IN THE TENTH DISTRICT COURT OF APPEALS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DISTRICT, *et al.*,	)	Case No. 25-AP-000603
Appellees/Cross-Appellants,	)	On Appeal from the Franklin County Court of Common Pleas
v.	)	
STATE OF OHIO,	)	Common Pleas Case No. 22-CV-000067
Appellant/Cross-Appellee.	)	

AMICUS CURIAE BRIEF OF THE BUCKEYE INSTITUTE IN SUPPORT OF CROSS-APPELLEE

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STATEMENT OF INTERESTS OF AMICUS CURIAE

The Buckeye Institute was founded in 1989 as an independent research and educational institution—a think tank—to formulate and promote free-market policy in the states. The Buckeye Institute accomplishes its mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating free-market policies, and marketing those policy solutions for implementation in Ohio and replication across the country. The Buckeye Institute also files lawsuits and submits amicus briefs to fulfill its mission. The Buckeye Institute is a nonpartisan, nonprofit, tax-exempt organization, as defined by I.R.C. § 501(c)(3).

This case addresses issues critical to school choice funding in Ohio. With The Buckeye Institute's support, Ohio became one of the first states to fund school choice. Since then, The Buckeye Institute has continued to support school choice legislation and has often filed amicus briefs in cases that affect K–12 education. *See* The Buckeye Institute, *How The Buckeye Institute Expanded School Choice to Every Child in Every Family in Every Community in Ohio* (2024), https://tinyurl.com/yr4pdrb9.

SUMMARY OF THE ARGUMENT

Education is not, and never has been, one-size-fits all. From school size to course offerings, education in Ohio has always been as varied as the communities that call Ohio home. For a court to intervene and require state education funding to be strictly equal on a per-student basis would upend the value judgments families and communities have made in raising their children. The General Assembly, through EdChoice's funding mechanism, sought to harmonize Ohioans' different educational priorities by expanding students' educational opportunities.

This amicus brief addresses the issues raised in Plaintiffs-Appellees/Cross-Appellants' ("Cross-Appellants") cross-appeal. On cross-appeal, Cross-Appellants suggest that Ohio's Equal Protection Clause requires equality of state funding for all children in all educational programs in order to satisfy strict scrutiny. Cross-Appellants' Br. at 17–18. But that argument ignores Ohio's history of educational diversity through varied state programs and local control. Moreover, it improperly equates spreadsheet funding with substantive education. This Court

should uphold the trial court's determination on cross-appeal that EdChoice does not violate the Equal Protection Clause.

ARGUMENT

I. Ohio's history and constitution focus on funding education, not funding an education bureaucracy or special interest.

Cross-Appellants confuse equality of funding with equality of education. This is a false equivalency that is not reflected in Ohio's historical attitude towards education, nor in Ohio's constitution.

Education has been at the heart of Ohio's civic culture since before it became a state. *See* An Ordinance for the Government of the Territory of the United States North-West of the River Ohio, § 14, art. III (1787) ("Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."); Ohio Const. of 1802, art. VIII, § 3 (same); Ohio Const., art. I, § 7 ("[I]t shall be the duty of the general assembly to pass suitable laws . . . to encourage schools and the means of instruction.").

The Northwest Ordinance and Ohio's Constitutions presuppose that

"religion, morality, and knowledge" are the forerunners of "good government," reflecting the belief that education and instruction would instill the character necessary for a self-governing people. As Horace Mann, one of the foremost 19th century advocates for and proponents of education—and "common schools"—put it, "the institution of Common Schools is the offspring of an advanced state of civilization, and is incapable of co-existing with barbarian life, because, should barbarism prevail, it would destroy the schools; should the schools prevail, they would destroy barbarism." Horace Mann, *Annual Reports on Education*, 10 (1872).

For Mann and other pro-education statesmen of his day, education was not a public works program—it was a means for common citizens to improve themselves and more fully exercise their liberties on the frontier. Indeed, he explained, "[w]hile we are in little danger of over-estimating the value of Common Schools, yet we shall err egregiously if we regard them as ends, and not as means." *Id.* In working toward that priority, Mann and his fellow statesmen saw dollars and cents as secondary concerns to providing an "equality of school privileges for all the children of the town,

whether they belong to a poor district or a rich one, a small district or a large one." *Id.* at 419. Indeed, among 19th-century education reformers, a chief reason for reforming American education was a belief that "[e]ducation [had been] conducted with a view to making money, and not with a view to purity of principle and perfection of character." *The Common School Journal and Educational Reformer For The Year 1852*, 258 (ed. W.M. B. Fowle 1852).

To be sure, Mann and other 19th-century reformers recognized that one means to achieving an educated citizenry would be "for the State to assume the entire work" of establishing schools. *Id.* at 214. But they also believed the state could "require the towns to provide justly and equally for every child." *Id.* It stands to reason that the state can structure funding methodologies to provide a fundamentally thorough and administratively efficient education for every child.

II. Ohio's differing schools are a product of the diverse populations and diverse educational approaches.

While other states with culturally cohesive populations may have been able to choose educational centralization without pushback, the latter

choice of "strict local autonomy" prevailed in Ohio. Andrew R.L. Cayton, *Ohio: The History of a People*, 59 (2002).

These immigrants, having risked life and limb on the frontier, maintained a strong desire for their children to be educated in the cultural customs they had brought with them to the Ohio valley. *Id.* at 59–61. For instance, "[a]fter trying to work out an accommodation in Cincinnati, Catholics recognized that the purpose of public education was to inculcate a Protestant version of moral literacy." *Id.* at 60–61. Indeed, both "Catholics and Jews found the Protestant tone and content of some of the [public school] teachings offensive." *Id.* at 61. By incorporating schools not hostile to particular communities' religious or cultural views, Ohio's educational tolerance allowed local communities to tailor their schools to the desired needs of citizens, with competencies such as reading, writing, and arithmetic at schools' core. *Id.* at 58.

However, the necessary tradeoff to Ohio's predominance of local control and local funding was for funding across schools to vary based on the needs of the community. This tradeoff was recognized in the primary funding mechanism for schools: local property taxes. In 1825, the State

"required people to pay a property tax to support local schools. But all control was local. Township trustees allocated resources and hired and fired teachers." *Id.*

Accordingly, for as long as there have been schools in Ohio, it has been "evident that the schools in some towns are far superior to those in other towns, and so are the teachers, the schoolhouses, and all the apparatus and means for thorough and useful instruction." *The Common School Journal and Educational Reformer For The Year 1852*, at 214. In short, the differences in schools have arisen not simply because schools have different levels of funding, but, at least in part, because different schools have different priorities. Cayton at 58 (writing that for some communities, "what free time people had was better spent with family and neighbors").

When Ohio Superintendent Samuel Lewis traveled the state in 1836, he viewed hundreds of schools and identified the common good provided by schools of different forms. *Id.* at 64. While different communities had their own particular educational foci, Superintendent Lewis's travel informed a view of common schools as providing a civic baseline—a

"means of proper instruction," consistent with the "encouragement" of the Northwest Ordinance and Ohio's Constitution. *See id.* at 63. So while funding levels may differ, Ohio schools' most fundamental aim is the same, providing the education necessary to instill the character required of productive members of society.

As Ohioans evaluated the need for a new Constitution in 1850, the delegates made it clear that education, not funding a bureaucracy, was the impetus behind Article VI, Section 2. Even Cross-Appellants note that the delegates "emphasized education as 'the highest interest of a free people,'" "the foundation stone upon which this mighty Republic rests," which is "an important and primary necessity," and "the great want of the age." Cross-Appellants' Br. at 5. The importance of these principles were not qualified by the state's educational funding levels.

III. The General Assembly's EdChoice funding structure falls within Ohio's "system of common schools."

Cross-Appellants' equal protection claim recognizes sub silencio that the General Assembly can discriminate its funding among school districts without any constitutional problem. *See* Cross-Appellants' Br. at 7

(recognizing and not challenging the funding disparity between Richmond Heights and Cleveland Heights-University Heights School districts). Nevertheless, Cross-Appellants assume that schools participating in the EdChoice program are outside the constitutional mandate to fund "common schools." But that assumption is misplaced.

In providing a means of proper instruction, State funding for its school system has undergone a number of revisions since 1787, 1802, and 1851. The latest iteration, EdChoice, encompasses the policy judgments of the General Assembly, which sought to expand access to alternative educational options for Ohio families. Such expansion is rationally within the ambit of the constitutional directive to fund "common schools."[1]

A. Ohio has common schools to educate—not to fund special interest groups.

It seems Horace Mann's fear of education being "conducted with a view to making money, and not with a view to purity of principle and

[1] Indeed, it is properly and even narrowly tailored to serve the state's interest in educating every child in the manner and place best suited to that child's educational needs. Moreover, Cross-Appellants' preferred mandate of a one-size-fits-all education system would not meet a strict scrutiny examination.

perfection of character," has been realized in the Cross-Appellants' lawsuit. *See The Common School Journal and Educational Reformer For The Year 1852*, at 258. Cross-Appellants' theory seems to be "if we can't have more money, then no one else can have any." They would deny educational funding to parents who would prefer to educate their children in an alternative educational setting.

This is not the first time public school or anti-school choice advocates have opposed funding non-traditional public schools in Ohio courts on the claim that those other schools are not part of the "system of common schools." Ohio Const. art. VI, § 2. In finding that community/charter schools are part of the "thorough and efficient system of common schools," the Ohio Supreme Court recognized that funding bureaucracies is not the goal—adequate education is:

> The Ohio Constitution requires establishment of a system of common schools. This requirement is grounded in the state's interest in ensuring that all children receive an adequate education that complies with the Thorough and Efficient Clause. To achieve the goal of improving and customizing public education programs, the General Assembly has augmented the state's public school system with public community schools. *The expressed legislative intent is to provide a chance of educational success for students who may*

> *be better served in their educational needs in alternative settings.* Requiring community schools to be operated just like traditional public schools would extinguish the experimental spirit behind [community schools].

(Emphasis added.) *State ex rel. Ohio Cong. of Parents & Tchrs. v. State Bd. of Edn.*, 2006-Ohio-5512, ¶ 32. The same experimental spirit applies to EdChoice. The Ohio Supreme Court, for good reason, recognized that "Ohio's statutory scheme for financing public education is complex." *DeRolph v. State*, 78 Ohio St.3d 193, 198 (1997) (*DeRolph I*).

In evaluating EdChoice here, this Court should recognize that Article VI, Section 2 of the Ohio Constitution, "does not prescribe a specific method for securing a system of common schools, it necessarily grants the General Assembly broad discretion in fulfilling its obligation." *State ex rel. Ohio Cong. of Parents & Tchrs* at ¶ 78 (Resnik, J., dissenting).

B. The Court should recognize the General Assembly's authority and lattitute to address the difficult issue of fulfilling Ohio's directive to provide a thorough and efficient system of common schools.

"As the statewide body, the General Assembly has the legislative authority and latitude to set the standards and requirements for common

schools . . . " *Id.* at ¶ 29. Ohio has been struggling to find the best system to educate children for decades, or longer.

The seemingly simple strict equality funding standard proposed by Cross-Appellants not only glosses over the complexity of school funding, but it invites chaos for Ohio families while this Court and other courts evaluate the limitless inequalities and educational challenges that are and have always been part and parcel of Ohio's school system. Cross-Appellants' insistence on strict scrutiny creates a Sisyphean task for the Court. Once starting that steep climb, it might never end.

Why limit court review of educational equality just to funding? A court "worried about monetary inputs into a public school system also is apt to care about educational outputs. But how do you measure output? Proficiency tests? Graduation rates? Attendance? Or some other measure?" Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law*, 39 (2018). Perhaps teacher evaluations or pay? Or even administrator pay? As Judge Sutton put it, "[s]trict scrutiny and education policy in the end often will be hard to reconcile . . . ." *Id.* at 37.

Cross-Appellants' argument only invites future court interventions and additional litigation, ad infinitum—and no doubt with contradictory results. While that may benefit the lawyers and special interest groups that get more money, it has little to do with education—the whole point of the system.

In keeping its analysis focused on education and mindful of the authority and policy determinations of the General Assembly, this Court can avoid the searching, unending review endured in the *DeRolph* series of cases. Because, "like all human institutions, courts are not universal problem solvers competent to manage any difficulty or resolve any dispute. There are some things courts are good at and some things they are not so good at . . . ." James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It*, 290 (1989).

IV. There is no correlation between increased funding and improved education.

Cross-Appellants' equal protection claim is built on the false premise that funding equals education, and that more funding means better education. *See* Cross-Appellants' Br. at Section II. This trope has long

been refuted, both nationally and in Ohio. According to a performance audit by the Ohio Department of Education, "higher expenditures do not guarantee higher [Performance Index] scores." Ohio Dept. of Educ., *Performance Audit*, 17 (2021), available at https://tinyurl.com/2r443xf6 (accessed Dec. 8, 2025). The Department's "regression analysis which identified the impact expenditure had on PI score showed that on a statewide level, expenditures were loosely, and *negatively*, correlated. This means that generally, as per-pupil expenditures increase, a District's PI score decreases." (Emphasis added.) *Id.* The analyses "indicate[d] that it is not necessary for districts to spend more to get better results." *Id.* The state's data showed that "lower spending districts can achieve at the same level as higher spending districts, a point which parents and taxpayers should take into consideration in their personal decision-making surrounding financial and performance issues in their district." *Id.*

Similarly, the Brooking Institute, no advocate of school choice, found "a weak relationship between per pupil school spending and educational outcomes as measured by test scores and high school dropout rates." Sarah Rber & Gabriela Goodman, *A State-Level Perspective On School*

Spending And Educational Outcomes, Economic Security and Opportunity at Brookings, 4 (2025). *See also id.* at 15.

The Ohio Constitution values education, not funding exclusively public schools—some of which have failed to educate Ohioans' children. *See State ex rel. Ohio Cong. of Parents & Tchrs.*, 2006-Ohio-5512. Even Cross-Appellants admit that educating children "was indisputably the centerpiece of the framers' vision for Ohio's advancement." Cross-Appellants' Br. at 19. The General Assembly has properly funded alternative education programs in an effort to provide "adequate education." *State ex rel. Ohio Cong. of Parents & Tchrs*, at ¶ 32.

CONCLUSION

Ohio's equal protection clause has never required strictly equal funding of all educational programs.[2] From the beginning, Ohio's legislative branch has enacted programs to address the needs of individual students, in order to further "good government and the happiness of

[2] Amicus recognizes that some school districts are in desparate need of more funds. *See* Cross-Appellants Br. at 11–12. However, terminating the EdChoice program will not, ipso facto, increase funding for those school districts. *See* Amicus Br. of The Buckeye Instituteat 26–32, Nov. 3, 2025.

mankind"—not the financial desires of public school administrators and teachers. *See* An Ordinance for the Government of the Territory of the United States North-West of the River Ohio, § 14, art. III (1787). While public educators and administrators are valued, vital parts of Ohio's education process,they are not the sole providers of education.

This Court should uphold the trial court's determination on cross-appeal that EdChoice does not violate the Equal Protection Clause.

Respectfully submitted,
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December 8, 2025

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above Amicus Curiae Brief of The Buckeye Institute in Support of Cross-Appellee was served on the parties' counsels of record on this 8th day of December 2025 via this Court's electronic filing system.

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