IN THE SUPREME COURT OF OHIO

YOUNGSTOWN CITY SCHOOL DIST. BD. OF EDN., *et al.*,	:	Case No. 2018-1131
Appellants,	:	
vs.	:	On Appeal from the Court of Appeals of Ohio, Tenth Appellate District,
STATE OF OHIO, *et al.*,	:	Case No. 17AP-775
Appellees.	:	

MERIT BRIEF OF AMICI CURIAE, OHIO SCHOOL BOARDS ASSOCIATION, BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS, OHIO FEDERATION OF TEACHERS, OHIO ASSOCIATION OF SCHOOL BUSINESS OFFICIALS, LORAIN CITY SCHOOL DISTRICT BOARD OF EDUCATION, AND COLUMBUS CITY SCHOOLS BOARD OF EDUCATION IN SUPPORT OF APPELLANTS

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TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES

Layton, *How Ohio Gov. John Kasich took over the schools in Youngstown*, The Washington Post (Feb. 1, 2016), https://www.washingtonpost.com/local/education/how-ohio-gov-john-kasich-took-over-the-schools-in-youngstown/2016/02/01/3944be56-bbc0-11e5-b682-4bb4dd403c7d_story.html?utm_term=.3e33f5dbbe76 (accessed January 3, 2019)..... 12, 13

Luce, *Legislative Procedure: Parliamentary Practices and the Course of Business in the Framing of Statutes* 205 (Riverside 1922)..... 9, 15

Molina, *Are Ohio school takeovers effective? If we don't know, why are they continuing?*, News 5 Cleveland (Sept. 17, 2018), https://www.news5cleveland.com/news/local-news/cleveland-metro/are-ohio-school-takeovers-effective-if-we-dont-know-why-are-they-continuing (accessed January 3, 2019)..... 14

Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution*, Part I, 43 (1971) https://www.lsc.ohio.gov/documents/reference/current/ohioconstrevisioncommrpt/recommendations%20pt1%20general%20assembly.pdf (accessed January 7, 2019)..... 10

Ohio Department of Education, *Youngstown City Schools District Review Report* (June 11, 2018), http://education.ohio.gov/getattachment/Topics/District-and-School-Continuous-Improvement/Academic-Distress-Commission/Youngstown-City-Schools-Academic-Recovery-Plan/YOUNGSTOWN-District-Review-Report-6-8-18.pdf.aspx?lang=en-US (accessed January 3, 2019)..... 14

Vermeule, *The Constitutional Law of Congressional Procedure*, 71 U.Chicago.L.Rev. 433 (2004)..... 9

INTRODUCTION

The Ohio Constitution's Three Reading Rule has two prongs: the first prong says that an amendment to a bill cannot "vitally alter" the bill; the second prong says that the legislative procedure followed in enacting a bill must comply with the Three Reading Rule's animating purpose. The Rule's animating purpose is to avoid "hasty action" and to "lessen the danger of ill-advised amendment at the last moment." *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 233, 631 N.E.2d 582 (1994). But that is not all. The Rule also allows legislators to study proposed bills, gather constituents' thoughts, read reactions from the press, "and become sensitive to public opinion." *Id.*at 233–234.

Here, the Governor's office worked in secret with a handful of Youngstown business leaders to craft a bill that would allow the state to take over struggling districts and enshrine unelected CEOs with "complete operational, managerial, and instructional control of the district." R.C. 3302.10(C)(1). On the last day of the 2015 legislative session, the Governor's office sprang that secret bill on all but a few members of the General Assembly, tacking on 67 pages of law to what was a long-considered 10-page bill. That bill became Am.Sub.H.B. No. 70. Legislators had little opportunity to review it, constituents had no time to contact their legislators, the press had no time to report on the bill, and public opinion had no opportunity to develop, let alone spread. This legislative procedure violated the Three Reading Rule.

The legislature could have remedied its violations of the Three Reading Rule by considering the amendments three times on three different days or by suspending the Rule by a two-thirds vote in each house. Article II, Section 15(C), Ohio Constitution. It made no effort to do that. Instead, complying with the Governor's demands, it rammed the amendment through both houses on the last day of the legislative session.

This case presents the Court with two possibilities. The Court can hold that the legislative procedure involved in the enactment of Am.Sub.H.B. No. 70 violated the animating purpose underlying the Three Reading Rule and is thus unconstitutional. Or the Court can hold that the second prong of the Three Reading Rule, which it announced some 25 years ago, was a dead letter even then—for if the circumstances surrounding Am.Sub.H.B. No. 70's enactment complied with the Rule's second prong, no legislative procedure could violate it.

What's more, the amendment that created Am.Sub.H.B. No. 70 not only vitally altered H.B. No. 70 but also turned that bill's purpose on its head.

On top of that, Am.Sub.H.B. No. 70 unconstitutionally wrests all power from school boards in districts taken over by the state.

The Youngstown City School District Board of Education, the Youngstown Education Association, AFSCME Ohio Council 8 AFL-CIO, Ohio Education Association, and Jane Haggerty (collectively, "the District"), victims of the Governor's plan, filed suit against the state of Ohio, the Ohio Department of Education, and the Superintendent of Public Instruction (collectively, "the State"), seeking, among other things, a declaratory judgment that Am.Sub.H.B. No. 70 is unconstitutional. The bill is void, so the Court should now reverse the lower courts and grant that declaratory judgment.

STATEMENT OF INTEREST OF AMICI CURIAE

The Ohio School Boards Association ("OSBA") is a nonprofit 501(c)(4) corporation dedicated to assisting its members to more effectively serve the needs of students and the larger society they are preparing to enter. Nearly 100% of the 713 district boards in all of the city, local, exempted village, career technical school districts, and educational service center governing boards throughout the State of Ohio are members of the OSBA, which provides extensive informational support, legislative advocacy and consulting activities, as well as policy service and analysis. The

OSBA has adopted a legislative platform that stresses the importance of meaningful participation in the legislative process, noting the members' support of a "consistent and thorough deliberative process" in the General Assembly and opposing the passage of legislation that has not been "thoroughly and properly vetted and heard by both chambers of the General Assembly."

The Buckeye Association of School Administrators ("BASA") is a statewide organization representing over 95% of school district superintendents in Ohio. BASA is a nonprofit 501(c)(6) corporation dedicated to assisting its members to more effectively serve the needs of school administrators and their districts. BASA provides extensive informational support, legislative advocacy, and professional development in an effort to support the professional practice of school administrators.

The Ohio Federation of Teachers ("OFT") is a union of professionals representing approximately 15,000 members, the majority of whom work in large, urban school districts. The OFT envisions an Ohio where all citizens have access to the high quality public education and public services they need to develop to their full potential. The OFT supports the social and economic wellbeing of its members, Ohio's children, families, working people, and communities and is committed to advancing these principles through community engagement, legislative action, collective bargaining and political activism, especially through the work of its members.

The Ohio Association of School Business Officials ("OASBO") is a statewide organization representing over 1200 school business officials (SBOs) in Ohio. OASBO is a nonprofit 501(c)(6) corporation dedicated to assisting its members in effectively fulfilling the finance, operations, and administration needs of Ohio's Boards of Education and school district administration. OASBO provides extensive informational support, advocacy, professional development, business services and search services for SBOs.

The Lorain City School District Board of Education is the local elected body that previously governed the Lorain City School District. Lorain is the second school district in Ohio to come under the control of an appointed CEO, who now wields complete operational, managerial, and instructional control of the district.

The Columbus City Schools Board of Education is the local elected body that governs the Columbus City Schools.

Amici regularly participate in the legislative process and serve as a voice for their members before the General Assembly on matters of concern to their constituents. The thousands of school board members, school officials, and educators who are members of the OSBA, BASA, OFT, OASBO, the Lorain City School District Board of Education, and the Columbus City Schools Board of Education operate in a system that is grounded in the Ohio Constitution and dependent on strong community support. It is critical that amici and their members understand the needs of their local communities and remain accountable to their local constituencies.

Amici also operate in an environment that the State regulates in a broad range of categories. Thus, it is equally important that amici, like other Ohio citizens, be able to engage in the legislative process in a meaningful way.

In enacting Am.Sub.H.B. No. 70, the State ignored and violated the fundamental principles of maintaining local accountability and participation in the legislative process. The impact on amici and their members is significant, and they file this brief in support of the District. For the reasons set forth below and in the District's merit brief, amici urge this Court to grant the District a declaratory judgment invalidating Am.Sub.H.B. No. 70.

STATEMENT OF THE CASE AND FACTS

Amici defer to the statement of the case and facts as set forth in the District's merit brief.

LAW AND ARGUMENT

Standard of Review

A. No facts are in dispute; thus, the question of whether the legislature's hasty action violated the Ohio Constitution is one of law, which the Court reviews de novo.

The question of whether the legislature's hasty action in enacting Am.Sub.H.B. No. 70 violated the constitution presents an issue of law, which courts review de novo. The District sought a declaratory judgment along with injunctive relief on the basis that Am.Sub.H.B. No. 70 violates Article II, Section 15 and Article VI, Section 3 of the Ohio Constitution. At this stage of the proceedings, the declaratory-judgment claim is most salient because a ruling on the merits of that claim will dispose of the case. Questions of law in declaratory-judgment actions like this one receive de novo review. *Arnott v. Arnott*, 132 Ohio St.3d 401, 2012-Ohio-3208, 972 N.E.2d 586, ¶13–16. Given that the parties do not dispute the underlying facts and circumstances surrounding the legislature's enactment of Am.Sub.H.B. No. 70, there remains only a question of law: whether those facts and circumstances demonstrated that the radically altered amended bill required three new considerations in each chamber. If so, Am.Sub.H.B. No. 70 "is void and without legal effect" because those new considerations never happened. *Hoover v. Bd. of Cty. Commrs., Franklin Cty.*, 19 Ohio St.3d 1, 3, 482 N.E.2d 575 (1985).

Proposition of Law No. 1:

> The Ohio Constitution's Three Reading Rule is a mandatory provision. A bill allowing school boards and communities to jointly provide supportive services to schools that is transformed overnight into an amended bill imposing the installation of unelected CEOs imbued with complete operational, managerial, and instructional control of school districts must comply with the Three Reading Rule.

A. The legislature must comply with the Ohio Constitution's Three Reading Rule—it is mandatory and thus enforceable through the courts.

The legislature must comply with the Three Reading Rule contained in Article II, Section 15(C), Ohio Constitution. When, as here, the legislature fails to comply with the Rule, the resulting act is void. *Hoover* at 3. That is, the Rule is mandatory. But it has not always been so.

1. In its earlier formulation, the Three Reading Rule prescribed actual readings—it was directory.

Before its amendment in 1973, Article II, Section 16, of the Ohio Constitution housed a version of the Three Reading Rule mashed together with the one-subject rule. The Court long ago held that version to be directory. *Miller v. State*, 3 Ohio St. 475 (1854). That version said that: "*Every bill shall be fully and distinctly read on three different days*, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title * * *." (Emphasis added.) Article II, Section 16, Ohio Constitution. Several reasons unique to the pre-1973 Rule underlay the Court's reasoning.

First, the Court said that the Rule had to be directory because, otherwise, all courts would have had the power to invalidate statutes that were not " '*fully*' and '*distinctly*' " read three times. The Court fretted that if in any reading a word were omitted or the reading were indistinct, it would have been impossible to know the state of the law. *Miller* at 483. This concern no longer exists because the constitution no longer requires readings, let alone full and distinct readings.

Second, the legislature's proceedings, like a lower court's, deserved a presumption of validity. *Id.*at 480. Nothing in the legislature's journal reflected that all readings had been anything but full and distinct. *Id.*at 481. Similarly, there was no reason to presume that the legislature failed to read the bill three times. After all, the journal "expressly sa[id] that the bill in queation [sic] was that day 'read the *third* time' and passed." (Emphasis sic.) *Id.* In that case, the journal did not show that the amendment, which was called a "new bill," included any substantial change because the matter inserted was consistent with the carried-over title. *Id.*at 479, 482. Lacking any evidence to the contrary, the Court presumed that the alteration was immaterial. *Id.*at 482. The legislature keeps a more detailed journal now, so this concern no longer exists.

Third, the Court endorsed an irrebuttable presumption that when the journal shows that a bill was passed and nothing shows that it was *not* read as required, it was properly enacted. *Id.*at 484. Like judges, legislators take an oath to support the constitution, and there is no reason to doubt that the legislators' sense of duty is weaker. *Id.* The constitution no longer requires actual readings of bills, so this presumption of proper reading need no longer exist.

The current text of the Rule renders compliance with its requirements capable of ready verification in the journal. Compliance with the reformulated Rule is mandatory.

2. The current version of the Rule, adopted in 1973, requires *considerations* rather than readings, and the legislature must record each consideration in the journal—it is now mandatory.

In 1973, the Three Reading Rule moved to Article II, Section 15(C), Ohio Constitution. It no longer requires readings. Instead, it says that:

> *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.

(Emphasis added.) *Id.* Now that verifying compliance with the Rule is mechanical—every consideration of a bill must be "recorded in the journal of the respective house," *id.*—the legislature must comply with the Rule or any resulting act is void. *See Hoover*, 19 Ohio St.3d 1, 482 N.E.2d 575 at the syllabus. The Rule is mandatory. *State ex rel. AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 232, 631 N.E.2d 582 (1994).

The parties agree that Am.Sub.H.B. No. 70 did not receive three considerations after the Governor's office sprang it on most of the General Assembly and all but a handful of the public. Nor did either house suspend the three-consideration rule by a two-thirds vote. Thus, Am.Sub.H.B. No. 70 is void.

3. Although labeled a singular rule, the Three Reading Rule comprises two prongs that apply in different situations: (1) when an amendment vitally alters the affected bill, and (2) when the legislative procedure enacting a bill defeats the Rule's animating purpose. The General Assembly violated both.

The Court formulated the two-pronged version of the Three Reading Rule in *State ex rel. Ohio AFL-CIO*, 69 Ohio St.3d at 225, 631 N.E.2d 582. That formulation drew the first prong, which requires compliance with the Rule after an amendment vitally alters a bill, from *Miller*, 3 Ohio St. at 482. *See also Hoover*, 19 Ohio St.3d at 5, 482 N.E.2d 575. The Court provided some guidance as to the meaning of *vitally altered*—when "there is no longer a common purpose or relationship between the original bill and the bill as amended." *State ex rel. Ohio AFL-CIO* at 233. That formulation drew the second prong, which applies when a court cannot discern whether an amendment vitally alters a bill, from the animating purpose behind the Rule:

> [T]o prevent hasty action and to lessen the danger of ill-advised amendment at the last moment. 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, note the comments of the press and become sensitive to public opinion.

(Citation and quotation marks omitted.) *Id.* at 233–234.

The State's arguments require the Court to apply both prongs of the Rule, and amici endorse the contention that the legislature violated both in enacting Am.Sub.H.B. No. 70. Either would justify reversal. In light of the severity of the legislature's departure from the Rule's purpose, amici, however, focus their efforts on the attempt to shroud the process in secrecy. To be sure, the results flowing from Am.Sub.H.B. No. 70 demonstrate that it codifies poor public policy. But even were it successful, the Act would still offend the Three Reading Rule.

B. The legislature's procedure in enacting Am.Sub.H.B. No. 70 deliberately subverted the purpose prong of the Three Reading Rule.

1. The purpose prong of the Three Reading Rule set forth in *State ex rel. Ohio AFL-CIO* embodies the policy that has underlain three-reading rules for nearly five centuries and flows from the purpose set forth by the 1971 Ohio Constitutional Revision Commission.

The Court did not conjure out of thin air the purpose prong of the Three Reading Rule. Rather, three-reading rules are a venerable parliamentary practice dating back to at least 1547 and the Journals of the House of Commons. Robert Luce, *Legislative Procedure: Parliamentary Practices and the Course of Business in the Framing of Statutes* 205 (Riverside 1922). And the practice of spreading the readings over three days existed in Massachusetts in 1657: "[N]o grant of land, law or order * * * shall henceforth be of force but such as, after *reading and mature consideration on three several days*, shall be approved and consented to by the major part of the Magistrates and Deputies." (Emphasis added.) *Id.* at 206. The purpose of three-reading rules did not change between Luce's book, published in 1922, and the Ohio Constitutional Revision Commission's report, published in 1971.

The purposes of three-reading rules have always included deliberate action, adequate information, and orderly discussion. *Id.* at 204. And to have the desired results, the rules must be entrenched, preferably in constitutions. Vermeule, *The Constitutional Law of Congressional*

Procedure, 71 U.Chicago.L.Rev. 433 (2004). The rules allow "the legislature to guard against the consequences of its own future passions, myopia, or herd behavior." *Id.* at 432.

The purpose behind Ohio's constitutional three-consideration rule (there is no longer a three-reading rule, per se) shares a common goal with its predecessors—the purpose discussed by the Ohio Constitutional Revision Commission was "maintaining safeguards against hasty consideration." Ohio Constitutional Revision Commission, Recommendations for Amendments to the Ohio Constitution, Part I, 43 (December 31, 1971). https://www.lsc.ohio.gov/documents/reference/current/ohioconstrevisioncommrpt/recommendations%20pt1%20general%20assembly.pdf (accessed January 7, 2019). Indeed, the Commission recognized that bills in Ohio were essentially never "fully and distinctly read" over three days. *Id.* at 42–43. The three-reading requirement had become an "archaism." *Id.*at 42. Yet the committee declined to suggest removal of the provision requiring action on three separate days because it wanted to "check undue haste in the enactment of legislation." *Id.*at 43. Instead, it suggested a change to make the legislature more accountable: every consideration of a bill "would have to be recorded in the journal." *Id.* at 42. And the committee deliberately recommended that the Rule remain a constitutional one rather than a legislative one—the committee reasoned that "if the protection is in the Constitution, it cannot be suspended * * *." *Id.*at 44.

The Court properly recognized that the legislature's procedure in enacting legislation must comply with this "underlying purpose of the three-consideration provision." *State ex rel. Ohio AFL-CIO*, 69 Ohio St.3d at 233, 631 N.E.2d 582.

2. Looking to the underlying purpose of the three-consideration provision, the secretive process that bred Am.Sub.H.B. No. 70 fell well short of the open debate approved in *State ex rel. Ohio AFL-CIO.*

The purpose prong of the Three Reading Rule, set forth in *State ex rel. Ohio AFL-CIO*, requires that the Court evaluate whether the legislature's enactment procedure complied with the

animating purpose of the Rule. *Id.* at 233. The legislature's secretive process here fell well short of the open debate endorsed in *State ex rel. Ohio AFL-CIO*. Indeed, the manner of enactment here demonstrates a deliberate attempt to avoid open debate and public input.

The enactment of Am.Sub.H.B. No. 107 in *State ex rel. Ohio AFL-CIO* complied with the Three Reading Rule's animating purpose. That purpose includes preventing "hasty action" and lessening "the danger of ill-advised amendment at the last moment." *Id.* at 233. It "affords *each legislator* an opportunity to study the proposed legislation, communicate with his or her constituents, note the comments of the press and become sensitive to public opinion." (Emphasis added.) *Id.*at 233–234. The legislative debate over Am.Sub.H.B. No. 107 lasted for months in each house. *Id.* at 234. The Governor jumpstarted that debate by announcing *in the press* that he would veto any appropriations bill that failed to reform the workers' compensation system. *Id.* In short, the legislature acted neither in last-minute haste nor in secret.

3. If the legislature's deliberate procedure here does not violate the second prong of the Three Reading Rule and thus does not require that the Court invalidate Am.Sub.H.B. No. 70, then no realistic legislative procedure will.

The enactment of Am.Sub.H.B. No. 70 here stands in stark contrast to the open and public process endorsed in *State ex rel. Ohio AFL-CIO*. The contrast is so stark that, should the Court decline to invalidate Am.Sub.H.B. No. 70 for its *deliberate* subversion of the Three Reading Rule's animating purpose, it would be all but impossible to construct a scenario that would justify invalidation. Put differently, the Court must either invalidate Am.Sub.H.B. No. 70 or recant and overrule *State ex rel. AFL-CIO*.

The legislative chicanery that accompanied the enactment of Am.Sub.H.B. No. 70 demonstrated the legislature's deliberate subversion of the Three Reading Rule's animating purpose. There is no doubt that Am.Sub.H.B. No. 70 was a last-moment amendment. The legislature

introduced and approved the amendment that became Am.Sub.H.B. No. 70 on the last day of the 131st General Assembly's legislative session.

The entire process of developing this amendment festered in secret. The 10-month process began when the president of the Youngstown/Warren Regional Chamber met in secret with members of the Governor's office and the Ohio Department of Education. (Tr. 181.) The Chamber president assembled a cabinet intended to remain secret but somehow also achieve the goal of reaching out to the public. (T.d. 150–153, Exhibit 8c.) Prioritizing secrecy over outreach, the cabinet never formally publicized itself. (T.d. 148, p. 93.) Indeed, it took pains to hide the cabinet's public servant–private sector partnership—a partnership that included then-Ohio School Superintendent Richard Ross. https://www.washingtonpost.com/local/education/how-ohio-gov-john-kasich-took-over-the-schools-in-youngstown/2016/02/01/3944be56-bbc0-11e5-b682-4bb4dd403c7d_story.html?utm_term=.3e33f5dbbe76 (accessed January 3, 2019). The ostensibly public-servant side weighed in heavily on the plan. "It was clear that Kasich's staff wrote the takeover plan; even after the legislature passed the bill, some of the 'cabinet' members were asking state officials to explain parts of it according to [notes taken at the cabinet meetings]." *Id.* Secrecy remained paramount throughout the process as then-Superintendent Ross admonished the members that "confidentiality amongst the Cabinet is essential * * *." *Id.* The goal was avoiding pushback from the public. (T.d. 148, p. 106; T.d. 150–153, Exhibit 35.)

In service of its goal of secrecy and avoiding public pushback, the Senate Education Committee introduced Am.Sub.H.B. No. 70 on the last day of the legislative session. Even after passage without media attention or public input became a foregone conclusion, the Committee deterred public debate. At the Committee meeting the day it introduced Am.Sub.H.B. No. 70, Melissa Cropper, president of the Ohio Federation of Teachers, testified in support of the original

H.B. 70. (Tr. 237.) She had learned of the coming changes and tried to speak out against them. (Tr. 240.) But the Committee Chair denied Cropper that opportunity because the amended version had not been introduced yet. (*Id.*) No sooner did Cropper return to her seat after testifying than the Committee introduced the amended version of the bill. (T.d. 148, p. 240.) The Committee reported the amended version out of committee that day, and the Senate passed it the same day. (T.d. 150–153, Exhibit 46.) Later that day, the House, which had already considered and passed H.B. 70, voted to accept the Senate's amendments.

This secret and swift legislative chicanery thwarted the Three Reading Rule's animating purpose. The actual legislative process—spanning the course of a single day—is quintessential "hasty action." That is despite Governor Kasich's opinion that "Some people said it moved too fast; I think it moved too slow." https://www.washingtonpost.com/local/education/how-ohio-gov-john-kasich-took-over-the-schools-in-youngstown/2016/02/01/3944be56-bbc0-11e5-b682-4bb4dd403c7d_story.html?utm_term=.3e33f5dbbe76 (accessed January 3, 2019).

Legislators lacked "an opportunity to study the proposed legislation" or communicate with constituents before the vote. *State ex rel. Ohio AFL-CIO*, 69 Ohio St.3d at 233, 631 N.E.2d 582. For instance, Representative Greta Johnson, a sponsor of H.B. 70, testified that "we didn't have time to digest it and there was not input from the community that it was going to impact." (T.d. 148, p. 222.) In fact, in a recent Columbus Dispatch article, State Senator Peggy Lehner, chairwoman of the Senate Education Committee, allowed that " '[Am.Sub.H.B. No. 70] went through very quickly * * * I think it was on the last day of session.' The crafting of the law 'was not something that the legislature played any role in.' " https://www.dispatch.com/news/20181231/plan-for-potential-takeover-of-columbus-schools-crafted-secretly-passed-quickly (accessed January 7, 2019). Rather, "Kasich's office came in the

night before the vote wanting to add the amendment. 'And the legislature did that,' Lehner said. 'In hindsight, I wish we had spent more time.' " *Id.* The hasty legislative action prevented the press from meaningfully commenting. *State ex rel. Ohio AFL-CIO* at 234. The hasty legislative action also prevented public opinion from forming in the first place, let alone affecting legislators' views. *Id.* That is, the plan to avoid pushback worked.

The animating purpose behind the Rule includes one last goal: avoiding ill-advised last-moment amendments. *Id.* at 233. To be sure, this particular amendment was ill-advised. Youngstown's school district is now operating under the control of an unelected CEO, who wields "complete operational, managerial, and instructional control of the district." R.C. 3302.10(C)(1). The Lorain City School District suffered the same fate. The state takeover of these districts has not worked. Both received Fs this year—Lorain actually lost ground, going from a D to an F. https://www.news5cleveland.com/news/local-news/cleveland-metro/are-ohio-school-takeovers-effective-if-we-dont-know-why-are-they-continuing (accessed January 3, 2019). Indeed, the State's own report on Youngstown demonstrates the district's unresolved problems. http://education.ohio.gov/getattachment/Topics/District-and-School-Continuous-Improvement/Academic-Distress-Commission/Youngstown-City-Schools-Academic-Recovery-Plan/YOUNGSTOWN-District-Review-Report-6-8-18.pdf.aspx?lang=en-US (accessed January 3, 2019). Given its lackluster results, Am.Sub.H.B. No. 70 embodies the concept of the ill-advised last-moment amendment.

But the Three Reading Rule's purpose of avoiding ill-advised last-moment amendments does not sanction an after-the-fact test for whether an enactment constitutes good policy. That Am.Sub.H.B. No. 70 failed does not render it unconstitutional. The *process* that brought it about rendered it unconstitutional. After all, the General Assembly chooses and directs public policy,

the courts determine only the constitutionality of those choices. *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, ¶ 212. Rather than police substance, the Rule aims to avoid ill-advised last-moment amendments as a procedural goal because no matter which party controls the legislature, last-moment amendments that skirt the public vetting process pose a greater risk of birthing ill-advised or ill-conceived public-policy choices. Three-reading rules have stood as a bulwark against similar amendments for almost 500 years. Luce, *Legislative Procedure: Parliamentary Practices and the Course of Business in the Framing of Statutes* at 205. Am.Sub.H.B. No. 70 illustrates why. The Court should invalidate Am.Sub.H.B. No. 70 not because it is bad policy—though it is—but because that bad policy was born of bad procedure.

The Court should thus apply the Three Reading Rule's purpose prong and issue a declaratory judgment invalidating Am.Sub.H.B. No. 70. *State ex rel. Ohio AFL-CIO*, 69 Ohio St.3d at 233–234, 631 N.E.2d 582. The circumstances surrounding Am.Sub.H.B. No. 70's enactment fly in the face of the purpose that underlays the Rule—avoiding "hasty action" and encouraging constituents' involvement. Those circumstances demonstrate the legislature's deliberate subversion of the Rule. Should this Court hold that Am.Sub.H.B. No. 70 did not violate the second prong of the Rule and is instead a valid act, the Court must overrule the second prong because it was a dead letter the moment the Court announced it.

C. The enactment of Am.Sub.H.B. No. 70 similarly violated the substantive prong of the Three Reading Rule because the amendment vitally altered H.B. No. 70.

Amici fully endorse the District's argument that Am.Sub.H.B. No. 70 vitally altered H.B. No. 70, which triggered the need for three additional considerations. Rather than belabor the District's points, amici note their agreement.

Proposition of Law No. 2:

> Am.Sub.H.B. 70, which radically amended R.C. 3302.10 to include the appointment of an unelected chief executive officer vested with complete operational, managerial, and instructional control of a school district, usurps the powers of elected boards of education in violation of Ohio Constitution, Article VI, Section 3.

Amici share a keen interest in preserving the community-centered autonomy of local school boards. Voters elect the members of their districts' school boards from their own communities. In turn, those boards manage their districts. But R.C. 3302.10, enacted in Am.Sub.H.B. No. 70, upends this system by unconstitutionally usurping the powers of school boards and, by extension, the will of the voters who elected the board members. In doing so, it violates Article VI, Section 3, of the Ohio Constitution.

The Ohio Constitution provides in Article VI, Section 3, that school districts "embraced wholly or in part within any city shall have the power by referendum vote to determine for [themselves] the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts."

In a vacuum, that language addresses only "questions of size and organization, not the power and authority, of city school boards." *State ex rel. Ohio Cong. of Parents & Teachers v. State Bd. of Ed.*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, ¶ 47. Yet the Ohio Constitution does not operate in a vacuum.

Concluding that Am.Sub.H.B. No. 70 passed constitutional muster, the Tenth District relied in part on *Parents & Teachers*' holding that under Article VI, Section 3, legislation can constitutionally provide for public charter schools independent of any school district. 10th Dist. Franklin No. 17AP-775, ¶ 27. After all, boards have only the powers conferred on them by statute. *Id.*, citing *Parents & Teachers* at ¶ 47. But *Parents & Teachers* observed that "the school boards have authority over the districts they are elected to serve." *Id. Parents & Teachers* held

that the plaintiff–appellants failed to prove that the law then in question usurped city school districts' powers. *Id.* That failure of proof prevented the Court from finding the statute unconstitutional. *Id.*

The District's case does not suffer from the same failure of proof underpinning the ruling in *Parents & Teachers*. Here, the statute reserves to the appointed chief executive officer the power to carry out all actions and wrests all power from a school board. It does so by granting the chief executive officer "complete operational, managerial, and instructional control of the district, which shall include, but shall not be limited to" a long list of enumerated (technically, lettered) powers. R.C. 3302.10(C)(1). Beyond the enumerated powers the provision shifts to the chief executive officer, the statute ensnares all of the unspecified including-but-not-limited-to powers. Indeed, R.C. 3302.10(O) empowers the chief executive officer to close *all* of a district's schools, which dissolves the academic-distress commission, removes the chief executive officer's power, *and* leaves nothing for the already-impotent school board to do. Irrespective of R.C. 5705.21's text, surely, at the point a district collapses, its board has lost the ability to place on the ballot a levy to operate the now-hollowed-out school district. Am.Sub.H.B. No. 70 thus usurps all board authority—even the authority to put a tax levy on the ballot—distinguishing this case from *Parents & Teachers*.

There comes a point where stripping the power and authority of a school board necessarily renders the power to determine size and organization meaningless. Am.Sub.H.B. No. 70 represents that point. The Ohio Constitution does not intend to secure the right to engage in a vain act: electing a powerless board that must sit idly by while an unelected chief executive officer potentially disbands the entire district. Amici submit that where, as here, the legislature drains

all of a school board's powers, the law renders meaningless the right to determine the number of members and the resulting organization.

Am.Sub.H.B. 70 therefore unconstitutionally impinges upon the voters who chose their local school board members. Having the right only to cast a ballot for powerless school board members is meaningless—and unconstitutional.

CONCLUSION

Amici stand firm with the District. This Court should enter a declaratory judgment in the District's favor because Am.Sub.H.B. No. 70 is void and unenforceable. It is void and unenforceable because the legislature deliberately subverted the purpose of the Three Reading Rule when it enacted the bill; because its amendment to H.B. No. 70 vitally altered the bill; and because R.C. 3302.10, codified by Am.Sub.H.B. No. 70, violates Article VI, Section 3, Ohio Constitution, by stripping all powers from school board members and thus denying board constituents any meaningful rights to elect those school board members.

Respectfully submitted,

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I certify that I served this document via email this 8th day of January, 2019, upon the following:

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