

EdChoice Challenge Can Continue

By **Mark I. Wallach**

In two lengthy and scholarly opinions, the Franklin County Court of Common Pleas denied the State of Ohio's Motion to Dismiss the EdChoice lawsuit and the Motion for Judgment on the Pleadings filed by intervening private school families. This lawsuit, filed in January of 2022 by a coalition of more than 125 Ohio school districts and families, contends that the EdChoice scholarship program violates various provisions of the Ohio Constitution. The State of Ohio moved to dismiss this suit before discovery, arguing that no plaintiff had standing to continue this litigation and that state and federal precedent foreclosed the school districts' claims. Several private school families also intervened to ask the Court to dismiss the lawsuit, arguing that the school districts could not show any facts entitling them to relief.

On December 16, 2022, the Court denied both motions, ruling that the EdChoice litigation can continue to discovery and, if necessary, trial. Specifically, the Court held that the school districts' Amended Complaint sufficiently alleged particular harm resulting from the EdChoice program and that the students pleaded injuries sufficient to confer standing. The Court also distinguished previous case law upholding charter schools and other voucher programs, noting that the facts alleged about the EdChoice program are not comparable.

As for the Intervenors' arguments, the Court found that the five causes of action pleaded by the school districts were supported by the Complaint's operative facts, if proved. The degree to which the EdChoice program impacts public school funding is a question, according to the Court, that must be decided after the evidence is reviewed. Likewise, whether the EdChoice program overall violates the state's constitution must also be determined after a full review of the relevant legislative history and evidence. Thus, the Court denied the motions to dismiss and for judgment on the pleadings, permitting this suit to move into the discovery phase.

The Ohio Coalition for Equity and Adequacy of School Funding, along with the school districts and individuals impacted by the EdChoice program, are the Plaintiffs in this action. Mark Wallach of Roetzel is lead counsel in this litigation, assisted by Lauren Smith of Roetzel and Miriam Fair of Weston Hurd.

Doug Spiker

Practice Group Manager
Employment Services
216.696.7125 | dspiker@ralaw.com

Lewis Adkins, Jr.

Practice Group Manager
Public Law, Regulatory and Finance
216.615.4842 | ladkins@ralaw.com

Susan Keating Anderson

Practice Group Manager
Education Law Group
216.232.3595 | sanderson@ralaw.com

Karen Adinolfi

330.849.6773 | kadinolfi@ralaw.com

Aretta Bernard

330.849.6630 | abernard@ralaw.com

Lisa Burleson614.645.5278 | lburleson@ralaw.com**Benjamin Chojnacki**216.377.1492 | bchojnacki@ralaw.com**Jason Dodson**330.849.6631 | jdodson@ralaw.com**Diana M. Feitl**216.615.4838 | dfeitl@ralaw.com**David Hirt**216.329.0558 | dhirt@ralaw.com**Hailee Kepchar**216.505.7851 | hkepchar@ralaw.com**Adrienne Kirshner**216.456.3850 | akirshner@ralaw.com**Justin Markey**330.849.6632 | jmarkey@ralaw.com**Stephanie Olivera Mittica**330.849.6671 | smittica@ralaw.com**Nancy Noall**216.820.4207 | nnoall@ralaw.com**Lauren Smith**419.254.5258 | LaurenSmith@ralaw.com**Joe Stevens**614.228.5467 | jstevens@ralaw.com**Mark I. Wallach**216.377.2855 | mwallach@ralaw.com**Sherri Warner**614.723.2110 | swarner@ralaw.com**Tim Webster**216.696.7795 | twebster@ralaw.com**Nick Ziepfel**513.748.1109 | nziepfel@ralaw.com