

HB 11 Opponent Testimony  
House Primary and Secondary Education Committee  
Robert S. Chaloupka  
April 25, 2023

Good afternoon Chair Bird, Vice Chair Fowler Arthur, Ranking Member Robinson, and members of the House Primary and Secondary Education Committee. My name is Robert Chaloupka. I am an attorney in solo practice in the Cleveland area. I'm also a volunteer attorney with Equality Ohio, Equitas Health, and Lawyers for Good Government. Most importantly, though, I am the father of an amazing 6-year-old daughter who attends Parma City School. On behalf of my daughter, and all Ohio students, I urge you to reject HB 11.

Last month, you heard from a number of witnesses who supported this bill – including policy advocates, families, and students, who all shared various stories of the success they felt resulted from the type or “educational freedom” that they argue this bill would provide. In fact, there's been a lot of talk about “freedom” when it comes to this bill – that and something about “funding students, not systems” – as though the opponents of this bill are somehow against freedom and are pro-bureaucracy. I'd like to say this was just an implied message, but the lead advocate for this bill, Troy McIntosh of the Ohio Christian Education Network (an affiliate of the Center for Christian Virtue), specifically stated that “every time you hear an opponent of the bill speaking against the bill in defense of a system,” you should focus on the individual students' stories they presented to you.

That's nice rhetoric. And, as Mr. McIntosh and other policy professionals know, it's always a good idea to set the narrative and characterize your opponents' statements before they make them. But I would like to present an alternative view. See, at the end of the day, this is a lawmaking body, and we're talking about whether or not a new law should be passed. So it's important to remember that parents in Ohio are ALREADY free to send their child to whatever school they choose. It's possible they may not be able to afford the tuition at some of the best private schools, and that is a valid, but entirely separate question. Simply put, the “freedom” that advocates of this bill are asking for already exists. And, while it's possible that some out there may favor a system over a student, I doubt any of those people work in education right now. It's all well and good for the proponents of this bill to create strawman arguments about educators who only care about protecting their own bureaucratic system, at the expense of the kids, but that has not been my experience. Nor has it been the experience of anyone with whom I'm familiar.

In fact, the entire premise is flawed from the start. All of the high-achieving, well-spoken young people who appeared before you to testify as to how their school has helped them are thriving . . . under the CURRENT system. So, why do we need to drastically expand the existing voucher system to address a problem that appears to have already been solved?

As I understand it, the goal of this bill is to “funding students, not systems, knowing that we need a full array of systems, pedagogies, approaches and philosophies to meet the many different needs of Ohio’s students.” As I’m sure you know, the Ohio Constitution requires “a thorough and efficient system of common schools.” According to a 1995 opinion by the Ohio Attorney General,

*The term "common schools" has been used in Ohio law for many years and is ordinarily understood to mean "public schools," or schools that are administered by public agencies and maintained from public funds. Precisely which schools are included as common schools under a particular statute depends on the intent of the legislature in enacting that statute.*

In other words, the state is required to provide for a public school system that serves everyone. Or, as the Ohio Supreme Court put it in *DeRolph*, “the Ohio Constitution requires the state to provide and fund a system of public education.” It does NOT require “a full array of systems” outside the public school system. Are such options important to ensure that as many children’s needs can be met as best as possible? For sure. But the state is not obliged to pay for them.

Proponents of the bill were happy to share anecdotes of specific families who have benefitted from what they call “school choice,” suggesting that a diversity of educational opportunities is important, and that parents are the best ones to determine the best options for each child’s needs. There is absolutely nothing wrong with this, assuming we’re talking about parents who are highly motivated to work for their children’s best interests, and who are very involved in their lives. And, honestly, that is likely the case for the vast majority of families. But, as we all know, there are a lot of other families where the parents are not as involved, or may even be acting against the wishes of their children. There are even families, such as my own, who have children with special needs, where the best options are not so obvious to the parents based solely on their parental instincts. In short, there are a lot of kids who fall through the cracks. When we start making decisions based on the assumption that we’re all good parents, and everyone is like us, we start to leave children behind.

Proponents of the bill pointed to several surveys of parents using the existing EdChoice program, showing that the majority of those surveyed were satisfied with their child’s new school – many of them reported being more satisfied. Given that the existing program exists to help families in districts that are struggling to meet expectations, as well as families with financial challenges, this is no surprise. While continuing to characterize those opposed to this bill as “opponents of educational freedom,” he sought to pre-empt the argument that several studies have shown lower test scores for children using vouchers. Deciding to call it a draw, he then raised the most telling element of the argument in support of this bill.

According to Mr. McIntosh and other witnesses, “parent satisfaction is a much better metric by which to gauge program success.” Think about that for a moment – parent satisfaction, not student satisfaction or student outcomes, is the most reliable measure of success. Now, if you

have a very business-centric, capitalist view of education, where the parents are the customers, perhaps that makes sense. And, given that the vast majority of the backers of this bill are affiliated with private and/or religious schools that rely on parents paying tuition to succeed, you would think you'd want to keep your "customers" satisfied.

But that's not what a public school is intended to be. If there is a "customer" in the public school system, it's the public. Parents are included in that public, but not as individuals. Whoever runs the school – state school board, department of education, local school board, etc. – is answerable to ***the people as a whole***, not each individual parent's preferences. We live in a society – a society that occasionally pools its resources to work for the common good. A society that decided a long time ago to create a "thorough and efficient system of common schools" to achieve the good of educating children. And, a society that looks out for children – all children – without making assumptions that all parents are exactly like the fine, upstanding people upon whom we choose to focus.

Proponents of the bill also claim that this is not an attack on public schools "no matter how much opponents of the bill try to frame it that way." As the argument goes, "educational freedom" is the rising tide that supposedly lifts all boats – if only public schools had to compete in the "educational marketplace to retain students," they would be motivated to produce better outcomes. Leaving aside for the moment the fact that this isn't how public school systems are designed to work, that certainly seems like an attack on public schools to me. In fact, proponents of the bill typically say that there are great people working in the public schools – great people who are trapped in a "broken system" that needs to look more like the free market. I'm not an education policy expert, but that certainly sounds like an attack on the public schools to me.

A public school system is, by design, NOT a capitalist, free-market system. It is NOT a for-profit business, even an altruistic one. It is, by definition, a government entity that the state is obliged to create by the state constitution's guarantee of a "thorough and efficient system of common schools." Private schools that don't provide results can shut down. Public schools don't have that option.

Ironically, what the proponents of this bill are actually describing is something akin to the original vision for the Affordable Care Act. They want to create a "market" where private educational providers are on the same footing as a "public option," which would be forced to accept all the people who didn't qualify for the private plans. However, they would remove the financial incentives for higher-performing schools, since they would be subsidizing whichever schools the children attended. Instead, I presume the market would be based on performance ... and since we've been told that the "best" measure of performance is parental satisfaction, the schools are motivated to make parents happy ... even if it's to the detriment of their children's ability to succeed.

Proponents will try to allay the fears of those suggesting there would be an exodus from the public school systems, since most kids will still attend public schools. But, having laid out that

this is a “clunky, broken system” with a wide range of issues, why would any parent choose to keep their children in public schools, once the state subsidizes them to go elsewhere.

Finally, the proponents make an argument “from a basic freedom perspective,” stating that “The state should not have the overwhelming power to both compel education and dictate the content of that education. That is too much power in the hands of the state.” While this is a nice slogan, it doesn’t actually make any sense. If the state is going to compel education, then as a taxpayer, I would certainly expect there to be some standards for what that education looks like. This argument suggests that the state could compel education but would have to accept whatever individual students and/or families claimed to be the “right” education for them; or it could dictate educational standards but could not require students to go to school. That is nonsense.

What they likely mean to say is that the state shouldn’t have the power to both compel you to go to school and dictate which school you attend. That’s a valid (though flawed) argument, but it’s not what’s happening now. As I said earlier, aside from district boundaries, there are no legal obstacles to parents choosing which schools their kids will attend. The “freedom” for which they are so passionately arguing ALREADY EXISTS. This bill is nothing more than a solution in search of a problem. Given that almost no public school districts or educators are in favor of the bill, while almost all of those giving proponent testimony were affiliated with for-profit and/or religious private schools who would benefit greatly from increased access to state funding, I ask you to carefully consider who would really benefit here.