COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DISTRICT, *et al.*, Plaintiffs, v. STATE OF OHIO, *et al.*, Defendants.	CASE NO.: 2022-CV-000067 JUDGE JAIZA N. PAGE **MOTION TO INTERVENE AS DEFENDANTS** ***ORAL HEARING REQUESTED***

Applicants Christopher and Chelsea Boggs, Brian Ellis, Kathryn Sliwinski, Marc Omelsky, and Benjamin Highley (hereinafter "Applicants") move for leave to intervene as defendants in this action to assert the defenses set forth in their proposed answer, a copy of which is attached to this motion, on the grounds set forth below.

INTRODUCTION

Applicants are the parents of children who currently participate in either the Ohio Educational Choice Scholarship Program (hereinafter "Traditional Program") or the Ohio Educational Choice Expansion Scholarship Program (hereinafter "Expansion Program"). The programs, which provide scholarships to K–12 students who are either assigned to underperforming public schools or whose families meet certain income designations, were enacted by the Ohio General Assembly to improve K–12 education and provide Ohio families with increased educational options. *See generally* R.C. 3310.01–.17. Applicants are the intended and direct beneficiaries of the programs and are therefore, in essence, the real parties in interest.

Applicants accordingly seek party status, as intervenor-defendants, to defend the constitutionality of the programs from which they benefit. They are entitled to intervene as of

right under Civ.R. 24(A)(2). Alternatively, they should be permitted to intervene under Civ.R. 24(B)(2). Indeed, parents of children participating in educational choice programs are routinely granted intervention to defend the programs when they are challenged in court. *See, e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (defense of Ohio Pilot Scholarship Program by parent-intervenors); *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 711 N.E.2d 203 (1999) (same). This case is no different, and intervention is therefore warranted.

This motion is based upon the facts and law set forth herein; Applicants' affidavits, appended hereto as Exhibits A through E and incorporated herein; and all the pleadings and other documents of record in this action. The motion is accompanied by Applicants' proposed answer to Plaintiffs' complaint, which Applicants proffer for filing should this motion be granted. Applicants request oral argument on this motion pursuant to Local Rule 21.01.

STATEMENT OF FACTS

I. Ohio Educational Choice Scholarship Program

Ohio's Educational Choice Scholarship Program ("EdChoice Program" or "Program") empowers students to attend participating private schools. The Program is made up of two parts: The Traditional Program, which serves students who are assigned to underperforming public schools, and the Expansion Program, which serves students from lower-income families.

A. The Traditional Program

The Traditional Program is an educational choice program enacted by the Ohio General Assembly in 2005 to offer alternatives to families whose children are assigned to public schools designated as underperforming according to certain statutory criteria. Generally speaking, a student is eligible for the Traditional Program if she: (1) is currently enrolled in an underperforming public school; (2) is enrolling in kindergarten and would be assigned to an

underperforming public school; (3) is enrolling in Ohio schools for the first time and would be assigned to an underperforming public school; (4) is an incoming K–2nd or 9th–12th grader who would be assigned to an underperforming public school; or (5) has a sibling who received a scholarship in the preceding year. *See generally* R.C. 3310.03, .033.

An eligible student who chooses to participate in the Program receives a scholarship to attend any private school of her parents' choosing, provided the school participates in the Traditional Program and has accepted the student. Scholarships are worth the lesser of: (1) the tuition amount charged at the private school (less any applicable tuition discounts for which the student is eligible); and (2) a maximum scholarship amount, which is $5,500 at the elementary level and $7,500 at the secondary level. *See* R.C. 3317.022(A)(10). A scholarship must be put toward tuition at the student's chosen private school, R.C. 3310.10, and if the student is from a family with an income of 200 percent of federal poverty guidelines or less, then the private school must accept the scholarship amount as the full amount of the child's tuition, R.C. 3310.13(A). Subject to a few statutory caveats, a student who receives a scholarship remains eligible to continue receiving scholarships in subsequent school years, through twelfth grade. *See* R.C. 3310.03. In Fiscal Year 2021, approximately 33,203 students participated in the Traditional Program.

B. The Expansion Program

The Expansion Program is an educational choice program enacted by the Ohio General Assembly in 2013 to offer private school scholarships to students from low- and middle-income households. In general, a student is eligible for the Expansion Program if she is not a resident of a school district in which the Cleveland Scholarship Program already operates; is ineligible for

the Traditional Program; and is a member of a household with an income of 250 percent of federal poverty guidelines or less. *See generally* R.C. 3310.032.

Just as with the Traditional Program, an eligible student who chooses to participate in the Expansion Program receives a scholarship to attend any private school of her parents' choosing, provided the school participates in the Program and has accepted the student. Scholarships are similarly worth the lesser of: (1) the tuition amount charged at the private school (less any applicable tuition discounts for which the student is eligible); or (2) a maximum scholarship amount, which is $5,500 at the elementary level and $7,500 at the secondary level. *See* R.C. 3317.022(A)(10). A scholarship must be put toward tuition at the student's chosen private school, R.C. 3310.10, and if the student is from a family with an income of 200 percent of federal poverty guidelines or less, then the private school must accept the scholarship amount as the full amount of the child's tuition, R.C. 3310.13(A). A student who receives a scholarship remains eligible until completing grade twelve unless the student's family income rises above four hundred percent of the federal poverty guidelines. R.C. 3310.032(E)(3). In Fiscal Year 2021, approximately 17,204 students participated in the Expansion Program.

II. Plaintiffs' Challenge To The EdChoice Scholarship Program

Plaintiffs—five school districts, the Ohio Coalition for Equity and Adequacy of School Funding, and two Ohio residents, as next friends of their children (hereinafter "Plaintiffs") filed this lawsuit on January 4, 2022, challenging the EdChoice Program on state constitutional grounds. Specifically, Plaintiffs argue that the EdChoice Program violates Article VI, Section 2, and Article I, Section 2, of the Ohio Constitution.[1]

[1] The Article I, Section 2 claim is brought by the individual plaintiffs only.

A. The Traditional Program Families

Applicants Christopher and Chelsea Boggs, Brian Ellis, and Kathryn Sliwinski, are parents of children who currently receive a scholarship under the Traditional Program. As such, they are the Program's direct beneficiaries. They now seek leave to intervene in this case to defend the Program and their interests in it.

Christopher and Chelsea Boggs live in Columbus with their three children, each of whom receive a scholarship under the Traditional Program. Ex. A, Boggs Aff., ¶ 1–3. All three children use their scholarships to attend Tree of Life Christian Schools in Columbus. *Id.* ¶ 3. Christopher and Chelsea are very happy with the education their children receive at the schools, as well as with the schools' strong academics and the faith-based education they provide. *Id.* ¶ 4. Without the Traditional Program, they would likely be unable to send their children to Tree of Life, where their children are thriving, and would instead have to send them to their assigned public schools, which Ohio designates as low performing. *Id.* ¶ 6–7.

Brian Ellis lives in Akron. Ex. B, Ellis Aff., ¶ 1. He has three school-aged children, as well as a son and a stepson who have graduated from high school. *Id.* ¶ 2. Brian's school-aged children attend Archbishop Hoban High School and St. Augustine Catholic School. *Id.* Each child receives a scholarship under the Program. *Id.* ¶ 5. Brian became very passionate about keeping his children out of Akron's public schools after his stepson's experience at Kenmore High School. *Id.* ¶ 4. Kenmore is an academically low-performing public high school, and students there encounter constant fighting, rampant drug use, and widespread truancy. *Id.* Moreover, homework is commonly not assigned, and, in Brian's view, the school provides neither college nor vocational readiness. *Id.* With two disabled children who require special attention, Brian is particularly passionate about keeping his children out of Akron's low-

performing public schools and ensuring that they receive a good education. *Id.* ¶ 7. But if the Traditional Program is taken away, Brian will be unable to continue sending his children to Archbishop Hoban and St. Augustine. *Id.* ¶ 8–9.

Kathryn Sliwinski is a mother in Toledo whose son uses the Traditional Program to attend Blessed Sacrament School in Toledo. Ex. C, Sliwinski Aff., ¶ 1–2, 6. It is important to Kathryn that he attends Blessed Sacrament because he has ADHD and benefits from the special attention he receives at the school. *Id.* ¶ 7. Kathryn's son is very impressionable and benefits from the strong moral atmosphere at the school, as well as its small class sizes. *Id.* ¶ 8–10. The Traditional Program is a lifesaver to Kathryn, as it enables her son to attend a school she otherwise would struggle to afford. *Id.* ¶ 11. Without the Traditional Program, she would have to choose between sending him to Deveaux Elementary School, the low-performing public school to which he is assigned, or enduring great financial hardship to keep him at Blessed Sacrament. *Id.* ¶ 12–14.

B. The Expansion Program Families

Applicants Marc Omelsky and Benjamin Highley are parents of children who currently receive a scholarship under the Expansion Program. As such, they are the program's direct beneficiaries. They now seek leave to intervene in this case to defend the program and their interests in it.

Marc Omelsky lives with his wife in Canton, Ohio. Ex. D, Omelsky Aff., ¶ 1. The two oldest of their four children attend Heritage Christian School using the Expansion Program. *Id.* ¶ 4. It is important to Marc that their children participate in the Expansion Program because Heritage Christian School offers a better learning environment, stronger academics than their assigned public school, and a faith-based education. Without the Expansion Program, the

Omelskys would have to choose between sending their oldest children to their assigned public school, Walker Elementary, or enduring great financial hardship to continue sending them to Heritage Christian School. *Id.* ¶ 7, 9.

Benjamin Highley lives with his wife in Middletown, Ohio. Ex. E, Highley Aff., ¶ 1–3. The four youngest of their five children attend Middletown Christian Schools using the Expansion Program. *Id.* ¶ 2, 4. It is important to Benjamin that his children participate in the Expansion Program because Middletown Christian Schools provide a better learning environment, stronger academics than their assigned public school, and an education that is compatible with his family's worldview. *Id.* ¶ 6. Without the Expansion Program, Benjamin and his wife could not afford to send their children to Middletown Christian Schools and would instead choose to homeschool them. *Id.* ¶ 7, 9.

ARGUMENT

Applying the intervention rules liberally, as required under Ohio law, *State ex rel. Merrill v. Ohio Dep't of Nat. Res.*, 130 Ohio St.3d 30, 2011-Ohio-4612, 955 N.E.2d 935, ¶ 41, this Court should allow Applicants to intervene in this case as a matter of right or, alternatively, under the rules governing permissive intervention. Applicants are the intended beneficiaries of Ohio's EdChoice Program. And as its intended beneficiaries, parents like Applicants are routinely granted leave to intervene when similar educational choice programs are challenged in court. Intervention is likewise warranted here.

I. Applicants, As The Intended Beneficiaries Of The EdChoice Program, Are Entitled To Intervene As Of Right In This Action.

Applicants are entitled to intervene as a matter of right under Civ.R. 24(A)(2). Ohio courts "construe Civ.R. 24 liberally to permit intervention," *id.*, and applicants are granted intervention as of right so long as they satisfy the following criteria:

> (1) the intervenor must claim an interest relating to the property or transaction that is the subject of the action; (2) the intervenor must be so situated that the disposition of the action may, as a practical matter, impair or impede the intervenor's ability to protect his or her interest; (3) the intervenor must demonstrate that his or her interest is not adequately represented by the existing parties; and (4) the motion to intervene must be timely.

Peterman v. Village of Pataskala, 122 Ohio App.3d 758, 760-61, 702 N.E.2d 965 (5th Dist.1997). As explained below, all of these criteria are satisfied.

A. Applicants Have An Interest In The Litigation.

First, Applicants have the requisite interest to intervene as a matter of right. Ohio law merely "requires that the applicant *claim* an interest relating to the property or transaction which is the subject of the action"—it does "not require[ ] that the interest be proven or conclusively determined before the motion [to intervene] is granted." *Blackburn v. Hamoudi*, 29 Ohio App.3d 350, 354, 505 N.E.2d 1010 (10th Dist.1986).

Applicants, as the parents of children who receive scholarships under the EdChoice Program, are the intended beneficiaries of the Program and thus have a direct interest in the Program's continued existence. Courts have repeatedly held that the beneficiaries of a government program or law have the requisite interest to intervene as a matter of right when that program or law is challenged. *See, e.g., California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (allowing health care providers to intervene to defend conscience protection law because "[t]hey [we]re the intended beneficiaries of th[e] law"); *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (allowing small farmers to intervene to defend rulemaking under reclamation acts because small farmers were "precisely those Congress intended to protect with the reclamation acts"); *United States v. Dixwell Hous. Dev. Corp.*, 71 F.R.D. 558, 560 (D. Conn. 1976) (allowing housing project tenants to intervene to defend portions of National

Housing Act because "their interest as beneficiaries of two aspects of the . . . Act" was "sufficient to support intervention").[2]

Applicants' interest in the EdChoice Program, moreover, is inextricably intertwined with their fundamental liberty interest in "direct[ing] the upbringing and education of" their children. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35, 45 S.Ct. 571, 69 L.Ed. 1070 (1925). The very purpose of the Program, after all, is to empower parents and guardians to exercise this liberty interest.

B. Applicants' Ability To Protect Their Interest Is Impaired Without Intervention.

Second, it is clear that "disposition of the action may, as a practical matter, impair or impede [Applicants'] ability to protect [their] interest." *Peterman*, 122 Ohio App.3d at 760-61, 702 N.E.2d 965. A prospective intervenor needs to "show only that impairment of [her] substantial legal interest *is possible* if intervention is denied." *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997) (emphasis added). This impairment burden is "minimal," *id.*, and courts thus regularly allow intervention when applicants can show that a lawsuit might harm their interests.

Here, impairment of Applicants' interest is not merely possible; it is a certainty if this Court grants Plaintiffs' requested relief. Applicants stand to lose their current scholarships, which have empowered them to choose the schools that will best serve their children's educational needs, as well as all future scholarships. "[A] lost opportunity to seek a government benefit"—including, specifically, participation in an educational choice program—is an "injury

[2] Ohio courts commonly look to the decisions of the federal courts in applying Rule 24, as Ohio's rule mirrors its federal counterpart. *See, e.g.*, *State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, 503, 696 N.E.2d 1058 (1998).

in fact" that satisfies even the stringent Article III standing requirements of the U.S. Constitution. *Carson ex rel. O.C. v. Makin*, 979 F.3d 21, 31 (1st Cir. 2020), *cert. granted*, 141 S.Ct. 2883 (2021) (mem.). Finally, should the EdChoice Program be held unconstitutional, Applicants and their children—who, again, are "the beneficiaries under the" Program—"would have no chance in future proceedings to have its constitutionality upheld." *Saunders v. Super. Ct.*, 510 P.2d 740, 741–42 (Ariz. 1973).

C. Applicants' Interests Are Not Adequately Represented By The Existing Parties.

Third, Applicants can easily meet the "minimal burden to establish that [their] interest may not be adequately represented by the current" defendants. *State ex rel. Smith v. Frost*, 74 Ohio St.3d 107, 108, 656 N.E.2d 673 (1995) (per curiam); *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10, 92 S.Ct. 630 30 L.Ed.2d 686 (1972) (holding that the burden under the analogous federal rule "should be treated as minimal"). Courts are instructed to consider three factors when determining whether a movant has satisfied this minimal burden:

> (1) whether the interests of a present party are sufficiently similar to that of the movant such that the legal arguments of the latter will be made by the former; (2) whether the present party is capable and willing to make those arguments; and (3) if permitted to intervene, whether the intervenor would add some necessary element to the proceedings that would not be covered by the present parties.

Lucas v. Ohio State Bd. of Educ., 10th Dist. Franklin No. 21AP-138, 2021 WL 5099886, at *4 (Nov. 2, 2021).

Here, the interest of the state is not "sufficiently similar" to that of the Applicants such that the parties will duplicate arguments. Indeed, it is not even clear that the state is "capable and willing to make those arguments" that Applicants intend to raise. *Id.* The state, after all, has a duty to represent the broad interests of the general public and, to that end, must integrate its defense of the EdChoice Program with the state's approach to education. Applicants, on the other

hand, have a narrower, more parochial interest: They have determined that public education *does not work* for their children and, to that end, have a uniquely particular interest in preserving the scholarships that their children receive and stand to receive in the future. Applicants likewise possess a unique liberty interest in "direct[ing] the upbringing and education of children under their control." *Pierce*, 268 U.S. at 534–35, 45 S.Ct. 571, 60 L.Ed. 1070.

Courts nationwide recognize that an existing party cannot adequately represent another party when their interests differ. Indeed, federal courts applying Federal Rule of Civil Procedure 24(a) have repeatedly recognized that the interest of an individual participating in a government program is distinct from the broader interest of the government in running that program. Because of these distinct interests, individual participants in the program are not adequately represented by the government in lawsuits about those programs. *See, e.g.*, *Trbovich*, 404 U.S. at 538–39 (allowing union member to intervene alongside Secretary of Labor in union election dispute because the Secretary's duty "to protect the vital public interest in assuring free and democratic union elections . . . transcend[ed] the narrower interest of the . . . union member" and the two interests therefore "may not always dictate precisely the same approach to the conduct of the litigation"); *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir.1998) ("[B]ecause the employment interests of IBT's members [in defending law guaranteeing them a prevailing wage] were potentially more narrow and parochial than the interests of the public at large, IBT demonstrated that the representation of its interests by the named defendants-appellees may have been inadequate.").[3] That is certainly true here: The only

[3] *See also Nat'l Farm Lines v. I.CC*, 564 F.2d 381, 384 (10th Cir.1977) ("We have here also the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible."); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 15 (D.D.C. 2010) ("[I]t is well-established that governmental entities generally cannot represent the more narrow and

way Applicants' interests can be adequately represented in this litigation is for them to be a part of it.

Moreover, when the interests of an applicant for intervention are "potentially more narrow and parochial than the interests of the public at large," courts commonly assume the potential for disagreement over litigation strategy. *Mendonca*, 152 F.3d 1184 at 1190. Past experience in educational choice litigation bears this assumption out. In *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125, 131 S.Ct 1436. 179 L.Ed.2d 523 (2011), for example, parent-intervenors successfully argued that the plaintiffs challenging the educational choice program lacked standing, an issue that the state conceded. The state similarly conceded standing in *Duncan v. State*, 166 N.H. 630, 102 A.3d 913 (2014), while the parent-intervenors successfully argued that the statute conferring standing was unconstitutional. In *Kotterman v. Killian*, 193 Ariz. 273, 972 P.2d 606 (1999), parent-intervenors—not the state—urged and convinced the court to confront the bigoted origins of the provision of the Arizona Constitution that the plaintiffs were using to attack the state's educational choice program. Finally, in *Hart* v. *State*, 367 N.C. 775 (N.C. 2014), it was parent-intervenors—not the government—that obtained interlocutory relief ensuring that 2,000 students would not lose their scholarships after an adverse judgment from the trial court.

Finally, Applicants will "add [a] necessary element to the proceedings that would not be covered by the presented parties." *Lucas*, 10th Dist. Franklin No. 21AP-138, 2021 WL 5099886, at *4. For example, Applicants will provide testimony as to how the EdChoice Program is

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parochial financial interest of a private party." (internal quotation marks omitted)); *Ass'n for Fairness in Bus., Inc. v. New Jersey*, 193 F.R.D. 228, 232 (D.N.J. 2000) (allowing intervention where "the government represent[ed] numerous complex and conflicting interests" and "the parochial interests of the Proposed Defendants–Intervenors m[ight] not be adequately represented" (internal quotation marks omitted)).

meeting the unique educational needs of their children and of the severe, personal injury their children will suffer if the Program is enjoined, as Plaintiffs request. This Court should have that testimony to fully comprehend the repercussions of invalidating a program that, for a decade and a half, has been empowering Ohio families to secure the education that will best meet their unique needs.

D. Applicants' Motion is Timely.

Finally, Applicants' motion is timely. In assessing the timeliness of a motion to intervene, Ohio courts consider:

> (1) the point to which the suit had progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure after he [or she] knew or reasonably should have known of his [or her] interest in the case to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.

State ex rel. First New Shiloh Baptist Church v. Meagher, 82 Ohio St.3d 501, 503, 696 N.E.2d 1058 (1998).

Here, each of these factors militates in favor of a finding of timeliness. This motion comes a mere three days after this lawsuit was filed, and the lawsuit has not progressed in any meaningful sense since then. "[T]he purpose for which intervention is sought" likewise supports the timeliness of this motion. *First New Shiloh Baptist Church*, 82 Ohio St.3d at 503, 696 N.E.2d 1058. Applicants seek leave to intervene to defend the constitutionality of the EdChoice Program, and no issues concerning its constitutionality have yet been resolved. "[T]he length of time preceding the application during which [Applicants] knew . . . of [their] interest in the case," moreover, is minimal. *Id.* They learned of this case the day it was filed and now move to intervene less than a week later. Finally, there are no "unusual circumstances militating against" intervention, and no "prejudice to the original parties" will result by virtue of allowing

Applicants to intervene at this point. *Id*. To the contrary, this case will continue to proceed on precisely the same schedule on which it has proceeded thus far.

For the foregoing reasons, intervention as of right is warranted.

II. Alternatively, Applicants Should Be Granted Permissive Intervention To Defend The EdChoice Program.

Applicants alternatively seek permissive intervention pursuant to Civ.R. 24(B)(2). Permissive intervention is granted upon timely motion "when an applicant's claim or defense and the main action have a question of law or fact in common." Civ.R. 24(B)(2). "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.* Applicants satisfy the conditions set forth in Civ.R. 24(B)(2), and intervention will not delay or prejudice adjudication of the current parties' rights.

First, Applicants' defenses share a question of law or fact in common with the main action. The central question of law in this case is whether the EdChoice Program is constitutional, and the interests of Applicants and their children are inextricably linked with the question of the Program's constitutionality.

Second, Applicants have acted quickly to prevent any delay in this litigation. As noted above, their motion to intervene comes within one week of the filing of Plaintiffs' complaint, and their participation will not prejudice the adjudication of the rights of the other parties. Rather, Applicants' participation will facilitate a thorough resolution of all issues in this case, providing a perspective on the EdChoice Program that only they—the Program's beneficiaries—can provide.

Finally, Applicants believe that participation of their counsel will also assist this Court in its resolution of the questions before it. Applicants' counsel have represented intervening parents

in the successful defense of over a dozen educational choice programs, at every level of federal and state court (including Ohio).[4] Moreover, Applicants' counsel are currently representing intervening parents in the defense of Tennessee's education savings account program, Kentucky's education savings account program, and North Carolina's voucher program.

CONCLUSION

In nearly every legal challenge to an educational choice program over the past three decades, parents who have sought to intervene to defend the program have been permitted to do so. Applicants respectfully request that they be permitted to do the same. Party status is necessary to ensure that the interests of the EdChoice Program's beneficiaries are fully protected. Should the Program be ruled unconstitutional in this case, Applicants will forever lose the opportunity to protect their scholarship interests. Particularly for this reason, Applicants seek leave to intervene as defendants.

WHEREFORE, Applicants respectfully request that this Court grant them leave to intervene as defendants in this case.

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[4] These programs include Ohio's Pilot Project Scholarship Program, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 711 N.E.2d 203 (1999); Arizona's individual tax credit scholarship program, *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011); *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999); Douglas County, Colorado's voucher program, *Doyle v. Taxpayers for Pub. Educ.*, ___ U.S. ___, 137 S.Ct. 2324, 198 L.Ed.2d 753 (2017) (mem.); Georgia's tax credit scholarship program, *Gaddy v. Ga. Dep't of Revenue*, 802 S.E.2d 225 (Ga. 2017); North Carolina's voucher program, *Hart v. State*, 774 S.E.2d 281 (N.C. 2015); Alabama's tax credit scholarship program, *Magee v. Boyd*, 175 So. 3d 79 (Ala. 2015); New Hampshire's tax credit scholarship program, *Duncan v. State*, 102 A.3d 913 (N.H. 2014); Indiana's voucher program, *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013); Arizona's educational savings account program, *Niehaus v. Huppenthal*, 310 P.3d 983 (Ariz. Ct. App. 2013); Arizona's corporate tax credit scholarship program, *Green v. Garriott*, 212 P.3d 96 (Ariz. Ct. App. 2009); Illinois' tax credit program, *Toney v. Bower*, 744 N.E.2d 351 (Ill. App. Ct. 2001); *Griffith v. Bower*, 747 N.E.2d 423 (Ill. App. Ct. 2001); and Milwaukee's voucher program, *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998); *Davis v. Grover*, 480 N.W.2d 460 (Wis. 1992).

Respectfully submitted this 7th day of January 2022.

/s/ Emmett Robinson
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**Pro Hac Vice* Applications pending

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene as Defendants was served by the electronic filing system of the Franklin County Court of Common Pleas Clerk of Courts pursuant to Civ.R. 5(B)(3) and Loc.R. 19.01 on this 7th day of January 2022, and thereby served upon the following:

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I further certify that the foregoing Motion to Intervene as Defendants was served by U.S. Mail pursuant to Civ.R. 5(B)(2)(c) and Loc.R. 19.01 on this 7th day of January 2022 on the following Defendants:

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Columbus City School District, et al.
v.
State of Ohio, et al.

Case No. 2022-CV-000067

Motion to Intervene as Defendants

Exhibit A

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DISTRICT, *et al.*,

Plaintiffs,

v.

STATE OF OHIO, *et al.*,

Defendants,

v.

CHRISTOPHER BOGGS, *et al.*,

Applicants for Intervention.

CASE NO.: 2022-CV-000067

JUDGE JAIZA N. PAGE

AFFIDAVIT OF CHRISTOPHER BOGGS IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANT INTERVENOR

STATE OF OHIO)
COUNTY OF FRANKLIN) ss:
)

Christopher Boggs, being first duly cautioned, swears or affirms as follows:

1. I am a resident of Columbus, Ohio and live at 1180 East Cooke Road. I am 18 years of age or older and make this affidavit based on my personal knowledge of the facts set forth herein.

2. My wife Chelsea and I have three children: C.B., who completed his sixth-grade year in June 2020; W.B., who completed his third-grade year in June 2020; and G.B., who completed her second-grade year in June 2020. All three of our children attend Tree of Life Christian School in Columbus, Ohio.

3. Each of our children is eligible for and has received a scholarship under Ohio's traditional, or performance-based, Educational Choice Scholarship ("EdChoice") Program. Chelsea and I rely on the EdChoice Program to send our children to Tree of Life.

4. Chelsea and I are very happy with the education that our children receive at Tree of Life. We are attracted to the school because of its strong academics, but also because of the faith-based education it provides our children.

5. In addition to my work in digital design, I am a pastor at our family's church. I appreciate the fact that my children can attend a school that instills values consistent with those that Chelsea and I instill in our children at home and at church.

6. The public schools to which our children would be assigned if they were not attending Tree of Life—Maize Elementary School and Medina Middle School— has been designated as low-performing by the State of Ohio. We do not believe that our children would receive a good education at their assigned public school.

7. Without the EdChoice Program, Chelsea and I likely would be unable to afford tuition at Tree of Life for our three children. At a minimum, we would have to endure great financial hardship to enable them to continue attending Tree of Life.

Christopher Bopp
Christopher Boggs

Sworn to or affirmed before me and subscribed in my presence the 4th day of January 2022, in the state of Ohio and county of Franklin.

Rhonda Holmes
Notary Public in and for the
State of Ohio
My commission expires: 12-8-2025

RHONDA HOLMES
Notary Public
State of Ohio
My Comm. Expires
December 8, 2025

Columbus City School District, et al.
v.
State of Ohio, et al.

Case No. 2022-CV-000067

Motion to Intervene as Defendants

Exhibit B

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DISTRICT, *et al.*,

Plaintiffs,

v.

STATE OF OHIO, *et al.*,

Defendants,

v.

CHRISTOPHER BOGGS, *et al.*,

Applicants for Intervention.

CASE NO.: 2022-CV-000067

JUDGE JAIZA N. PAGE

AFFIDAVIT OF BRIAN ELLIS IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANT INTERVENOR

STATE OF OHIO)
COUNTY OF SUMMIT) ss:
)

Brian Ellis, being first duly cautioned, swears or affirms as follows:

1. I am a resident of Akron, Ohio and live at 2217 23rd Street. I am an adult over the age of 18 years, have personal knowledge as to all matters contained herein, and am fully competent to make this declaration.

2. I am a married father of four children: B.E., who in June 2021 completed his senior year at Archbishop Hoban High School; B.E., who in June 2021 completed his freshman year at Archbishop Hoban High School; K.E., who in June 2021 completed his second year at St. Augustine Catholic School; and K.E., who in spring 2021 completed her kindergarten year at St. Augustine Catholic School. I also have a stepson who graduated from Kenmore High School.

3. I have sole legal and physical custody of three of my children, and joint custody of my stepson and oldest son.

4. After my stepson's experience at Kenmore, I became very passionate about keeping my children out of Akron's middle and high schools. Kenmore is one of the lowest performing high schools in Akron. There is constant fighting, drug use is rampant on school property, and children do not attend class and are truant. There is neither college nor vocational readiness; there are no steppingstones to becoming productive in this world. Often, the school does not assign homework, and the work that they do assign is what students did not finish in class.

5. My children use the traditional, or performance-based, Educational Choice Scholarship ("EdChoice") Program to attend their schools.

6. I am very happy with the education that my children receive at their schools. If they did not participate in the EdChoice Program, then they would be assigned to Kenmore-Garfield High School and Sam Salem CLC elementary school, which have been designated as low-performing by the State of Ohio. My children would not receive an education as good as the one they receive at their current schools.

7. It is particularly important to me that my children participate in the EdChoice Program because two of them are disabled and require special attention that they receive at their current schools.

8. If I am unable to continue receiving scholarships for my children because of the Plaintiffs' lawsuit, I would have to send them to low-performing public schools or endure great financial hardship to enable them to continue attending Archbishop Hoban and St. Augustine.

9. As things currently stand, I would not be able to afford to continue sending my children to Archbishop Hoban and St. Augustine without the EdChoice Program. If it were ruled unconstitutional, an important program that I expect to rely on for my children's educations will be eliminated.

Brian Ellis

Sworn to or affirmed before me and subscribed in my presence the 4th day of JAN, 2022, in the state of Ohio and county of Summit.

Notary Public in and for the
State of Ohio
My commission expires: 04/23/2023

J'Waun Miller
NOTARY PUBLIC, STATE OF OHIO

Columbus City School District, et al.
v.
State of Ohio, et al.

Case No. 2022-CV-000067

Motion to Intervene as Defendants

Exhibit C

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DISTRICT, *et al.*,

Plaintiffs,

v.

STATE OF OHIO, *et al.*,

Defendants,

v.

CHRISTOPHER BOGGS, *et al.*,

Applicants for Intervention.

CASE NO.: 2022-CV-000067

JUDGE JAIZA N. PAGE

AFFIDAVIT OF KATHRYN SLIWINSKI IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANT INTERVENOR

STATE OF OHIO)
COUNTY OF LUCAS) ss:
)

Kathryn Sliwinski, being first duly cautioned, swears or affirms as follows:

1. I am a resident of Toledo, Ohio and live at 2187 Castlewood Drive. I am an adult over the age of 18 years, have personal knowledge as to all matters contained herein, and am fully competent to make this declaration.

2. I am a married mother of O.S.

3. I have sole legal and physical custody of O.S.

4. My ex-husband and I divorced when O.S. was less than one year old.

5. I work as Director of Human Resources and Strategic Initiatives at St. John's Jesuit Academy in Toledo.

6. My son uses the traditional, or performance-based, Educational Choice Scholarship ("EdChoice") Program to attend Blessed Sacrament School in Toledo. O.S. finished the first grade in June 2021.

7. It is important that O.S. attend Blessed Sacrament because he has ADHD and needs special attention from his teachers.

8. O.S. is easily influenced by his peers and needs help from his teachers to stay focused.

9. The class sizes in a small school help O.S. concentrate on his work and get the attention that he needs.

10. O.S. also benefits from being in an educational environment that emphasizes morals and values.

11. The EdChoice Program is a lifesaver that enables my son to attend a school that I would otherwise not be able to afford.

12. Toledo is our home, but I cannot justify sending O.S. to Deveaux Elementary School, the public school to which he would be assigned if he were not attending Blessed Sacrament. The State of Ohio has designated Deveaux as a low-performing school.

13. The EdChoice Program enables us to stay in our home and to get O.S. an education that works for him.

14. If I am unable to obtain scholarships for my son because of the Plaintiffs' lawsuit, I would have to send him to the low-performing public schools or endure great financial hardship to enable him to attend Blessed Sacrament.

15. As things currently stand, I would not be able to afford to send my son to a private school if not for the EdChoice Program. If it were ruled unconstitutional, an important program that I expect to rely on for my son's education will be eliminated.

K. Sliwinski

Kathryn Sliwinski

Sworn to or affirmed before me and subscribed in my presence the 5 day of January, 2022, in the state of Ohio and county of Lucas.

Christopher D Gang

Notary Public in and for the
State of Ohio
My commission expires: 8-29-2022

Columbus City School District, et al.
v.
State of Ohio, et al.

Case No. 2022-CV-000067

Motion to Intervene as Defendants

Exhibit D

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DISTRICT, *et al.*,

Plaintiffs,

v.

STATE OF OHIO, *et al.*,

Defendants,

v.

CHRISTOPHER BOGGS, *et al.*,

Applicants for Intervention.

CASE NO.: 2022-CV-000067

JUDGE JAIZA N. PAGE

AFFIDAVIT OF MARC OMELSKY IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANT INTERVENOR

STATE OF OHIO)
COUNTY OF STARK) ss:
)

Marc Omelsky, being first duly cautioned, swears or affirms as follows:

1. I am a resident of Canton, Ohio and live at 2015 Faircrest Street SE. I am an adult over the age of 18 years, have personal knowledge as to all matters contained herein, and am fully competent to make this declaration.

2. I am a married father of four children: ENO, who in June 2021 completed fifth grade at Heritage Christian School; EMO, who in June 2021 completed first grade at Heritage Christian School; and EPO and EMO, who as of June 2021 were not old enough to attend school.

3. My wife and I have sole legal and physical custody of our children.

4. My two oldest children, ENO and EMO, use the expansion, or income-based, Educational Choice Scholarship ("EdChoice") Program to attend their school.

5. I am very happy with the education that my children receive at their schools. If they did not participate in the EdChoice Program, then they would be assigned to Walker Elementary. There, my children would not receive an education as good as the one they receive at their current school.

6. It is important to me that my children participate in the EdChoice Program because Heritage Christian School provides my children with a faith-based education. I also believe it provides my children with a better learning environment, stronger academics, and smaller class sizes.

7. If I am unable to continue receiving scholarships for my children because of the Plaintiffs' lawsuit, I would have to send them to their assigned public school or endure great financial hardship to enable them to continue attending Heritage Christian School.

8. My wife and I are both pastors. We work at the Worldwide Missionary Movement Church in Canton, OH. I also work as a Spanish interpreter at Cleveland Clinic Mercy Hospital in Canton, OH.

9. As things currently stand, my wife and I would not be able to afford to continue sending my children to Heritage Christian School without the EdChoice Program. If it is ruled unconstitutional, an important program that we expect to rely on for our children's educations will be eliminated.

Marc Omelsky

Sworn to or affirmed before me and subscribed in my presence the 5th day of January 2022, in the state of Ohio and county of Stark.

Notary Public in and for the
State of Ohio
My commission expires: 5-19-2024

Bryan K. Worley
Notary Public, State of Ohio
My Commission Expires
May 19, 2024

Columbus City School District, et al.
v.
State of Ohio, et al.

Case No. 2022-CV-000067

Motion to Intervene as Defendants

Exhibit E

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DISTRICT, *et al.*,

Plaintiffs,

v.

STATE OF OHIO, *et al.*,

Defendants,

v.

CHRISTOPHER BOGGS, *et al.*,

Applicants for Intervention.

CASE NO.: 2022-CV-000067

JUDGE JAIZA N. PAGE

AFFIDAVIT OF BENJAMIN HIGHLEY IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANT INTERVENOR

STATE OF OHIO)
COUNTY OF BUTLER) ss:
)

Benjamin Highley, being first duly cautioned, swears or affirms as follows:

1. I am a resident of Middletown, Ohio and live at 1618 Webber Avenue. I am an adult over the age of 18 years, have personal knowledge as to all matters contained herein, and am fully competent to make this declaration.

2. I am a married father of five children: IH, who in June 2021 completed tenth grade at Middletown High School, where he is enrolled so that he can participate in Ohio's College Credit Plus Program and take online classes at Sinclair Community College; NH, who in June 2021 completed seventh grade at Middletown Christian Schools; NH, who in June 2021 completed seventh grade at Middletown Christian Schools; GH, who in June 2021 completed fifth grade at Middletown Christian Schools; EH, who in June 2021 completed kindergarten at Middletown Christian Schools.

3. My wife and I have sole legal and physical custody of our children.

4. My children use the expansion, or income-based, Educational Choice Scholarship ("EdChoice") Program to attend their school.

5. I am very happy with the education that my children receive at their school. If they did not participate in the EdChoice Program, then they would be assigned to Miller Ridge Elementary School, Middletown Middle School, and Middletown High School. At those schools, my children would not receive an education as good as the one they receive at their current school.

6. It is important to me that my children participate in the EdChoice Program because Middletown Christian Schools are not hostile to my family's worldview. I also believe

it provides my children with a better learning environment, stronger academics, and smaller class sizes.

7. If I am unable to continue receiving scholarships for my children because of the Plaintiffs' lawsuit, I would homeschool my children.

8. I am studying at Xavier University to become a professional counselor and my wife is a licensed cosmetologist.

9. As things currently stand, my wife and I would not be able to afford to continue sending my children to Middletown Christian Schools without the EdChoice Program. If it is ruled unconstitutional, an important program that we expect to rely on for our children's educations will be eliminated.

Benjamin Higney

Sworn to or affirmed before me and subscribed in my presence the 4th day of January 2022, in the state of Ohio and county of Butler

Notary Public in and for the
State of Ohio
My commission expires: March 25-2026