IN THE SUPREME COURT OF OHIO

YOUNGSTOWN CITY SCHOOL DISTRICT BOARD OF EDUCATION, et al., Appellants, vs. STATE OF OHIO, et al., Appellees.	)	Case No. 2018-1131 On Appeal from the Court of Appeals of Ohio, Tenth Appellate District Case No. 17APE-11-775

MEMORANDUM OF AMICI CURIAE, EAST CLEVELAND EDUCATION ASSOCIATION, OEA/NEA, AND LORAIN EDUCATION ASSOCIATION, OEA/NEA IN SUPPORT OF APPELLANTS

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STATEMENT OF INTEREST OF AMICI CURIAE

The East Cleveland Education Association, OEA/NEA, ("ECEA") is an "Employee Organization" as that term is defined under R.C. 4117.01(D), in which public employees in the East Cleveland City School District ("ECCSD") are members and that exists for the purpose of dealing with the ECCSD concerning grievances, labor disputes, and negotiations regarding wages, hours, terms, and other terms and conditions of employment. ECEA is an affiliate of the Ohio State Education Association and member of the National Education Association. ECEA, as defined by the recognition clause in their collective bargaining agreement with the ECCSD, is the "exclusive representative of the individuals employed by the Board involved in the instruction, supervision or counseling of students in grades K-12. Individuals presently included in the bargaining unit shall include, but not be limited to, classroom teachers, librarians, guidance counselors, speech and hearing therapists, psychologists, nurses, social workers, and resource teachers. In addition, individuals presently holding positions as in-school suspension monitors, and swimming aides, shall be considered to be within the unit, but may be placed, where appropriate in individual cases, on a designated non-degree column on the salary schedule."

The Lorain Education Association, OEA/NEA ("LEA") is an "Employee Organization" as that term is defined under R.C. 4117.01(D), in which public employees in the Lorain City School District ("LCSD")are members and that exists for the purpose of dealing with the LCSD concerning grievances, labor disputes, and negotiations regarding wages, hours, and other terms and conditions of employment. LEA is an affiliate of the Ohio State Education Association and member of the National Education Association. LEA, as defined by the recognition clause in their collective bargaining agreement with LCSD, is "the sole and exclusive bargaining representative, for the purpose of and as defined in Chapter 4117 Oho Revised Code for all certificated employees

(pursuant to O.R.C. 3319.09) who work fifteen (15) hours or more per week for the regular teacher work year, halftime kindergarten teachers and/or magnet school coordinator replacements...".

ECEA and LEA and their members have a key interest in this matter. Both ECEA and LEA are advocates for its members in the legislative process, depend upon community support and operate within their respective schools on systems grounded in the Constitution. For reasons set forth below, amici curiae, ECEA and LEA, urge this Court to overturn the Ohio Tenth Appellate District's judgment in this matter.

STATEMENT OF CASE AND FACTS

Amici curiae, ECEA and LEA, defer to the statement of case and facts as set forth in Appellant's memorandum in support of jurisdiction to the Ohio Supreme Court.

LAW AND ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. 1: The Ohio Legislature's transformation of House Bill 70, from legislation designed to allow local boards to create community learning centers in districts to a substitute bill (Am. Sub. HB 70), focused on allowing Academic Distress Commissions to take over control of local boards seizing their authority and appointing an unelected Chief Executive Officer ("CEO"), violated the Ohio Constitution's Three Reading Rule.

Appellants brought this suit challenging the constitutionality of House Bill 70. The subject matter of this case is the transformation of House Bill 70 ("H.B. 70"), from legislation designed to allow local boards to create community learning centers in districts to a substitute bill ("Am. Sub. H.B. 70"), focused on allowing Academic Distress Commissions to take over control of local boards seizing their authority and appointing an unelected Chief Executive Officer ("CEO").

OH Const. Art. II, § 15, Bills and joint resolutions; single subject; procedures provide:

> "(C) Every bill shall be considered by each house on three different days, unless two-thirds of the members elected to the house in which it is pending suspend this requirement, and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house. No bill may be passed until the bill has been reproduced and distributed to members of the house

in which it is pending and every amendment been made available upon a member's request."

There is no dispute that the legislature, while vested with the power to suspend the "three reading rule" requirement, failed to do so. There is also no dispute that Am. Sub. HB70 did not receive three readings after undergoing its transformation. Instead, the State argues that the three-reading rule does not apply.

While there is a dearth of case law on the three-reading rule, in 1854, the Ohio Supreme Court in *Miller v. State* (1854), 3 Ohio St. 475, 484, held that as long as the legislative journals confirm a bill was passed, and there is nothing that confirms that it was not read, then a presumption of compliance arises. That is, the *Miller* Court found the three-reading considerations to be directory, as opposed to mandatory, and compliance was an enforcement for the General Assembly, not the courts.

However, in 1973, the Ohio Constitution was amended, and the three-consideration rule added the following language "and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house." As a result of the constitutional amendment, in *Hoover v. Bd. Of Franklin Cty. Cmmrs.* (1985), 19 Ohio St.3d 1, 6, 19 OBR 1, 5 482 N.E.2d 575, 580, the Ohio Supreme Court stated, "where it can be proven that the bill in question was not considered the required three times, the consequent enactment is void and without legal effect." In *Hoover*, "S.B. No. 109 was originally introduced" as a bill "...pertaining to criminal non-support." *Hoover*, at 4. Subsequently, the Judiciary Committee "...reported back to the House of Representatives a substitute bill, completely different in content from Am. S.B. No. 109 passed by the Senate." *Id.* "This bill proposed ...'to facilitate the financing, acquisition and construction of hospital and health care facilities for the use of non-profit entities.'" *Id.* It was then amended a third time "...for the Ohio Licensure of Canadian physicians without

examination." *Id.* The *Hoover* court found that these changes mandated compliance with the three-reading rule and remanded it to the court for a determination on compliance.

In *State ex. rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, this court held "as a result of *Hoover* the three-consideration language of Section 15(C), Article II is no longer directory but instead mandatory." The *Voinovich* Court stated:

> "We did not, however, abandon *Miller* in its entirety. The court in *Hoover* went on to adopt *Miller's* reasoning that "amendments which do not vitally alter the substance of a bill do not trigger a requirement for the three considerations anew of such amended bill." (Emphasis added). *Hoover, supra,* 19 Ohio St.3d at 5, 19 OBR at 4, 482 N.E.2d at 579. *See, also, ComTech Systems, Inc. v. Limbach* (1991), 59 Ohio St.3d 96, 570 N.E.2d 1089."

The amendments drastically altered the academic distress commission from the then-current version of R.C. 3302.10. The Tenth District Appellate Court found:

> "H.B. No. 70, as introduced, authorized the creation of community learning centers in underperforming school buildings. If the community learning center process was initiated, the board of education was required to create a school action team composed of 12 members, including 7 parents or guardians of students enrolled in the school and members of the community, and 5 teaching or non-teaching employees assigned to the school. R.C. 3302.18(A). The school action team would conduct a performance audit of the school and propose an improvement plan.
>
> As amended, Am. Sub. H.B. No. 70 retained the community learning center provisions, and added provisions revising the law related to academic distress commissions. It provided that an academic distress commission was to be established for any school district that received an overall failing grade for three consecutive years or had been subject to an academic distress commission under prior law for at least four years. R.C. 3302.10(A). The academic distress commission would be comprised of three members appointed by the state superintendent of education, one teacher employed by the district to be appointed by the president of the board of education, and one member appointed by the mayor of the appropriate municipality. R.C. 3302.10(B)(1). The academic distress commission would then appoint a chief executive officer, whose duties would include creating a plan to improve the district's academic performance, subject to review and approval of the commission. R.C. 3302.10(E).
>
> In this case, the original legislation and the amended final version not only involved the same general subject area of education, but the specific subject area of improving underperforming schools. Notably, the community learning center

> provisions contained in the original legislation were retained in the final version, with some changes through the amendment process. Unlike the scenario in Hoover, Am.Sub. H.B. No. 70 was not completely different in content from H.B. No. 70 as introduced. Rather, the original version, which provided one method of improving underperforming schools, was amended to include another method of improving underperforming schools. Thus, the legislation at issue in this case is more analogous to the heavily amended bill in Voinovich..."

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The Tenth District Appellate Court impermissibly looked to the subject of the bills, as opposed to the purpose of the bills. While both bills dealt broadly with the subject of education, more specifically, the purpose of the two bills were antithetical. The original purpose of H.B. 70 was to provide greater local control and authority by establishing community learning centers. Am. Sub. H.B. 70 completely transformed H.B. 70 on its head by allowing for an unelected CEO to control the local school district, thereby revoking nearly all powers of the local board of education. The purpose of the amendment focused on allowing Academic Distress Commissions to take over control of local boards seizing their authority and appointing an unelected Chief Executive Officer ("CEO").

Indeed, Representative Denise Driehaus, a joint sponsor of the original version of HB 70, testified: Am. Sub. HB70 was "counter to" the purpose of the original bill, that it "was the antithesis of the original bill" and it "turns the [original] bill on its head." The purpose of the original bill was to seek community engagement and input, whereas Am. Sub. HB 70 created "a process where a CEO is first put in place, hired by five people, three of whom are chosen by somebody here in Columbus * * * [with] ultimate authority over the school district." She went on to say: "Eventually, according to this amendment, * * * the entire school district could be dismantled under this amendment by way of the CEO. * * * It's the opposite of what House Bill

70's about." Representative Lepore-Hagan of Youngstown said: "What started as an organic community-based plan for our children's futures has really been turned on its head and perverted by a fast track, heavy handed takeover of Youngstown city schools. The total loss of citizens' rights of local control." Representative Greta Johnson, a co-sponsor of the original bill, withdrew her sponsorship as Am. Sub. HB 70 "was an entirely different animal than what I *** put my name on." Senator Joseph Schiavoni testified: "something this drastic of a change needs public input. So it should have never been an amendment to any bill." Am. Sub. HB 70 failed to receive three readings from each chamber on these drastic amendments

a) The procedure in enacting the bill violates the purpose behind the Three-Reading Rule, avoiding "hasty action" and lessening "the danger of ill-advised amendment at the last moment."

Justice Douglas explained the purpose of the Three-Reading Rule in his concurring opinion in *Hoover*. 19 Ohio St.3d at 8 (Douglas, J., concurring). The purpose of the "three-reading" rule is to prevent "hasty action" and to "lessen the danger of ill-advised amendment at the last moment." *Id.* Further, the rule provides "time for more publicity and greater discussion and affords each legislator an opportunity to study the proposed legislation, communicate with his or her constituents, and note the comments of the press and become sensitive to public opinion." *Id.* The legislature adhering to this rule will help ensure the development of "well-reasoned legislation." *Id.*

This Court examined an amendment process that satisfied the Three-Reading Rule in *Voinovich*. In *Voinovich*, H.B. 107 and its amendments were deliberated for several months. *Voinovich*, 69 Ohio St.3d at 234. The legislature held several hearings on the issues and openly debated the amendments. *Id.* It was determined by this Court that the deliberation process that occurred in *Voinovich* satisfied the underlying purpose of the Three Reading Rule because it

allowed for open debate on the issues and prevented "hasty action" on the adoption of "ill-advised amendments at the last moment." The lengthy and in-depth deliberation process on the amendments ensured the development of well-reasoned legislation.

The Tenth District failed to take the purpose of the Three-Reading Rule into consideration when it found that the adoption of Am. Sub. H.B. 70 did not violate the Three-Reading Rule. The adoption of the amendments to Am. Sub. H.B. 70 were done in less than 24-hours and could not have satisfied the underlying purpose of the Three Reading Rule as outlined by this Court in *Hoover*. The Tenth District found that the "amendments were adopted in the Senate Education Committee on the morning of June 24, 2015" and the "full Senate considered the amended bill later that afternoon." *Youngstown* at ¶23. The House then voted "to concur in the Senate amendments later that same day." *Id.* The process that occurred in the adoption of Am. Sub. H.B. 70 is exactly what this Court sought to prevent in *Hoover*, preventing "hasty action" and to "lessen the danger of ill-advised amendment at the last moment."

In contrast, Am. Sub. H.B. 70 was introduced, amended, and adopted all in the same day. There were no hearings, no open debates, and no opportunity for legislators to communicate with their constituents over the issue. There was no press involvement or any public opinion on the issue. Rather, secret meetings were conducted by State officials and a group of Youngstown business people drafted the amendments that eventually became Am. Sub. H.B. 70. This group conducted secret meetings over a 9-month period that completely excluded the public. In April of 2015, a representative from the Ohio Department of Education attended one of the business meetings to provide the framework for what would become Am. Sub. H.B. 70. Even on the day Am. Sub. H.B. 70 was introduced, the President of Ohio Federation of Teachers attempted to testify against the amendment in front of the legislature. However, she was told that she could not

testify against the amendment because the amendment was not yet ready to be introduced. Shortly after she finished her testimony in support of HB 70 (without the amendment), the legislature introduced Am. Sub. H.B. 70 and the bill was adopted later that day.

The Tenth District seems to draw a distinction between the process in *Voinovich* and the process that occurred in this case. The Tenth District acknowledged that the adoption of the amendments and Am. Sub. H.B. 70 "occurred quickly" and that this case "does not involve the same sort of lengthy, deliberative process" that occurred in *Voinovich*. However, the Tenth District does not provide any reason as to why the process in adopting Am. Sub. H.B. 70 satisfied the Three-Reading Rule. Rather, the Tenth District relied on dicta language in *Voinovich* in which this Court warned against "policing every detail of the legislative amendment process when bills are passed containing a consistent theme." *Youngstown* at ¶23. The Tenth District seemed to use that language as a way to avoid answering an important element of the Three Reading Rule analysis— whether the purpose of the Three Reading Rule has been satisfied through the amendment process. The Tenth District's reasoning is misplaced. Even with the warning provided in *Voinovich*, it does not permit the legislature to completely disregard an Ohio Constitutional requirement.

The only other lawful way not to abide by the Three-Reading Rule is for "two-thirds of the members elected to the house in which [the bill] is pending [to] suspend the requirement." OH Const. Art. II, § 15(C). But it is undisputed that the legislature did not pursue its lawful ability to suspend the rule in this case. Rather, the legislature took "hasty action" which led to the adoption of an "ill-advised amendment at the last moment."

CONCLUSION

Amici Curiae respectfully request that the Court reverse the Ohio Tenth Appellate District's judgment in this matter.

Respectfully submitted,

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I hereby certify that a copy of the foregoing Memorandum of Amici Curiae, East Cleveland Education Association, OEA/NEA And Lorain Education Association, OEA/NEA In Support of Appellants was forwarded by electronic mail and regular U.S. mail to:

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