. Ninety percent of the donations had to be used for scholarship awards, and the scholarship organizations had to comply with state reporting and monitoring requirements. *Id*. Scholarship funds went directly to participating private schools. *Id*. at 469. This program was challenged as violating the no-aid provision to sectarian schools provision of the Montana Constitution. *Id*. at 470. Similar to the *Trinity* holding, the court determined that Montana's no-aid provision barred religious schools from public benefits solely because of the religious character of the schools. *Id*. at 476-477 ("This case also turns expressly on religious status and not religious use.").

The next case involves Maine's creation of a tuition assistance program for private nonsectarian schools. *Carson v. Makin*, 596 U.S. 767, 771-772 (Jun. 21, 2022. The U.S. Supreme Court determined that the nonsectarian requirement violated the Free Exercise Clause of the First Amendment. *Id*. at 789. It also noted, "the prohibition on status-based discrimination under the Free Exercise Clause is not a permission to engage in use-based discrimination." *Id*. at 788.

Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819 (Jun. 29, 1995) involved operators of an organization who were denied reimbursement for the costs of publishing a magazine because the contents of its publications constituted "religious activity." *Id*. at 825-828. The court determined that the organization's exclusion from receiving a public benefit violated the Free Exercise Clause because the prohibited perspective, not the general subject matter, resulted in the refusal to reimburse. *Id*. at 831, 845-846.

The Plaintiffs' respond to the Defendants' arguments by asserting that Article VI Section 2 of the Ohio Constitution's language, "but no religious or other sect, or sects," includes all non-state entities, not just religious ones. If correct, they submit that there is no Free Exercise issue

because no religious organization is being singled out and denied a government benefit. Key to this analysis is the definition of the word "sect."

Modern dictionaries define "sect" as: (1) a dissenting or schismatic religious body, especially one regarded as extreme or heretical; (2) a group adhering to a distinctive doctrine or to a leader. Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/sect (accessed Apr. 22, 2025) [https://perma.cc/AYM5-MYDB]. However, contemporary to the ratification of the thorough and efficient clause, "sect" was defined as, "[a] body or number of persons united in tenets, chiefly in philosophy or religion, but constituting a distinct party by holding sentiments different from those of other men." Noah Webster, *An American Dictionary of the English Language*, pg. 999 (Rev. Ed. 1850)[12].

Viewing the term through Ohioans' eyes in 1851, "sect" is not limited to religious groups, but refers to any person or collective of persons with like philosophy. As such, "other sect, or sects," distinguishes from a "religious sect," and refers to any non-religious group or groups. This is borne out in the plain language of the Constitution, differentiating between religious sect(s) and other sect(s). If "sect" were only defined to include religious persons or entities, the delegates or framers would not have included the adjective "religious."

Though the notes from the debates occurring during the 1850 Constitutional Convention demonstrate that the delegates were primarily concerned with religious sects attempting to control the school funds of the State, the plain language of this clause evidences their intent to prohibit any non-state actor, actors, entity, or entities from controlling school state funds. *Constitutional*

[12] The 1853 dictionary definition is nearly identical, as follows: "1. A body or number of persons united in tenets, chiefly in philosophy or religion, but constituting a distinct party by holding sentiments different from those of other men; a denomination. 2. A denomination which dissents from an established church. 3. A cutting or cion." Noah Webster, *An American Dictionary of the English Language; Exhibiting the Origin, Orthography, Pronunciation, and Definitions of Words*, pg. 897 (1853).

Debates of 1850, pg. 688. These same concerns resurfaced in 1873. *Constitutional Debates of 1873*, pg. 2188, 2246; Plaintiffs' Ex. ZZ, pg. 4-6. Combined with the framers' inclusion of the words "religious or other sect, or sects," this information demonstrates their intent to prohibit both religious sects and non-religious sects from controlling school funds.

Consequently, an order determining that the EdChoice voucher program is unconstitutional because it bestows the exclusive right to, or control of, any part of the state's school funds to one or more "religious or other sect, or sects" does not violate the Free Exercise Clause of the First Amendment because the voucher program does not prohibit any religious organization from participating based on its religious viewpoint.

The Defendants also argue that the EdChoice program does not violate the thorough and efficient clause because it does not give the exclusive right or control of any state school funds to any private school receiving EdChoice funds. This argument is based on the idea of "school choice," and that because parents and students choose their private EdChoice participating school, those private religious schools do not have any control of school funds of the State. However, as articulated above, the students and parents only choose which school they apply to. The ultimate decision to accept prospective students, and by doing so receive EdChoice funds, lies with the private school. This process, where a private religious school has the discretion and ability to apply for and receive subsidies directly from the government, while at the same time discriminating against applicants on the basis of religion, sexual orientation, or other criteria, is hardly analogous to *Goff*, where funding flowed to the student first, and discrimination was prohibited. *See Goff*, 86 Ohio St.3d 1, 7-8; R.C. 3313.976(A)(5)-(6). For these and the reasons articulated above, the Court rejects the Defendants' "school choice" argument.

After reviewing the arguments and evidentiary materials of the parties, the Court finds that

there is no issue of genuine material fact that the EdChoice voucher program violates Article IV Section 2 of the Ohio Constitution as alleged in Count Four of the Plaintiffs' First Amended and Supplemental Complaint. Therefore, Plaintiffs' motion for summary judgment is **GRANTED** as to this count. The Defendants' motions for summary judgment on this count are **DENIED**.

F. PLAINTIFFS' COUNT FIVE: VIOLATION OF OHIO CONSTITUTION ARTICLE I SECTION 2

The Plaintiffs' fifth claim alleges that the EdChoice Program codified in H.B. 110 and H.B. 33 creates a disparity in per-pupil funding. (Plaintiffs' Supp. Complaint, Dec. 21, 2023, ¶ 108-192). Specifically, they allege that EdChoice scholarship recipients received $6,166 for students in grades K-8 and $8,408 for students in grades 9-12 in fiscal year 2024, compared to: (1) approximately $2,590.25 per pupil for students attending Cleveland Heights-University Heights City School District; (2) approximately $3,800.02 per student in the Columbus City School District; (3) approximately $1,529.09 per student in the Richmond Heights Local School District; and (4) approximately $4,983.59 per student for many other Ohio public schools. *Id*. at 181, 183, 185, 186, 188. These numbers represent per pupil funding during various fiscal years from 2022 to 2024. The Plaintiffs submit that these disparities affect similarly situated students attending both their schools and students attending private schools receiving funds from EdChoice with no compelling or legitimate state interest to do so. In their briefs, the Plaintiffs argue that the uncontested evidence, largely comprised of data obtained from the State Defendants, firmly supports their claim and warrants summary judgment.

The Defendants respond with several arguments, including: (1) there is no evidence of disparate treatment; (2) a rational basis exists supporting the EdChoice legislation (single stream

private schools v. multi-stream revenue public schools, consider state funding only or total funding); and (3) invalidating the EdChoice program would not provide the Plaintiffs with any meaningful relief.

Starting with the Defendants' first argument, a proponent of an equal protection claim must demonstrate that there is unequal treatment of classes of people by the state without the requisite level of state interest. *Bd. of Educ. v. Walter*, 58 Ohio St. 2d 368, 373 (Jun. 13, 1979). The Defendants submit that the Plaintiffs' equal protection claim fails because all similarly situated students in Ohio are offered the same choice to participate in the EdChoice program. (State Defendants' Memo. Contra, Jul. 5, 2024, pg. 23-28: State Defendants' Mot. Summary Judgment, Jun. 7, 2024, pg. 39: Boggs Intervenors' Mot. Summary Judgment, Jun. 7, 2024, pg. 43-44). They also argue that funding disparities do not matter as long as each child receives an adequate education. (Boggs Intervenors' Mot. Summary Judgment, pg. 44).

The Defendants' first argument asserts that the Plaintiffs have not provided any evidence as to disparate treatment because any Ohio student can choose to participate in the EdChoice program. As explained above, Ohio students and their parents do not choose to participate in the EdChoice program. They can only choose to apply to a particular EdChoice participating school. Ultimately, the EdChoice participating school chooses whether it will accept that student and may deny their attendance on the basis of religion, sexual orientation, or other potentially discriminatory criteria.

However, the Defendants point out that this count, unlike the Plaintiffs' counts one through four, is limited to the specific claims of Fergus Donnelly, Malcolm McPherson, and Chase and Savannah Hales (together the "Student Plaintiffs"), and does not involve the general K-12 student population of the Plaintiff districts. (Compare Plaintiffs' Supp. Complaint, ¶ 184, 187 to State

Defendants' Reply, Jul. 26, 2024, pg. 19). While it seems inevitable that some Ohio students might be excluded from the EdChoice program by a participating private school, none of the student plaintiffs have alleged or provided any evidence of denial of participation in the EdChoice program. Without such an allegation, let alone evidence to substantiate it, the Defendants are entitled to summary judgment as to the Plaintiffs' count five.

IV. CONCLUSION

After reviewing the briefs, evidence, and arguments of the parties, the Court finds as follows:

- As to Count One of the Plaintiffs' Supplemental Complaint: Plaintiffs' motion for summary judgment is **GRANTED**. The Defendants' motions for summary judgment are **DENIED**.
- As to Count Two of the Plaintiffs' Supplemental Complaint: Plaintiffs' motion for summary Judgment is **GRANTED**. The Defendants' motions for summary judgment are **DENIED**.
- As to Count Three of the Plaintiffs' Supplemental Complaint: Plaintiffs' motion for summary judgment and the Defendants' motions for summary judgment are **DENIED**.
- As to Count Four of the Plaintiffs' Supplemental Complaint: Plaintiffs' motion for summary judgment is **GRANTED**. The Defendants' motions for summary judgment are **DENIED**.
- As to Count Five of the Plaintiffs' Supplemental Complaint: Plaintiffs' motion for summary judgment is **DENIED**. The Defendants' motions for summary judgment

are **GRANTED**.

- Judgment is entered in favor of the Plaintiffs on Counts One, Two, and Four of their Supplemental Complaint. In entering said judgment, the Court has determined that the EdChoice program is unconstitutional and shall be enjoined.
- This is a final appealable order subject to immediate appeal pursuant to Civ.R. 54(B) and R.C. 2505.02(B)(8). There is no just reason for delay.
- In recognition that this decision may cause significant changes to school funding in Ohio and the high likelihood that the parties will immediately appeal, the judgment in this case shall be stayed pursuant to Civ.R. 62(B). No bond is ordered. See Civ.R. 62(C).

IT IS SO ORDERED.

Copies to all parties.

SIGNATURE PAGE ATTACHED

Franklin County Court of Common Pleas

Date: 06-24-2025

Case Title: COLUMBUS CITY SCHOOL DISTRICT ET AL -VS- STATE OF OHIO ET AL

Case Number: 22CV000067

Type: ORDER

It Is So Ordered.

/s/ Judge Jaiza Page

Court Disposition

Case Number: 22CV000067

Case Style: COLUMBUS CITY SCHOOL DISTRICT ET AL -VS- STATE OF OHIO ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 22CV0000672024-06-0699960000
   Document Title: 06-06-2024-MOTION FOR SUMMARY JUDGMENT - PLAINTIFF: COLUMBUS CITY SCHOOL DISTRICT
   Disposition: MOTION GRANTED IN PART

2. Motion CMS Document Id: 22CV0000672024-06-0799860000
   Document Title: 06-07-2024-MOTION FOR SUMMARY JUDGMENT - NON-PARTY: CHRISTOPHER BOGGS
   Disposition: MOTION GRANTED IN PART

3. Motion CMS Document Id: 22CV0000672024-06-0799810000
   Document Title: 06-07-2024-MOTION FOR SUMMARY JUDGMENT - DEFENDANT: STATE OF OHIO
   Disposition: MOTION GRANTED IN PART

4. Motion CMS Document Id: 22CV0000672024-09-2499980000
   Document Title: 09-24-2024-MOTION FOR PROTECTIVE ORDER - DEFENDANT: STATE OF OHIO
   Disposition: MOTION RELEASED TO CLEAR DOCKET

5. Motion CMS Document Id: 22CV0000672024-09-2799980000
   Document Title: 09-27-2024-MOTION FOR PROTECTIVE ORDER - DEFENDANT: STATE OF OHIO
   Disposition: MOTION RELEASED TO CLEAR DOCKET

6. Motion CMS Document Id: 22CV0000672025-04-0499950000
   Document Title: 04-04-2025-MOTION FOR SUBSTITUTION FOR PARTY - DEFENDANT: STATE OF OHIO
   Disposition: MOTION RELEASED TO CLEAR DOCKET