

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 22-616

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STATE OF WEST VIRGINIA,

Petitioner,

and

KATIE SWITZER AND
JENNIFER COMPTON,

Petitioners,

v.

No. 22-616

TRAVIS BEAVER, WENDY PETERS,
DAVID L. ROACH, State Superintendent of Schools, and
L. PAUL HARDESTY, President of the West Virginia Board of Education,

Respondents.

From the Circuit Court of Kanawha County Civil Action
Nos. 22-P-24, 22-P-26 and
Intermediate Court of Appeals of West Virginia
No. 22-ICA-1

**AMICUS CURIAE BRIEF OF EDCHOICE AND
FOUNDATION FOR EXCELLENCE IN EDUCATION
IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

INTEREST OF AMICI CURIAE..... 3

INTRODUCTION 3

ARGUMENT 6

 I. The Circuit Court’s Clearly Erroneous Holding Is Not Limited to the Hope Program, But
 Renders Unconstitutional Any Educational Initiatives or Programs Outside of the Public
 School System..... 6

 A. The Circuit Court’s Analysis Is Not Limited To the Hope Program But Would
 Render All Educational-Related Spending Outside of the K-12 Public School
 System Unconstitutional. 7

 B. The Circuit Court Exceeded Its Role and Substituted Its Policy Judgments for
 That of the Legislature. 9

 C. Courts Across the Country Have Consistently Upheld the Constitutionality of
 Similar Programs and Rejected the Unduly Narrow View of the Legislature’s
 Authority in Educational Spending the Circuit Court Found Here..... 11

 II. The Hope Program Is a Logical Next Step This Century to Continue to Honor the
 Founders’ Goal To Provide Universal Funding for Education. 13

 A. West Virginia Is One of 32 States Offering Education Options; Children Are
 Learning, Parents Are Satisfied and as a Result, School Choice Programs
 Steadily Expand and New States Continue Regularly Adopt School Choice
 Programs. 13

 B. Research Demonstrates That School Choice Improves Academic Outcomes
 and Long-Term Educational Attainment for Participating Students. 14

 C. Research Demonstrates That School Choice Improves Academic Outcomes
 and Long-term Educational Attainment for Participating Students..... 15

 D. Parents Consistently Express a Strong Desire for School Choice, with
 Strongest Support Found Within Minority Communities Long Underserved by
 the Traditional System. 15

 E. Public School Students Exposed to School Choice Are Not Harmed and
 Academic Outcomes Improve..... 17

 F. School Choice Has a Positive Impact on Civic Values and Practices and
 Racial and Ethnic Integration..... 17

 G. School Choice Saves Money for States and for School Systems. 18

CONCLUSION..... 19

TABLE OF AUTHORITIES

Cases

51 W. Va. Op. Atty. Gen. 852 (1966)..... 6
177 W.Va. 472, 354 S.E.2d 106 (1986)..... 7
Farley v. Graney,
146 W.Va. 22, 119 S.E.2d 833 (1960) 9
Fountain Place Cinema 8, LLC v. Morris,
227 W.Va. 249, 707 S.E.2d 859 (2011) 9
Hart v. State,
774 S.E.2d 281 (N.C. 2015) 9
Jackson v. Benson,
578 N.W.2d 602 (Wis. 1998) passim
Meredith v. Pence,
984 N.E.2d 1213 (Ind. 2013)..... 10
Pauley v. Kelly,
162 W.Va. 672 (1979)..... 4
Randolph County Bd. of Educ. v. Adams,
196 W.Va. 9 (1995)..... 6
Schwartz v. Lopez,
382 P.3d 886 (Nev. 2016) 10
State ex rel. Appalachian Power Co. v. Gainer,
149 W.Va. 740, 143 S.E.2d 351 (1965) 7
State ex rel. Blankenship v. Richardson,
196 W.Va. 726, 474 S.E.2d 906 (1996) 7, 8, 9
State ex rel. Cooper v. Tennant,
229 W.Va. 585, 730 S.E.2d 368 (2012) 8

Statutes

Article IX, Section 2(1) of the North Carolina Constitution 10
Article XII of the West Virginia Constitution 6
Article XII, Section 12 of the West Virginia Constitution 7
Chapter 18C, Article 5 of the Code 6
Chapter 18C, Article 7 of the Code 5
W. Va. Code § 18-31 2
W.Va. Code § 18C-7-6 5
W.Va. Const. art. XII, § 1 2, 4, 6, 10
W.Va. Const. art. XII, § 5 4, 5

Other Authorities

SB 250..... 7
SB 302..... 10

INTEREST OF AMICI CURIAE

EdChoice, Inc. is a 501(c)(3) nonpartisan, nonprofit organization and a national leader in educational choice research, legal defense and education, fiscal analysis, policy development, and educational training and outreach. The mission of EdChoice is to advance educational freedom and choice for all as a pathway to successful lives and a stronger society. EdChoice believes that all families—regardless of race, origin, residence, or family income—should have a full and unencumbered opportunity to choose schools and other educational resources that work best for their children. The public good is well served when children have a chance to learn at their maximum potential, regardless of the environment where that learning occurs—public or private, near or far, religious or secular. When children find their best fit for education and succeed, they will thrive as adults. They are our future.

The Foundation for Excellence in Education, Inc. (“ExcelinEd”) is a nonprofit, nonpartisan organization founded in 2008 whose mission is to build an American educational system that equips every child to achieve his or her individual potential. ExcelinEd designs and promotes student- centered education policies, creates model legislation, and provides rule- making expertise, implementation assistance, and public outreach.¹

INTRODUCTION

Why the Hope Scholarship Program (the “Hope Program”)? West Virginia’s state legislators understand their constitutional obligation to, “provide, by general law, for a thorough and efficient system of free schools.” Certain litigants in this case believe the legislature is

¹ None of the parties to this case nor counsel for any party authored this brief, in whole or in part, and no entity or person other than *amici curiae* and their members made any monetary contribution for the preparation or submission of this brief.

prohibited from funding any type of educational opportunity for children other than public schools.² Why pass the Hope Program?³

West Virginia Senator Patricia Rucker, a mother of five children (two with special needs), and a key supporter of the Hope Program, stated before the legislative committee considering the Hope Program to explain why she believes the Hope Program is essential: “Unfortunately, the public education system, back then, where I live, was not willing and able to do what my kids needed the most. They didn’t have the flexibility for their particular needs . . . Our schools, our teachers, are put in difficult situations . . . It is not the fault of the public school system that we have this situation.”⁴

Senator Rucker was faced with a decision to give up her career to stay home and teach her children while her husband worked two jobs to cover her lost wages and support the family.

Senator Rucker said that an education savings account like the Hope Program “would have been a huge help to my family.”⁵ She also said that people in the same situation she faced, but who do not have a husband who can work two jobs, or who do not have the ability to teach their kids, without any resources, are the reason she supports the Hope Program.

The public schools where she lives did not have the particularity for her children’s needs. Senator Rucker’s desire for all children of West Virginia to receive the educational resources they need to succeed is the same sentiment that was expressed by those forming the new state of West

² W.Va. Const. art. XII, § 1.

³ W. Va. Code § 18-31

⁴ Senator Rucker’s Remarks from Committee Regarding the Hope Scholarship, http://sg001-harmony.sliq.net/00289/Harmony/en/PowerBrowser/PowerBrowserV2/20210309/-1/48778#people_ (last visited Sep. 6, 2022).

⁵ *Id.*

Virginia in 1863.⁶ The purpose of those who organized the state was to establish “free schools and universal education” to reach every child.⁷ Their energy was devoted to, “the advancement and promotion of every educational interest.”⁸

West Virginia has a unique history and a proud record of persistence to make education available to all children, especially those in the most rural areas of the state. Men of vision could see that future peace and prosperity rested on their ability to bring educational resources to all citizens of this new state. Establishing free public schools statewide was essential and they worked diligently to fund and develop those schools over several decades. They were determined to create a state where no one was illiterate and where everyone enjoyed a level “of culture, of refinement, and a home life fitted to adorn the highest type of civilized and enlightened commonwealths.”⁹

Today, West Virginia is one of 32 states that have enacted 76 educational choice programs to provide suitable learning opportunities for children. For well over 150 years, West Virginia has been striving to bring effective methods of education to the state. Today, most states have adopted educational choice programs to help children learn and succeed. West Virginia’s legislature has determined that the children of their state need this, too. With respect for parents and hopes for a prosperous future, legislators boldly acted in broadening statewide educational opportunity for all,

⁶ One of the delegates to the Constitutional Convention of 1861-1863 noted that “people have been leaving West Virginia in droves . . . influenced by the fact that elsewhere they could educate their children, and here they could not do it.” This delegate noted that “[f]or to a parent loving his children there is no interest on earth, nothing beneath the heavens, next to his soul, that so intimately and nearly concerns him as providing the means of instruction for his children” and that the convention needed to do something “in earnest...[and] make a provision which means business on this subject.” Constitutional convention of 1861-1863, Jan. 28, 1862. Another delegate quipped that when he visited members of his church he noticed, “for want of education many of them ten or twelve or fifteen years old, didn’t know a letter of the alphabet; many of their parents did not know their letters and could not write their names.” *Id.*

⁷ *The History of Education in West Virginia*, 1863-1906, Superintendent of Schools, 1907.

⁸ *Id.*

⁹ *Id.*

just as West Virginia’s founders did in 1863. Today’s Hope Program is a logical continuation of the educational and cultural legacy established by this state’s forebears.

West Virginians should be applauded, not challenged, for being as proactive today in finding education solutions to uplift the people of their state as their founders were years ago. West Virginia is continuing a proud legacy, well-supported by this state’s constitution.

ARGUMENT

I. THE CIRCUIT COURT’S CLEARLY ERRONEOUS HOLDING IS NOT LIMITED TO THE HOPE PROGRAM, BUT RENDERS UNCONSTITUTIONAL ANY EDUCATIONAL INITIATIVES OR PROGRAMS OUTSIDE OF THE PUBLIC SCHOOL SYSTEM.

Article XII, Section 1 of the West Virginia Constitution, known as the “free schools” clause requires the Legislature to “provide, by general law, for a thorough and efficient system of free schools.”¹⁰ This Court has been clear that “[t]he mandatory requirements of ‘a thorough and efficient system of free schools’ found in Article XII, Section 1 of the West Virginia Constitution, make education a fundamental, constitutional right in this State.”¹¹ The Constitution is also clear that “[t]he Legislature shall provide for the support of free schools by,” *inter alia*, by general taxation of personal and property.”¹² There is no dispute as to these points.

Instead, the issue in this case is whether the Legislature has ability or discretion to appropriate monies for educational initiatives and purposes outside of the public school system. The circuit court’s ruling is that it does not; that “public funds can only be used to fund public

¹⁰ W.Va. Const. art. XII, § 1.

¹¹ Syl. pt. 3, *Pauley v. Kelly*, 162 W.Va. 672 (1979).

¹² W.Va. Const. art. XII, § 5.

schools”¹³ because the Constitution requires that “state taxation and funding pay only for *public* K-12 education.”¹⁴ The circuit court’s analysis is faulty for multiple reasons.

A. The Circuit Court’s Analysis Is Not Limited To the Hope Program But Would Render All Educational-Related Spending Outside of the K-12 Public School System Unconstitutional.

West Virginia law is replete with examples of the Legislature appropriating monies towards the educational betterment of its citizens outside of the public K-12 education system. A well-known example of the Legislature is the “Providing Real Opportunities for Maximizing in-State Student Excellence” Scholarship Program, also known as the PROMISE Scholarship Program, established under Chapter 18C, Article 7 of the Code.

The PROMISE Scholarship was approved by the Legislature in 1999 and funded in 2001, with the first scholarships being awarded in 2002. The Promise Scholarship is a merit-based financial aid program for West Virginia high school graduates planning to attend one of the state’s public or private two or four-year institutions.¹⁵ In 2009, the amount of the annual award was set at \$4,750 per qualifying student, with the West Virginia Higher Education Policy Commission being granted authority to increase the amount of this annual award if adequate funds are available.¹⁶ According to the “West Virginia Financial Aid 2021 Report” published by the Higher Education Policy Commission and the West Virginia Community and Technical College System, for the 2020-21 year, there were 9,936 recipients of the PROMISE Scholarship, with the total amount being awarded exceeding \$45 million.

¹³ Final Order at p.16.

¹⁴ *Id.*

¹⁵ *See* W.Va. Code § 18C-7-6 (Repl. 2016).

¹⁶ *See id.* § 18C-7-6(a)(2)-(3).

Another example is the West Virginia Higher Education Grant Program created by Chapter 18C, Article 5 of the Code. It is a need-based financial aid program designed to ensure that West Virginia students with financial need are given an opportunity to pursue postsecondary education at approved public and private postsecondary institutions.¹⁷ According to the West Virginia Financial Aid 2021 Report, for the 2020-21 year, 14,461 recipients received over \$35.4 million in awards.

The PROMISE Scholarship and the West Virginia Higher Education Grant Programs represent spending in excess of \$80 million annually that is outside of the free public education system.¹⁸ However, the circuit court’s logic would not be limited to the Hope Program. Other worthy programs such as the PROMISE Scholarship and West Virginia Higher Education Grant Programs would also be unconstitutional because “state taxation and funding [may] pay only for *public* K-12 education,”¹⁹ and the \$80 million spent on these programs annually represents monies that could otherwise be going to the public school system.

The Legislature’s authority and discretion is not so confined. While the Legislature is mandated to provide for a thorough and efficient system of free schools, this does not mean the public school system is the exclusive method by which the Legislature can promote educational

¹⁷ See *id.* § 18C-5-6.

¹⁸ The term “free schools” has been interpreted to mean public schools where tuition and the materials basic to a quality education are free and does not include public or private colleges or institutions outside of K-12. See *Randolph County Bd. of Educ. v. Adams*, 196 W.Va. 9, 20 (1995) (“These courts find, as we do now, that free does not just mean tuition-free but also includes a right to educational materials that are basic to a quality education.”); 51 W. Va. Op. Atty. Gen. 852 (1966) (“The cumulative effect of the foregoing sections of Article XII of the West Virginia Constitution is to establish conclusively that the use of the words ‘free schools’ as contained in Section 1, Article XII, of the Constitution, has reference to schools managed at the local level which serve all the children of the respective areas free of tuition and equally available to all the children of the prescribed school age. This apparently excludes from the ‘free school’ system all normal schools, colleges, and universities.”).

¹⁹ Final Order at p.16.

initiatives on behalf of the citizenry. In other words, this constitutional mandate is a floor - not a ceiling - for the Legislature. This point is clearly contemplated by Article XII, Section 12 of the West Virginia Constitution, which states, “The Legislature shall foster and encourage, moral, intellectual, scientific and agricultural improvement.”²⁰

At bottom, the circuit court’s unduly narrow view of the Legislature’s constitutional authority would wreak havoc upon and effectively nullify not just the Hope Program, but every other educational initiative outside of the K-12 public school system.

B. The Circuit Court Exceeded Its Role and Substituted Its Policy Judgments for That of the Legislature.

In *Boyd v. Merritt*,²¹ this Court set forth the oft-quoted role of the judiciary in determining the constitutionality of legislative enactments:

This Court does not sit as a superlegislature, commissioned to pass upon the political, social, economic or scientific merits of statutes pertaining to proper subjects of legislation. It is the duty of the legislature to consider facts, establish policy, and embody that policy in legislation. It is the duty of this court to enforce legislation unless it runs afoul of the State or Federal Constitutions.²²

In other words, “[c]ourts are not concerned with questions relating to legislative policy.”²³ The judiciary is not concerned with whether it agrees or disagrees with legislative policy, or if it

²⁰ W.Va. Const. art. XII, § 12.

²¹ 177 W.Va. 472, 354 S.E.2d 106 (1986).

²² *Id.* at 474, 354 S.E.2d at 108.

²³ Syl. pt. 1, *State ex rel. Appalachian Power Co. v. Gainer*, 149 W.Va. 740, 143 S.E.2d 351 (1965); *see also State ex rel. Blankenship v. Richardson*, 196 W.Va. 726, 731, 474 S.E.2d 906, 911 (1996) (“This Court is not concerned with the legislative policy which motivated the enactment of S.B. 250 . . .”).

believes the legislative goals could be better accomplished through a different mechanism.²⁴ The function of the judiciary is confined to determining the constitutionality of the law.²⁵

In this case, it is clear the circuit court exceeded this mandate and, instead, questioned the wisdom of the Legislature's policy choices in connection with the Hope Program. For example, the circuit court was critical of the fact that eligibility for the Hope Program was not income or needs based.²⁶ Reasonable minds can debate whether or not the Legislature should have made the Hope Program needs based, just as they could debate whether the Legislature should have made the PROMISE Scholarship Program needs based (which it did not). However, the point is that these are legislative policy choices, and whether the circuit court agrees or disagrees with those choices is of no moment in the constitutional analysis.

In another example, the circuit court was critical of the fact that the statute "provides limited mechanisms for fiscal accountability, providing only for random audits of the use of the voucher funds."²⁷ Again, whether the circuit court believed the Legislature should have provided more mechanisms for fiscal accountability or that it should have, in the circuit court's mind, passed a better statute, is not an appropriate consideration.

²⁴ See, e.g., syl. pt. 12, *State ex rel. Cooper v. Tennant*, 229 W.Va. 585, 730 S.E.2d 368 (2012) ("The only role of the Supreme Court of Appeals of West Virginia in determining whether a state legislative redistricting plan is constitutional is to assess the validity of the particular plan adopted by the Legislature under both federal and state constitutional principles, rather than to ascertain whether a better plan could have been designed and adopted.").

²⁵ See *Richardson*, 196 W.Va. at 731, 474 S.E.2d at 911 ("It is the duty of the legislature to consider facts, establish policy, and embody that policy in legislation. It is the duty of this Court, however, to determine the constitutionality of the legislation.") (internal quotations and citations omitted).

²⁶ See Final Order at p.9 ("Because private schools cost more than the voucher amount . . . vouchers can only be used by families with the resources to pay for the additional private school tuition and expenses or by families affluent enough for a parent with the necessary skills to stay home to educate their child.").

²⁷ *Id.* at p.8.

Lastly, in perhaps the most glaring example, the circuit court questioned the fiscal soundness of the Legislature's decision.²⁸ However, it is well-recognized that "the power of the purse lies solely with the Legislature" and fiscal policy is within the legislative province.²⁹ Whether the circuit court considered the cost of the Hope Program to be too high or believed the judgment of the Legislature to be fiscally unsound is irrelevant.

Although the circuit court's role was limited solely to whether the Hope Program was constitutional, its order makes clear that it disagrees with the wisdom of the Hope Program. But the appropriate time and place for that debate was on the floor of the Legislature, not in the courtroom.

C. Courts Across the Country Have Consistently Upheld the Constitutionality of Similar Programs and Rejected the Unduly Narrow View of the Legislature's Authority in Educational Spending the Circuit Court Found Here.

With the enactment of the Hope Program, West Virginia joins an extensive list of states enacting educational choice programs. In adjudicating the constitutionality of those programs, other state courts have rejected the same arguments under their respective state constitutional provisions that Respondents advance here.

In North Carolina, for example, taxpayers brought an action challenging the constitutionality of the Opportunity Scholarship Program.³⁰ It was alleged that the program

²⁸ See *id.* at p.15 (noting that when fully implement, the Hope Program will cost taxpayers \$120 million per year).

²⁹ *Fountain Place Cinema 8, LLC v. Morris*, 227 W.Va. 249, 254, 707 S.E.2d 859, 864 (2011); see also *Farley v. Graney*, 146 W.Va. 22, 119 S.E.2d 833 (1960) ("We do not consider it within the province of the courts to override the judgment of the legislative branch of government in an area which must necessarily be a matter of legislative determination.")

³⁰ See *Hart v. State*, 774 S.E.2d 281 (N.C. 2015).

violated, *inter alia*, Article IX, Section 2(1) of the North Carolina Constitution, which states, “The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.”³¹ The North Carolina Supreme Court rejected the argument, holding that the Opportunity Scholarship Program did not create an alternate system of publicly funded schools and nothing prohibited the General Assembly from funding educational initiatives outside the public school system.³² The highest courts in Nevada and Indiana have likewise rejected challenges to the constitutionality of their educational choice programs.³³

Here, just as in the above cases, there is no claim that West Virginia public school students are currently and actually being denied a “thorough and efficient” education. West Virginia’s public school system will remain free and open to all students and the Hope Program does not alter that structure. The fact that Article XII, Section 1 mandates the Legislature to provide for a “thorough and efficient system of free schools” simply does not preclude other educational initiatives.

³¹ N.C. Const. art. IX, § 2(1).

³² See *supra* n.30 at 290 (“The uniformity clause applies exclusively to the public school system and does not prohibit the General Assembly from funding educational initiatives outside of that system. Accordingly, the Opportunity Scholarship Program does not violate Article IX, Section 2(1).”).

³³ See *Schwartz v. Lopez*, 382 P.3d 886 (Nev. 2016) (“The plaintiffs do not dispute that Nevada’s public school system is uniform, free of charge, and open to all students. SB 302 does not alter the existence or structure of the public school system . . . Thus, SB 302 is not contrary to Section 2’s mandate to provide for a uniform system of common schools.”); *Meredith v. Pence*, 984 N.E.2d 1213, 1223 (Ind. 2013) (“The school voucher program does not replace the public school system, which remains in place and available to all Indiana schoolchildren in accordance with the dictates of the Education Clause.”); *Jackson v. Benson*, 578 N.W.2d 602, 627-28 (Wis. 1998).

II. THE HOPE PROGRAM IS A LOGICAL NEXT STEP THIS CENTURY TO CONTINUE TO HONOR THE FOUNDERS’ GOAL TO PROVIDE UNIVERSAL FUNDING FOR EDUCATION.

Funding education continues to be an issue today, yet the Hope Program has the potential to bring balance and cooperation to education funding, in a way that supports funding driven by learning needs. When states care more about a child learning than *where* the child is learning, we will begin to make real progress.

A. West Virginia Is One of 32 States Offering Education Options; Children Are Learning, Parents Are Satisfied and as a Result, School Choice Programs Steadily Expand and New States Continue Regularly Adopt School Choice Programs.

West Virginia joins Arizona in offering education savings accounts that are accessible by most or all children. Arizona began as a program for children with special needs in 2011. It was expanded steadily over the past eleven years and was recently expanded to include all children in the state. Six other states currently offer education savings accounts.

For perspective, the following illustrates program comparisons:

State	Participants	Eligibility	Average Funding	Percent State-level Public School Per-Student Spending	Number of Schools	Year Launched
AZ	11,775	100%	\$7,000 - \$15,189	90%	345	2011
FL	18,585	10%	\$10,267	90%	1,870	2014
IN	NEW	13%	NEW	90%	NEW	2022
MS	492	12%	\$5,606	60%	114	2015
NH	1,635	31%	\$3,787	21%	N/A	2021
NC	304	11%	\$8,926	91%	82	2018
TN	307	2%	\$7,068	72%	26	2017
WV	3,100+	93%	\$4,600 est.	38%	N/A	2022

Arizona, New Hampshire, and West Virginia do not restrict eligibility to children with special needs.³⁴

Two states, Kentucky and Missouri, passed tax-credit funded Education Savings Accounts in 2021. In Kentucky, 49% of families are eligible for a scholarship up to \$4,700 or 40% of public school per-student spending. In Missouri, 51% of families are eligible for a scholarship up to \$6,375 or 52% of public school per-student spending. Neither state restricts eligibility to children with special needs.³⁵

School Choice encompasses education savings accounts, tax-credit education savings accounts, vouchers, tax-credit scholarships, and tax credits and deductions for education expenses.³⁶

B. Research Demonstrates That School Choice Improves Academic Outcomes and Long-Term Educational Attainment for Participating Students.

³⁴ <https://www.edchoice.org/school-choice-in-america-dashboard-scia/>, School Choice In America Dashboard, EdChoice, last accessed Sep. 6, 2022.

³⁵ *Id.*

³⁶ Education savings accounts allow parents to withdraw their children from public district or charter schools and receive a deposit of public funds into government-authorized savings accounts with restricted, but multiple, educational uses. Vouchers give parents freedom to choose a private school for their children, using all or part of the public funding set aside for their children’s education. Tax-credit scholarships and Tax-credit Education Savings Accounts grant taxpayers full or partial tax credits when they donate to nonprofits that provide private school scholarships. Individual tax credits and deductions allow parents to receive state income tax relief for approved educational expenses, which can include private school tuition, books, supplies, computers, tutors, and transportation. ABCs of School Choice 3-4, <https://www.edchoice.org/wp-content/uploads/2022/01/2022-ABCs-FINAL-WEB.pdf>. These programs are often collectively referred to as “school-choice programs” or “student-aid programs.” “Educational choice” is a more expansive term that includes private choice programs, home schooling subsidies, and other means of enhancing educational options for all children.

EdChoice’s core mission includes compiling substantial data regarding educational-choice programs nationwide. State legislatures continue to regularly introduce, enact, and expand school-choice programs based on constituent demand.

Critics have argued that the literature is not sufficiently clear on the benefits of school choice, or alternatively that some studies have shown such benefits to be marginal. The crux of these arguments is that school choice programs should not exist while any doubt remains as to their value, despite (1) the significant empirical research finding that school choice improves cognitive and non-cognitive outcomes for participants and (2) parents are continuing to seek choice options for their children.

C. Research Demonstrates That School Choice Improves Academic Outcomes and Long-term Educational Attainment for Participating Students.

School choice programs improve academic outcomes. Several empirical studies have examined the effect of school choice on student performance using the random-assignment method, a rigorous standard for ensuring the validity of social science research.³⁷ Of 17 empirical studies on program participant test scores to date, 11 found choice improves student outcomes and four found no visible effect. Two analyses of Louisiana’s voucher program and one analysis of Milwaukee’s voucher program found a negative average outcome for some or all groups of students.³⁸

D. Parents Consistently Express a Strong Desire for School Choice, with Strongest Support Found Within Minority Communities Long Underserved by the Traditional System.

³⁷ EdChoice. *The 123s of School Choice*; Empirical Research Literature on the Effects of School Choice at Slide 6, <http://www.edchoice.org/school-choice-bibliography> (last accessed Sep 6, 2022).

³⁸ *Id.* at Slide 7.

Parents know what they want for their children, but they often are not able to access the type of educational environment they most desire. EdChoice’s comprehensive school choice public opinion survey, conducted annually, has shown a consistent desire for private school options despite a large majority of children remaining in public district schools.

In the 2021 survey, when asked what type of school they would select if given the option, parents’ first choice was public district school (39%), followed by private school (36%), public charter school (14%), and homeschool (12%).³⁹ Enrollment patterns show that many parents cannot access schools of choice: 83% of students in the United States attend a district school, while only 8% attend private schools, and 6% attend public charters.⁴⁰ Parent demands to access the schools they otherwise could not afford has led to a significant increase in the number of states implementing school choice initiatives in the past decade.

In a tracking poll conducted recently by Morning Consult and EdChoice, West Virginia parents, when asked what type of school they would select if given the option, indicated that their first choice was regular public school (43-45%), followed by private school (31-32%), home school (11-12%) and charter school (5-8%).⁴¹ When West Virginia school parents were asked if they support school choice policies, strongest support was for education savings accounts like the Hope Program (73%), followed by school vouchers (68%), and charter schools (63%).⁴²

³⁹ EdChoice, *2021 Schooling in America Survey* (conducted June 14–July 8, 2021), pg.16

⁴⁰ *Id.*

⁴¹ EdChoice *Public Opinion Tracker* (conducted Aug 3, 2022), <https://edchoice.morningconsultintelligence.com/reports/west-virginia.pdf> (last accessed Sep 6, 2022).

⁴² *Id.*

Of the 32 surveys of parents whose children participate in school choice programs, 30 found significantly higher rates of parental satisfaction, one study found no difference, and two found that parents were less satisfied.⁴³

E. Public School Students Exposed to School Choice Are Not Harmed and Academic Outcomes Improve.

A philosophical foundation of school choice is that it should improve education for children in both private and public schools. When district schools know that students, regardless of income, can choose to attend school elsewhere, they have a powerful incentive and renewed interest in improving performance to keep and attract students. Rigorous academic research supports this theory. Empirical studies show that the positive effect of school choice on public school academic performance is at least as strong as the effect on children who are offered choice. Of 28 studies that used proper methodological techniques, 25 have found that school choice improves test scores in public schools, one found no visible effect, and two found a negative effect.⁴⁴

F. School Choice Has a Positive Impact on Civic Values and Practices and Racial and Ethnic Integration.

Another line of research examines the impact of school choice on civic values and practices. Of 11 studies to date, six found school choice has a positive impact, five showed no visible effect, and no study has shown school choice to have a negative effect.⁴⁵ In one study, researchers found higher levels of political tolerance, civic skills, expected future political participation, and volunteerism in participants in Milwaukee's voucher program when compared

⁴³ EdChoice. *The 123s of School Choice*; Empirical Research Literature on the Effects of School Choice at Slide 21, <http://www.edchoice.org/school-choice-bibliography> (last accessed Sep 6, 2022).

⁴⁴ *Id.* at Slide 27.

⁴⁵ *Id.* at Slide 33.

to public school students.⁴⁶ The study also found the positive effect to be significantly stronger in religious schools than in other private schools.

Social science research has produced statistically valid, reliable reasons why parents favor school choice and why including private schools is important to parents. The human equation substantiates all that research: parents use student-aid programs to fund their children's education when their children are not thriving and need a school that is a better fit for their individual needs.

G. School Choice Saves Money for States and for School Systems.

Opponents of school choice continue to assert that choice programs will spell financial ruin for public schools, but no evidence supports this assertion. Critics claim that students who remain in public schools will be harmed because these programs siphon funding from public schools. Even when the students are no longer present to educate, representatives of school districts argue that schools have fixed costs, such as building and maintenance, and that no costs are variable. However, these same schools that argue all costs are fixed when students leave will also argue that all costs are variable when enrollment increases. If all costs were fixed, new students would not generate additional costs.⁴⁷

But whether enrollment goes up or down, the plea for more money is constant. Today, a new school choice program becomes a convenient reason for demanding more money, yet the truth is that public schools demand more money before, during, and after school choice programs are proposed—regardless of whether a school choice program is enacted. With over two decades of

⁴⁶ A Win-Win Solution, Greg Forster, PhD, May 2016.

⁴⁷ Benjamin Scafidi, The Fiscal Effects of School Choice Programs on Public School Districts <https://files.eric.ed.gov/fulltext/ED529881.pdf> (last visited Sep 6, 2022).

results available, including 73 studies on the fiscal impact of school choice programs, 68 studies show that school choice has a net positive effect on public school funding, four studies show a cost neutral effect, and only five studies have found that school choice programs generated increased net costs.⁴⁸

If educational choice programs were failing families, it is unlikely that state legislators would have the will and constituent support to enact and expand them across the nation.

CONCLUSION

For the above reasons, this Court should reverse the circuit court's decision, dissolve the permanent injunction, and allow the Hope Program to take effect.

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Respectfully submitted,

EDCHOICE

and

**FOUNDATION FOR EXCELLENCE IN
EDUCATION**

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⁴⁸ School Choice Bibliography, <https://www.edchoice.org/school-choice-bibliography> (last visited Sep 6, 2022).

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**Pro Hac Vice pending*