

**Written Statement to the Ohio House of Representatives
Primary and Secondary Education Committee**

Second Hearing on H.B. 529
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About the Author

John Ketcham is a fellow at the Manhattan Institute for Policy Research,** working primarily on state and local policy and legal policy. He obtained a JD, *magna cum laude*, from Harvard Law School in 2021 and earned a BS in management information systems, *summa cum laude*, from Fordham University. He has authored a number of MI reports and op-eds on curriculum transparency, election issues, developments at the Supreme Court and state courts, and policing and public safety.

**The Manhattan Institute does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my research as an Institute scholar, the views represented today are solely my own, not my employer's.

Statement

I thank the Primary and Secondary Education Committee for the honor of providing this written testimony on H.B. 529 specifically and on the broader issue of curriculum transparency. While the legislation under consideration touches on several aspects of education in Ohio, my comments are exclusively directed to the proposed amendment to Section 3301.164 and enactment of Section 3313.213 of the Revised Code, both of which relate to posting on school websites the materials and activities used for student instruction.

H.B. 529 overlaps considerably with my research, in particular a Manhattan Institute policy document that senior fellows Christopher F. Rufo, James R. Copland, and I published in December 2021 titled “A Model for Transparency in School Training and Curriculum,”¹ which I incorporate by reference. Requiring schools to post on their websites all the materials and activities used to instruct students, irrespective of content, would be beneficial for at least three reasons. Broad curricular transparency accords with domestic and international law and the American parental rights tradition, would likely improve academic outcomes through greater parental engagement, and would provide benefits to parties other than parents.

First, the idea underlying my policy document and H.B. 529—that parents should have the information necessary to make the best decisions for their children’s education—enjoys a wide and deep base of legal and historical support. The Anglo-American legal tradition,² a century of foundational U.S. Supreme Court precedent,³ the Universal Declaration of Human Rights,⁴ and the International Covenant on Civil and Political Rights,⁵ among others, affirm the right and duty of parents to direct the upbringing and education of their children. Indeed, that principle has long been understood as an uncontroversial, commonsensical, and incontrovertible given.⁶

This right encompasses parents’ ability to know about curricular materials and activities, especially those that they may find developmentally inappropriate or morally objectionable. In recent years, parents across the U.S. have been shocked to discover that their children are being exposed to controversial concepts and materials regarding sex, gender, and race.⁷ In the wake of these incidents, many parents have felt betrayed

¹ CHRISTOPHER F. RUFO, JAMES R. COPLAND & JOHN KETCHAM, A MODEL FOR TRANSPARENCY IN SCHOOL TRAINING AND CURRICULUM, (Manhattan Institute 2021), https://media4.manhattan-institute.org/sites/default/files/MI_rufo_copland_ketcham_model_legislation.pdf.

² 1 WILLIAM BLACKSTONE, COMMENTARIES, *450 (Lippincott ed. 1893) (“The last duty of parents to their children is that of giving them an education suitable to their station in life: a duty pointed out by reason, and of far the greatest importance of any.”).

³ Meyer v. Nebraska, 262 U.S. 390, 401 (1923) (discussing the right of parents “to control the education of their own.”); Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925) (affirming the right of parents to control the education of their children in still stronger terms. The Court famously stated, “The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”).

⁴ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 26 (Dec. 10, 1948) (“Parents have a prior right to choose the kind of education that shall be given to their children.”).

⁵ Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171, art. 18 (“The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”).

⁶ See, e.g., Moore v. City of East Cleveland, 431 U.S. 494, 503–04 (1977) (“[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.”).

⁷ See, e.g., Hannah Nathanson, *How and why Loudoun County became the face of the nation’s culture wars*, WASHINGTON POST (July 5, 2021 7:26 PM), <https://www.washingtonpost.com/local/education/loudoun->

by the teachers and staff with whom they entrusted their children. A recent survey conducted by Free to Learn found that over 80% of parents reported being concerned with the quality of today's education; 59% were concerned with what their children were learning, and 74% believed that they should be able to request the curriculum being taught to their children.⁸

Ohio's education officials have not been immune from these developments. In July 2020, the State Board of Education passed Resolution 20, which directed the Ohio Department of Education to reexamine its standards and model curricula for supposed bias and required that all state employees who work with the department undergo training for "implicit bias."⁹ This concept frequently involves imputing moral culpability and unconscious, racially-motivated prejudice to broad swaths of the population—merely on account of their "whiteness."¹⁰ Following an intense public backlash, the state board requested a legal opinion from Attorney General Dave Yost,¹¹ who responded that, among other things, "the curricula and standards will be contrary to law if they treat students differently on the basis of race."¹² On October 13, 2021, the state board rescinded Resolution 20 and replaced it with a less divisive alternative.¹³ Thanks to the transparency enabled by Ohio's Sunshine Laws,¹⁴ which requires open public meetings of public bodies, concerned parents helped thwart the introduction of contentious and potentially unlawful race-based standards in Ohio public schools.

critical-race-theory-transgender-rights/2021/07/05/3dab01b8-d4eb-11eb-ae54-515e2f63d37d_story.html; Emily Jacobs, *Ohio parents who opposed critical race theory speak up after kids get expelled*, NEW YORK POST (July 7, 2021 4:51 PM), <https://nypost.com/2021/07/07/ohio-parents-who-opposed-critical-race-theory-speak-up-after-kids-get-expelled/>.

⁸ Kendall Tietz, *Nearly 60 Percent of American Parents Are Concerned With What Their Kids Are Learning: Poll*, OHIO STAR (Dec. 28, 2021), <https://theohiostar.com/2021/12/28/nearly-60-percent-of-american-parents-are-concerned-with-what-their-kids-are-learning-poll/>.

⁹ Minutes of the State Board of Education of Ohio (July 13, 2020), <https://education.ohio.gov/getattachment/State-Board/State-Board-Meetings/State-Board-Meetings-for-2020/July-2020-Meeting-Minutes-Final.pdf.aspx?lang=en-US> ("[T]he State Board of Education shall require training for all state employees and contractors working with the Department of Education to identify their own implicit biases so that they can perform their duties to the citizens of Ohio without unconscious racial bias."); see also Max Eden, *Smashing "Whiteness" in the Classroom*, CITY JOURNAL (Oct. 26, 2020), <https://www.city-journal.org/ohio-education-department-antiracist-training>.

¹⁰ For an illustration of the concepts associated with implicit bias, see, e.g., Kathleen Osta & Hugh Vasquez, *Implicit Bias and Structural Racialization*, NATIONAL EQUITY PROJECT, <https://www.nationalequityproject.org/frameworks/implicit-bias-structural-racialization> ("The biases we have internalized, both consciously and unconsciously, have been 'primed' through our experiences – images and messages we receive every day about who is 'normal' or 'desirable' and 'belongs' and who is 'different' or 'undesirable' and 'not one of us.' These messages are neither neutral nor random. In the United States, 'whiteness' is the dominant and privileged identity; socially constructed to justify conquest and slavery and reified in laws and policies, both historic and current, that ensure that white people benefit disproportionately from the benefits of society and are protected from more of its harms. White supremacy is baked into our country's DNA.").

¹¹ Susan Tebben & Nolan Simmons, *State school board to ask AG for opinion on anti-racism resolution*, OHIO CAPITAL JOURNAL (July 15, 2021, 1:00 AM), <https://ohiocapitaljournal.com/2021/07/15/state-school-board-to-ask-ag-for-opinion-on-anti-racism-resolution/> (quoting board member John Hagan, a skeptic of the resolution who was nonetheless surprised by the vigor of the opposition, "Even I could not have imagined the outrage of parents and community members over the training required by the resolution and the assertions made in it.").

¹² Office of the Attorney General of Ohio, Opinion Letter No. 2021-022 (Sept. 14, 2021).

¹³ Anna Staver, *Ohio State Board of Education repeals its anti-racism resolution*, COLUMBUS DISPATCH (Oct. 14, 2021, 8:22 AM), <https://www.dispatch.com/story/news/2021/10/14/ohio-state-board-education-repeals-anti-racism-resolution/6094952001/>.

¹⁴ OHIO REV. CODE ANN. § 121.22.

H.B. 529's broad curricular transparency similarly offers a moderate, content-neutral solution to these charged issues. The legislation does not seek to define curricula, limit or regulate the substance of what is taught or discussed in school classrooms, or promote any particular material, concept, method, or pedagogical approach. Neither does it enable parents to dictate what will be taught. School districts, teachers, and administrators retain wide discretion to define the curriculum and employ materials and activities necessary to instruct pupils. H.B. 529 simply provides parents with information, regardless of content. Equipped with this knowledge, parents can take steps necessary to secure the best outcomes for their children, including, but not limited to, discussing their children's educational progress with teachers and staff, running for school board seats, or switching schools, if necessary.

Second and irrespective of current events, by facilitating parental participation in children's education, H.B. 529 provides an avenue for higher academic achievement and healthy childhood socialization. Simply put, if Ohio wishes to improve the chances that its students will succeed, the state should encourage parents to be actively involved in the educational process. Research has consistently demonstrated that student outcomes improve when parents engage with teachers and their children about school, including higher grades and test scores, improved graduation rates, lower rates of chronic absenteeism, and better self-esteem, social skills, and intrinsic motivation.¹⁵

Even if existing Ohio law requires teachers to turn over curricular materials to parents who request them,¹⁶ there are good reasons to set the default to *proactive* transparency. Fundamentally, it would signal that the state respects parents' uniquely important role and wishes to partner with them in ensuring that their children receive a suitable education. Pragmatically, many families today include two full-time employed parents, both with demanding workweeks and responsibilities; conveniently listing the curriculum on the school website would save them the time and effort needed to submit requests. This would, consequently, better enable them to direct their efforts to higher-value educational activities. While my policy document does not apply to private schools, given that parents ostensibly enter into contractual agreements freely in such instances and can always opt to exit, transparency in private school curricula would similarly promote academic excellence and inform parents who are considering moving into a non-public school.

Third, the benefits of transparency extend beyond parents to teachers, school administrators, and the public at large. Teachers and staff in lower-performing schools can look to the curricula and instructional materials utilized at higher-performing schools for avenues of improvement. Some teachers may not ever learn about such materials but-for the broad transparency that H.B. 529 would afford. This is particularly important given the wide latitude that teachers have in selecting and customizing the particular materials and activities used in their classrooms.¹⁷ Transparency would thus encourage a race to the top for curricular materials and activities.

And as a general matter, transparency in government fosters trust, promotes accountability, and demonstrates that the ultimate basis of state power rests in the people. Contrary to the implausible claim

¹⁵ For an overview of the literature on the benefits of parent involvement in education, see Waterford Institute, *How Parent Involvement Leads to Student Success*, (Nov. 1, 2018), <https://www.waterford.org/education/how-parent-involvement-leads-to-student-success/>.

¹⁶ OHIO REV. CODE ANN. § 3313.212 (2014).

¹⁷ See JULIA H. KAUFMAN ET AL., HOW INSTRUCTIONAL MATERIALS ARE USED AND SUPPORTED IN U.S. K–12 CLASSROOMS 14 (Rand Corp. 2020), https://www.rand.org/pubs/research_reports/RRA134-1.html (“As we have demonstrated, principals’ recommendations and requirements for curricula do not necessarily align with what teachers actually use for instruction. Most teachers draw from several curricula, make modifications, or supplement their instruction with self-created materials.”).

that curricular transparency would create distrust, parents would likely trust teachers and administrators more if the law allays suspicions that their children are being exposed, without their knowledge, to materials and activities that they believe are inappropriate. Ohio taxpayers deserve to know how public dollars are being used to educate the next generation of citizens. The people have an interest in knowing how children are being prepared for their civic duties. What is more, Ohio's Sunshine Laws signify that the legislature already acknowledges the immense public benefits of transparency.¹⁸

While concerns about greater administrative burdens on teachers are no doubt reasonable and understandable, H.B. 529 provides ample leeway to comply with its requirements without substantially adding to teachers' workloads. It requires posting only the essential information about materials and activities used to instruct students, such as a title or Internet link for textbooks, websites, videos, and the like. It requires such information to be listed by July 1, which would inform parents during the open enrollment process. In the event of curricular revisions, it provides a 30-business-day window for teachers and administrators to update the online list of materials and activities.

Moreover, teachers and school officials need not fear that they will be subject to lawsuits or disciplinary consequences for failures to comply, as H.B. 529 contains no explicit enforcement mechanism that would subject them to liability or sanctions. And while my co-authors and I propose extending transparency to all materials and activities used to train teachers and staff—which would be justified in light of the surge in implicit bias training and “diversity, equity, and inclusion” initiatives¹⁹—H.B. 529 limits transparency to student instruction. Finally, because school districts and private schools already utilize websites, the financial cost of adding a simple text-based list online would be essentially negligible, as the Fiscal Note & Local Impact Statement confirms.

I commend the House of Representatives for undertaking the careful consideration of H.B. 529, and I appreciate the opportunity to share my thoughts on this crucial matter.

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¹⁸ Transparency in government, moreover, is eminently a bipartisan value. *See, e.g.*, Barack Obama, Memorandum on Transparency and Open Government, 74 Fed. Reg. 4685 (Jan. 21, 2009), https://obamawhitehouse.archives.gov/realitycheck/the_press_office/Transparency_and_Open_Government (“Openness will strengthen our democracy and promote efficiency and effectiveness in Government. *Government should be transparent.* Transparency promotes accountability and provides information for citizens about what their Government is doing.”).

¹⁹ *See, e.g.*, Ginia Bellafante, *Private Schools Brought in Diversity Consultants. Outrage Ensued.*, NEW YORK TIMES (Apr. 23, 2021), <https://www.nytimes.com/2021/04/23/nyregion/private-schools-diversity-brearley-dalton-grace.html>; *see also* Bexley City Schools, *BCSD Awarded Diversifying the Education Profession in Ohio Grant*, (April 1, 2021), <https://www.bexleyschools.org/protected/PrintArticle.aspx?iid=5P2AGY&dasi=3AP2> (“‘Bexley City Schools began a journey toward equity and anti-racism almost 10 years ago,’ Racquel Armstrong, Bexley Middle School Assistant Principal, said. ‘This grant intends to continue to address our goal of promoting a culture of equity.’ The grant will aid in the implementation of a plan to recruit and retain staff of color.”).