

*Testimony of Gabriel Jakubisin to Ohio House of Representatives  
February 18th, 2020  
Regarding House Bill 9*

Good evening. I am the principal at St. Joan of Arc Catholic School in Toledo, OH. Thank you for the opportunity to speak and to represent the nearly 50 EdChoice students at my school. I also want to speak on behalf of the many more members of our community who do or were hoping to benefit from these programs.

Allow me to make a number of brief points tonight - I promise to keep it to 10 minutes or less:  
1st, An example of Ohio's leadership in the area of school choice,  
2nd, the right of parents to choose where to send their children to school,  
3rd, the Establishment clause of the 1st Amendment and the separation of Church and State,  
4th, why the right of parents ought to be financially supported, and  
5th, a personal anecdote from my community.

**1st: Ohio's leadership in the area of school choice**

Ohio has been one of the leading states in supporting parental school choice and the nation looks to Ohio for this leadership.

It's worth noting, just as an example, that one of the programs initiated by the philanthropic Drexel Fund helps provide start-up funds to private schools nationwide looking to educate under-served populations. They consider Ohio a "target" state, meaning they are particularly eager to help open schools here. Why? Because they know they wouldn't be working alone, but rather alongside the State of Ohio, to see such a school succeed. Why should they support the founding of a school that is unlikely to succeed? It would be a waste of their funds. But, because of the EdChoice programs, they believe that a well-planned school has a great chance of success here. I don't represent the Drexel Fund but, as an Ohioan, I appreciate that the Drexel Fund wants to send dollars to Ohio to help under-served student populations and I would hate to see that change.

**2nd, the right of parents to choose where to send their children to school,**

The State of Ohio in the past decades has given families nationwide hope because of its EdChoice programs. Such families believe that they have the inherent right to choose where to send their children to school as a matter of justice. This right has been recognized and enshrined by the United States for nearly a hundred years. In *Pierce v Society of Sisters* (1925), the Supreme Court of our country struck down an Oregon law forcing students to attend public schools as unconstitutional. Education is obligatory, but parents have the right to choose where their children receive such education. I will resist tracing the entire judicial history here, but do wish to point out that *Pierce* is not an isolated case; it was affirmed in *Wisconsin v Yoder* and has been utilized as precedent over and over again.

### **3rd, the Establishment clause of the 1st Amendment and the separation of Church and State,**

The EdChoice programs do not violate the Establishment Clause of the 1st Amendment, nor do they violate the separation of Church and State advocated for by Thomas Jefferson and subsequently unofficially enshrined as US policy. What the EdChoice programs do is give families in Ohio, taxpayers, the empowerment to choose what is best for their children. For some families, that means public school. For others, charter. For others, private. This is not, as some media sources have attempted to frame it, a “battle between religious schools and public schools”. Far from it. This legislative tension is about the right of parents to choose where to send their children. With every tour we give at our school and every prospective family we meet, my staff and I encourage them to do their research and make the best choice for their children. Which might not be us! But we don’t exist to make money; we exist to provide a service - as quality of a service as possible to as many people interested in it as possible.

We are, though, a religious institution. In the last few weeks, I’ve heard people say that it is unconstitutional to let state dollars go to religious schools. This is a point worth addressing. Should the Establishment clause of the 1st Amendment of our Constitution or the principle of the separation of Church and state forbid state dollars to find their way into religious schools via the hands of parents who want to make the best choice for their children? I answer no, emphatically. And so does the Supreme Court of our country. In *Lemon v Kurtzman* (1970), the Court established the three-pronged Lemon Test to determine whether a law violates the Establishment clause. I hesitate to preach to an educated body on this, but in the interest of clarity and thoroughness, let me succinctly address each point of the test. To the first, “does the law have a secular purpose?”, the answer is clear that the EdChoice programs have a secular purpose, the improvement of educational outcomes for thousands of students. To the second, “is the primary effect either to advance religion or to inhibit religion?”, again, the answer is clear that EdChoice does not primarily advance or inhibit religion. To the third, “does the law foster an excessive governmental entanglement with religion?”, EdChoice in its current iteration certainly does not constitute excessive entanglement, although if, as some have proposed, changes to the current legislation result in increased oversight of religious schools, it would.

In short, there is no reason to think that the EdChoice programs violate the Establishment Clause or the separation of Church and State. There is every reason, however, to be concerned that if the results of the current debates increase state oversight into religious schools, the Lemon Test would find them unconstitutional.

### **4th, why the right of parents ought to be financially supported,**

Presuming that all I’ve said so far is true and accurate (which it is), the most important question remains, does the right of a parent to choose the education of their child necessitate the state’s assistance in such action? The rest of the debate centers around this most-important question. Despite all the nonsense in the media and all the uproar across the state, parental right to choose their children’s education is protected by the Supreme Court and the assistance of the state to such parents is constitutional when carried out correctly (as it has been in this state for

many years). These two points are relatively clear, as the bulk of what I've said so far serves to illustrate. Yet, ought it be so? Ought the state help parents to make the best choice for their children? Parents *do make* the choice; the state *can* help; but ought it be so?

I stand here today to represent dozens of families in northwest Ohio who answer a resounding yes. Is the current system perfect? No, not by a long shot. Should American (and Ohio) schools "get better at getting better?" as Anthony Bryk and other educational experts encourage us? Absolutely. But should the State of Ohio return to its taxpayers their funds to empower and assist parents to provide the best educational opportunities for their children, especially when that education is otherwise out of reach? Without question.

**Finally, a personal anecdote from my community.**

My 8th graders will graduate in the coming months with their compatriots all across the country. For millions of children, this is a time of great hope. With their friends and family, they look toward the next four years, their high school careers, with some anxiety but with great hope. I remember the anticipation with which I looked forward to joining the ranks of the Wildcats at my alma mater. My students ought to have the same anticipation now. But not all of them do. Let me tell you about just one of them. He's been dreaming of attending Central Catholic High School in Toledo. His parents are both educators, one in private school, one in the public system. They've devoted their lives to helping thousands of children, not just their own, succeed educationally. But because of that sacrifice, Central Catholic High School is out of reach for this student of mine without EdChoice. They simply can't afford it. I won't violate their privacy by reading it to you but I wish I could communicate to you the plea I could hear in their last email to me. The last thing they want to do is tell their son that he can't go to the school of his dreams because they can't afford it. Especially when they've been telling him they could and that rug was pulled out from under them by this recent calling-into-question of EdChoice. He's only one kid but his story is far from uncommon. In fact, it's echoed across Ohio right now.

**[Conclusion]**

In conclusion, I wish I had the voice to confront the, at best, misleading statistics, and at worst, numerous factually incorrect claims being promoted by EdChoice-detractors in Toledo right now. But I don't have that voice. You do. By guiding our state properly in the next few weeks, you have the voice to clarify the truth to the people of this great state. I urge you. Protect these families. Protect their rights. Secure with them their children's futures. Thank you.