

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.*,

Intervenor-Defendants.

CASE NO.: 2022-CV-000067

JUDGE JAIZA N. PAGE

**[PROPOSED] ANSWER AND  
AFFIRMATIVE DEFENSES OF  
INTERVENOR-DEFENDANTS TO  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Intervenor-Defendants, Christopher and Chelsea Boggs, Brian Ellis, Kathryn Sliwinski, Marc Omelsky, and Benjamin Highley (collectively, the “Intervenor-Defendants”) state the following as their Answer and Affirmative Defenses to the Complaint for Declaratory and Injunctive Relief of 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 Donnelly and Eve McPherson, Parents and Next Friends of Malcom McPherson and Fergus Donnelly, Minors, and the Ohio Coalition for Equity and Adequacy of School Funding (the “Plaintiffs”):

**SUMMARY OF CLAIMS**

Intervenor-Defendants admit that this paragraph purports to be a summary of Plaintiffs’ claims; otherwise, the allegations are denied.

**INTRODUCTION**

1. Intervenor-Defendants admit that this is a lawsuit for declaratory and injunctive relief whereby Plaintiffs challenge the constitutionality of the EdChoice Scholarship Program (“EdChoice Program”), codified at R.C. Chapter 3310, *et seq.* Intervenor-Defendants admit that Plaintiffs allege claims under the Ohio Constitution. The remaining allegations in paragraph 1 are legal conclusions and Intervenor-Defendants therefore deny the same.

2. Admit.

3. Intervenor-Defendants admit the allegations in paragraph 3 only to the extent they are consistent with the laws creating the EdChoice Program, which speak for themselves, and otherwise deny the allegations.<sup>1</sup>

4. Intervenor-Defendants admit the allegations in paragraph 4 only to the extent that they are consistent with H.B. 110, which speaks for itself, and otherwise deny the allegations.

5. Intervenor-Defendants deny the allegations in paragraph 5.

6. Intervenor-Defendants admit the allegations in paragraph 6 only to the extent that they are consistent with H.B. 110, which speaks for itself, and otherwise deny the allegations.

7. Intervenor-Defendants deny the allegations in paragraph 7.

8. The allegations in paragraph 8 are legal conclusions and Intervenor-Defendants therefore deny the same.

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<sup>1</sup> Throughout the Complaint, Plaintiffs identify the programs they are challenging as providing “Performance-Based Vouchers” and “Income-Based Vouchers.” Such terminology is not used in the relevant statutes, and Intervenor-Defendants therefore do not admit its accuracy. To avoid confusion, however, Intervenor-Defendants will respond to the allegations in the Complaint without denying, in each paragraph they are used, the accuracy of the labels.

9. Intervenor-Defendants admit that the eligibility for EdChoice was expanded with H.B. 110. The remaining allegations in paragraph 9 are legal conclusions and Intervenor-Defendants therefore deny the same.

10. Intervenor-Defendants admit that the eligibility for EdChoice was expanded by H.B. 110. The remaining allegations in paragraph 10 are legal conclusions and Intervenor-Defendants therefore deny the same.

11. Intervenor-Defendants admit the allegations in paragraph 11 only to the extent that they are consistent with H.B. 110, which speaks for itself, and otherwise deny the allegations.

12. Intervenor-Defendants deny the allegations in paragraph 12.

13. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations concerning an alleged Cincinnati Enquirer review and therefore deny the same. Intervenor-Defendants deny the remaining allegations in the paragraph.

14. Intervenor-Defendants deny the allegation in paragraph 14 that private schools receiving EdChoice Vouchers are subjected to few statutory and regulatory obligations towards students, communities, and taxpayers at large. Intervenor-Defendants admit the allegations in the second and third sentences of paragraph 14 only to the extent that they are consistent with the statutes creating the program, which speak for themselves, and otherwise deny the remainder of allegations in those sentences. Intervenor-Defendants deny the allegations in the last sentence of paragraph 14.

15. The allegations in paragraph 15 are legal conclusions and Intervenor-Defendants therefore deny the same.

16. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in the first sentence of paragraph 16 and therefore deny the same. Intervenor-Defendants deny the allegations in second sentence in paragraph 16.

17. Intervenor-Defendants admit only that the allegations in paragraph 17 contain a quotation from Article VI, Section 2 of the Ohio Constitution. Intervenor-Defendants deny the remaining allegations.

18. Intervenor-Defendants deny the allegations in the first two sentences of paragraph 18. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the remaining allegations in paragraph 18 and therefore deny the same.

19. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the allegations in paragraph 19 and therefore deny the same.

20. The allegations in paragraph 20 are legal conclusions and Intervenor-Defendants therefore deny the same.

**PLAINTIFFS**

21. Intervenor-Defendants deny that the EdChoice Program is unconstitutional and that any Plaintiff is harmed by the EdChoice Program. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the remaining allegations in paragraph 21 and therefore deny the same.

22. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 22 and therefore deny the same.

23. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 23 and therefore deny the same.

24. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 24 and therefore deny the same.

25. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 25 and therefore deny the same.

26. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 26 and therefore deny the same.

27. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 27 and therefore deny the same.

**DEFENDANTS**

28. Admit.

29. Intervenor-Defendants admit that David Yost is the Attorney General of Ohio. Intervenor-Defendants admit the remaining allegations in paragraph 30 only to the extent they are consistent with R.C. 2721.12(a), which speaks for itself, and otherwise deny the same.

30. Intervenor-Defendants admit that Defendant Stephanie Siddens is Ohio's Interim Superintendent of Public Instruction. Intervenor-Defendants admit the remaining allegations in

paragraph 30 only to the extent they are consistent with the laws of Ohio, which speak for themselves, and otherwise deny the same.

24. Intervenor-Defendants admit the allegations in paragraph 24 only to the extent they are consistent with the laws of Ohio, which speak for themselves, and otherwise deny the same.<sup>2</sup>

25. Intervenor-Defendants admit the allegations in paragraph 25 only to the extent they are consistent with the laws of Ohio, which speak for themselves, and otherwise deny the same.

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

26. Intervenor-Defendants admit only that the allegations in paragraph 26 contain language quoted from Article VI, Section 2 of the Ohio Constitution, which speaks for itself.

27. Intervenor-Defendants admit only that the allegations in paragraph 27 contain language quoted from Article I, Section 2 of the Ohio Constitution, which speaks for itself.

28. Intervenor-Defendants admit only that the allegations in paragraph 28 contain language quoted from Revised Code § 3310.02, which speaks for itself.

29. Intervenor-Defendants admit only that the allegations in paragraph 29 contain language quoted from Revised Code § 3310.01(A), which speaks for itself.

30. Intervenor-Defendants admit only to the extent the allegations in paragraph 30 are consistent with the language of Revised Code § 3310.03, which speaks for itself, and otherwise deny the allegations.

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<sup>2</sup> The numbering in Plaintiff’s complaint changes after paragraph 30 to paragraph 24. Intervenor-Defendants are mirroring Plaintiff’s numbering to avoid confusion.

31. Intervenor-Defendants admit only that the allegations in paragraph 31 contain language quoted from Revised Code § 3310.03(3)(D) of the Ohio Constitution, which speaks for itself, and otherwise deny the allegations.

32. Intervenor-Defendants admit only to the extent the allegations in paragraph 32 are consistent with the language of Revised Code § 3310.032, which speaks for itself, and otherwise deny the allegations.

33. Intervenor-Defendants admit only that the allegations in paragraph 33 contain language quoted from Revised Code § 3310.17(B), which speaks for itself, and otherwise deny the allegations.

34. Intervenor-Defendants admit the allegations in paragraph 34 only to the extent they are consistent with Revised Code § 3302.21, which speaks for itself, and otherwise deny the allegations.

35. Intervenor-Defendants admit the allegations in paragraph 35 only to the extent they are consistent with Revised Code § 3317.011 and H.B. 110, which speak for themselves, and otherwise deny the allegations.

36. Intervenor-Defendants admit the allegations in paragraph 36 only to the extent they are consistent with Revised Code § 3317.017 and H.B. 110, which speak for themselves, and otherwise deny the allegations.

37. Intervenor-Defendants admit the allegations in paragraph 37 only to the extent they are consistent with Revised Code § 3317.011 and H.B. 110, which speak for themselves, and otherwise deny the allegations.

38. Intervenor-Defendants admit the allegations in paragraph 38 only to the extent they are consistent with Revised Code § 3317.022(A)(1) and H.B. 110, which speak for themselves, and otherwise deny the allegations.

39. Intervenor-Defendants admit the allegations in paragraph 39 only to the extent they are consistent with Section 265.215 of H.B. 110, which speaks for itself, and otherwise deny the allegations. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the remaining allegations in paragraph 39 and therefore deny the same.

40. Intervenor-Defendants admit that the maximum allowable voucher payment was increased to \$5,500 for students in grades kindergarten through eight and \$7,500 for students in grades nine through twelve. Intervenor-Defendants deny the remaining allegations in paragraph 40.

41. Intervenor-Defendants admit the allegations in paragraph 41 only to the extent that they are consistent with Section 733.70 of H.B. 110, which speaks for itself, and otherwise deny the allegations.<sup>3</sup>

42. Intervenor-Defendants admit the allegations in paragraph 42 only to the extent that they are consistent with Revised Code § 3310.02 and H.B. 110, which speak for themselves, and otherwise deny the allegations.

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

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<sup>3</sup> Intervenor-Defendants admit the allegations in footnote 3 only to the extent that they are consistent with R.C. 3310.033(A)(4) and H.B. 110, which speak for themselves, and otherwise deny the allegations.



eligible applicant. The statute requires the Department of Education to award a scholarship to “each student with an approved application.”

**FACTS COMMON TO ALL CLAIMS**

**A Thorough and Efficient System of Common Schools**

- 44. Intervenor-Defendants deny the allegations in paragraph 44.
- 45. Intervenor-Defendants deny the allegations in paragraph 45.
- 46. Intervenor-Defendants deny the allegations in paragraph 46.
- 47. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in the first sentence of paragraph 47 and therefore deny the same. Intervenor-Defendants deny the remaining allegations in paragraph 47.
- 48. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 48 and therefore deny the same.
- 49. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 49 and therefore deny the same.
- 50. Intervenor-Defendants deny the allegations in paragraph 50.
- 51. Intervenor-Defendants deny the allegations in paragraph 51.

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

- 52. Intervenor-Defendants admit that in 2005 the state of Ohio enacted the EdChoice Program and created a system of scholarships to be issued to eligible students to pay for their private school tuition. Intervenor-Defendants deny the remaining allegations in paragraph 52.

53. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 53 and therefore deny the same.

54. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 54 and therefore deny the same.

55. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 55 and therefore deny the same.

56. Intervenor-Defendants admit the allegations in the first two sentences of paragraph 56 only to the extent that they are consistent with H.B. 555, which speaks for itself, and otherwise deny the allegations in those sentences. Intervenor-Defendants deny the allegation in the third sentence of paragraph 56 that “Ohio’s method of classifying public school buildings via the academic performance rating system devised under H.B. 555 is wholly irrational”; Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegation that this method of classifying “has received substantial criticism from numerous stakeholders in Ohio’s public education sphere” and therefore deny the same. Intervenor-Defendants deny the allegations in the fourth and fifth sentences of paragraph 50.

57. Intervenor-Defendants admit the allegations in paragraph 57.

58. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 58 and therefore deny the same.

59. Intervenor-Defendants admit the allegations in paragraph 59 only to the extent they are consistent with S.B. 89, which speaks for itself, and otherwise deny the allegations.

60. Intervenor-Defendants admit the allegations in paragraph 60 only to the extent they are consistent with S.B. 89, which speaks for itself, and otherwise deny the allegations.

61. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 61 and therefore deny the same.

62. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 62 and therefore deny the same.

63. Intervenor-Defendants admit the allegations in paragraph 63 only to the extent they are consistent with H.B. 110, which speaks for itself, and otherwise deny the allegations.

64. Intervenor-Defendants admit that the maximum allowable voucher payment was increased from \$4,650 to \$5,500 for students in grades kindergarten through eight and from \$6,000 to \$7,500 for students in grades nine through twelve. Intervenor-Defendants deny the remaining allegations in paragraph 64.

65. Intervenor-Defendants deny the allegations in paragraph 65.

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

66. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in the first sentence of paragraph 66 and therefore deny the same. The allegations in the second sentence of paragraph 66 are legal conclusions and Intervenor-Defendants therefore deny the same.

67. The allegation in paragraph 67 that “[t]he above mandate was never met” is a legal conclusion and Intervenor-Defendants therefore deny the same. Intervenor-Defendants deny the remaining allegations.

68. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 68 and therefore deny the same.

69. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 69 and therefore deny the same.

70. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 70 and therefore deny the same.

71. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 71 and therefore deny the same.

72. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 72 and therefore deny the same.

73. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 73 and therefore deny the same.

74. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 74 and therefore deny the same.

75. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 75 and therefore deny the same.

76. Intervenor-Defendants deny the allegations in paragraph 76.

77. Intervenor-Defendants deny the allegation that the EdChoice program “guarantees considerably more funding for private school students than their public school counterparts, and prioritizes funding private entities over the public schools system.” The remaining allegations in paragraph 77 are legal conclusions and Intervenor-Defendants therefore deny the same.

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

78. Intervenor-Defendants deny the allegations in paragraph 78.

79. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in the first sentence of paragraph 79 and therefore deny the same. Intervenor-Defendants deny the remaining allegations in paragraph 79.

80. Intervenor-Defendants deny the allegations in paragraph 80.

81. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 81 and therefore deny the same.

82. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 82 and therefore deny the same.

83. The allegation in paragraph 83 that the public school districts “have yet to be funded adequately and equitably” is a legal conclusion and Intervenor-Defendants therefore deny the same. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the remaining allegations in paragraph 83 and therefore deny the same.

84. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in the first sentence of paragraph 84 and therefore deny the same. Intervenor-Defendants deny the allegations in the second sentence.

85. Intervenor-Defendants deny the allegations in paragraph 85.

86. The allegations in paragraph 86 that the EdChoice program is “unconstitutional[ly] implement[ed]” is a legal conclusion and Intervenor-Defendants therefore deny the same. Intervenor-Defendants deny the remaining allegations in paragraph 86.

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

87. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 87 and therefore deny the same.

88. Intervenor-Defendants admit only that EdChoice Program vouchers “never enter the parents’ bank accounts.” Intervenor-Defendants deny the remaining allegations in paragraph 88.

89. Intervenor-Defendants deny the allegations in paragraph 89.

90. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in the first sentence of paragraph 90 and therefore deny the same. The remaining allegations in paragraph 90 are legal conclusions and Intervenor-Defendants therefore deny the same.

91. Intervenor-Defendants deny the allegations that “[p]rivate schools receiv[e] EdChoice Program funding” and that “private schools absorb[ ] much of the education funding provided by the State.” Intervenor-Defendants admit that private schools participating in the EdChoice Program “must hold a valid charter from the State Board of Education and must administer various state tests to students receiving EdChoice Vouchers.” The remaining allegations in paragraph 91 are legal conclusions and Intervenor-Defendants therefore deny the same.

92. Intervenor-Defendants deny the allegations in paragraph 92.

93. Intervenor-Defendants deny the allegation that “private schools receiv[e] EdChoice Program funding.” The remaining allegations in paragraph 93 are legal conclusions and Intervenor-Defendants therefore deny the same.

94. The allegations in paragraph 94 are legal conclusions and Intervenor-Defendants therefore deny the same.

95. Intervenor-Defendants admit the allegations in paragraph 95 only to the extent that they are consistent with 20 U.S.C. §§ 1401 *et seq.*, and Chapter 3323 of the Revised Code, which speak for themselves, but otherwise deny the allegations.

96. Intervenor-Defendants deny the allegations in paragraph 96.

97. Intervenor-Defendants deny the allegations in paragraph 97.

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

98. Intervenor-Defendants incorporate every statement in paragraphs 1–97 as if fully set forth herein.

99. Intervenor-Defendants admit only that the allegations in paragraph 99 contain a quotation from Article VI, Section 2 of the Ohio Constitution. Otherwise, the allegations are denied.

100. Intervenor-Defendants admit only that the allegations in paragraph 100 contain a quotation from Article VI, Section 2 of the Ohio Constitution. The remaining allegation is a characterization of what the provision requires and is a legal conclusion and is therefore denied.

101. Intervenor-Defendants deny the allegations in paragraph 101.

102. Intervenor-Defendants admit the allegations in paragraph 102 only to the extent that they are consistent with the text of H.B. 110, which speaks for itself, and otherwise deny the allegations.

103. Intervenor-Defendants deny the allegations in paragraph 103.

104. Intervenor-Defendants deny the allegations in paragraph 104.

105. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 105 and therefore deny the same.

106. Intervenor-Defendants deny the allegations in paragraph 106.

107. Intervenor-Defendants admit only that private schools are not legislatively created and deny the remaining allegations in paragraph 107.

108. Intervenor-Defendants deny the allegations in paragraph 108.



109. Intervenor-Defendants deny the allegations in paragraph 109 to the extent they allege that public school districts and community schools may not condition admission on a student's intellectual ability, measures of achievement or other characteristics that permit discrimination against many students.

110. Intervenor-Defendants deny the allegations in paragraph 110.

111. The allegations in paragraph 111 are legal conclusions and Intervenor-Defendants therefore deny the same.

112. The allegations in paragraph 112 are legal conclusions and Intervenor-Defendants therefore deny the same.

113. The allegations in paragraph 113 are legal conclusions and Intervenor-Defendants therefore deny the same.

114. The allegations in paragraph 114 are legal conclusions and Intervenor-Defendants therefore deny the same.

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

115. Intervenor-Defendants incorporate every statement in paragraphs 1–114 as if fully set forth herein.

116. Intervenor-Defendants admit only that the allegations in paragraph 116 contain a quotation from Article VI, Section 2 of the Ohio Constitution. Otherwise, the allegations are denied because they contain legal conclusions about the provision and a characterization of the *DeRolph* cases, which speak for themselves.

117. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 117 and therefore deny the same.

118. Intervenor-Defendants admit only that funding for the EdChoice Program has increased since its inception and deny the remaining allegations in paragraph 118.

119. Intervenor-Defendants deny the allegations in paragraph 119.

120. Intervenor-Defendants deny the allegations in paragraph 120.

121. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in the first and second sentences of paragraph 121. The remaining allegations in paragraph 121 are denied.

122. Intervenor-Defendants deny the allegations in paragraph 122.

123. Intervenor-Defendants deny the allegations in paragraph 123.

124. Intervenor-Defendants deny the allegations in paragraph 124.

125. The allegations in paragraph 125 are legal conclusions and Intervenor-Defendants therefore deny the same.

126. The allegations in paragraph 126 are legal conclusions and Intervenor-Defendants therefore deny the same.

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

127. Intervenor-Defendants incorporate every statement in paragraphs 1–126 as if fully rewritten here.

128. The allegations in paragraph 128 are legal conclusions and Intervenor-Defendants therefore deny the same.

129. Intervenor-Defendants deny the allegations in paragraph 129.

130. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in the first sentence of paragraph 130. The remaining allegations in paragraph 130 are denied.

131. Intervenor-Defendants admit the allegations in the first sentence of paragraph 131. The allegations in the second sentence are legal conclusions and Intervenor-Defendants therefore deny the same.

132. Intervenor-Defendants admit only that the EdChoice voucher program has been advertised as offering more school options for low-income and minority students and deny the remaining allegations in paragraph 132.

133. Intervenor-Defendants deny the allegations in paragraph 133.

134. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 134 and therefore deny the same.

135. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 135 and therefore deny the same.

136. Intervenor-Defendants deny the allegations in the first sentence of paragraph 136. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the remaining allegations in paragraph 136 and therefore deny the same.

137. Intervenor-Defendants deny the allegations in paragraph 137.

138. Intervenor-Defendants admit only that H.B. 110 expands the EdChoice program and deny the remaining allegations in paragraph 138.

139. Intervenor-Defendants deny the allegations in the first sentence of paragraph 139 on the ground that they contain a legal conclusion and because Intervenor-Defendants lack sufficient information as to the meaning of “the common schools ideology.” Intervenor-Defendants deny the allegation that “the EdChoice Program causes or exacerbates class and race-based segregation in Ohio’s public schools.” The remaining allegations are legal conclusions and Intervenor-Defendants therefore deny the same.

140. The allegations in paragraph 140 are legal conclusions and Intervenor-Defendants therefore deny the same.

141. The allegations in paragraph 141 are legal conclusions and Intervenor-Defendants therefore deny the same.

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

142. Intervenor-Defendants incorporate every statement in paragraphs 1–141 as if fully set forth herein.

143. The allegations in paragraph 143 are legal conclusions and Intervenor-Defendants therefore deny the same.

144. Intervenor-Defendants admit only that the allegations in paragraph 144 contain a quotation from Article VI, Section 2 of the Ohio Constitution. Otherwise, the allegations are denied.

145. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 145 and therefore deny the same.

146. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 146 concerning the intent of the Ohio Constitution's framers and therefore deny the same. The remaining allegations in paragraph 146 are denied.

147. Intervenor-Defendants deny the allegations in paragraph 147.

148. Intervenor-Defendants deny the allegations in paragraph 148.

149. Intervenor-Defendants deny the allegations in paragraph 149.

150. Intervenor-Defendants deny that the EdChoice Program diverts funding to the exclusive control of parochial schools. The remaining allegations in paragraph 150 are legal conclusions and Intervenor-Defendants therefore deny the same.

151. The allegations in paragraph 151 are legal conclusions and Intervenor-Defendants therefore deny the same.

152. The allegations in paragraph 152 are legal conclusions and Intervenor-Defendants therefore deny the same.

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

153. Intervenor-Defendants incorporate every statement in paragraphs 1–152 as if fully set forth herein.

154. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the intent of the framers of the Ohio Constitution and therefore deny the

allegations in paragraph 154 concerning that intent. The remaining allegations in paragraph 154 are legal conclusions and Intervenor-Defendants therefore deny the same.

155. Intervenor-Defendants admit only that the allegations contained in paragraph 155 contain a quotation from Article I, Section 2 of the Ohio Constitution. Otherwise, the allegations are legal conclusions and Intervenor-Defendants deny the same.

156. Intervenor-Defendants deny the allegations in paragraph 156.

157. Intervenor-Defendants deny the allegations in paragraph 157.

158. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 158 and therefore deny the same.

159. The allegations in paragraph 159 are legal conclusions and Intervenor-Defendants therefore deny the same

160. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 160 and therefore deny the same.

161. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 161 and therefore deny the same.

162. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 162 and therefore deny the same.

163. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 163 concerning whether

and why some school districts have sought and received authorization to raise property taxes. The remaining allegations in paragraph 163 are legal conclusions and Intervenor-Defendants therefore deny the same.

164. The allegations in paragraph 164 are legal conclusions and Intervenor-Defendants therefore deny the same.

165. The allegations in paragraph 165 are legal conclusions and Intervenor-Defendants therefore deny the same.

166. The allegations in paragraph 166 are legal conclusions and Intervenor-Defendants therefore deny the same.

**PRAYER FOR RELIEF**

- A. No response is required as this prayer for relief contains no allegations of fact or law.
- B. No response is required as this prayer for relief contains no allegations of fact or law.
- C. No response is required ad this prayer for relief contains no allegations of fact or law.
- D. No response is required as this prayer for relief contains no allegations of fact or law.

**AFFIRMATIVE DEFENSES**

- 1. Intervenor-Defendants reserve the right to assert any affirmative defense to the extent that facts discovered in the course of this litigation support such an affirmative defense.
- 2. The Plaintiffs' claims fail, in whole or in part, because they have failed to state a claim upon which relief can be granted.
- 3. The Plaintiffs' claims fail, in whole or in part, because they seek a judicial decision that would violate the Free Exercise, Establishment, and Equal Protection Clauses of the U.S. Constitution.

4. Intervenor-Defendants request this Court enter a final judgment in favor of Defendants and Intervenor-Defendants as follows:
- a. dismissing Plaintiffs' claims with prejudice;
  - b. denying Plaintiffs' requests for permanent and temporary injunctions;
  - c. awarding Intervenor-Defendants any and all such other relief as the Court deems just and equitable, including, but not limited to, an award of attorneys' fees and costs to the extent provided by Ohio law.

Respectfully submitted this 7th day of January 2022.

/s/ Emmett Robinson  
Emmett Robinson  
Supreme Court ID # 88537  
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*\*Pro Hac Vice Applications pending*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Proposed Answer of Intervenor-Defendants to Complaint for Declaratory and Injunctive Relief was electronically filed and 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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*Attorneys for Ohio Coalition for Equity and Adequacy in School Funding, Columbus City School District, Cleveland Heights-University Heights City School District, Richmond Heights Local School District, Lima City School District, Barberton City School District, and Malcolm McPherson and Ferguson Donnelly, through their parents Jeffrey Donnelly and Eve McPherson*

I further certify that the foregoing Proposed Answer of Intervenor-Defendants to Complaint for Declaratory and Injunctive Relief 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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c/o OHIO SECRETARY OF STATE  
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OHIO DEPARTMENT OF EDUCATION

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/s/ Emmett Robinson  
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