In the Supreme Court of Ohio

YOUNGSTOWN CITY SCHOOL DISTRICT BOARD OF EDUCATION, *et al.*, Appellants,	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
v.	:	Supreme Court Case No. 2018-1131
STATE OF OHIO, *et al.*, Appellees.	:	Court of Appeals Case No. 17 AP 775

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Canton City School District Board of Education respectfully requests that this Court invalidate 2015 Amended Substitute House Bill No. 70 ("HB 70" or "Am.Sub.H.B. No. 70"), a mechanism created by the Ohio General Assembly to impermissibly strip locally-elected school boards of authority in violation of the Ohio Constitution. The original bill was intended to provide assistance to buoy struggling public school districts and enable locally-elected boards of education to "right the ship" for students; however, the General Assembly's eleventh-hour amendments turned HB 70 into a draconian seizure of school districts by those with no personal stake in a school district's progress. As discussed below, the General Assembly's improper passage of HB 70 has thus far allowed for a targeted attack on certain lower-income, urban school districts throughout the state under the guise of "educational assistance."

The Canton City School District (the "District") is a "city school district" pursuant to R.C. 3311.01 and 3311.03 located in Stark County, Ohio. The District is considered a political subdivision of the state under R.C. 2744.01, *et seq.* The District currently maintains a total student enrollment of seven thousand, seven hundred and ninety-one (7,791) students who attend the twenty-two (22) schools in the District. The Canton City School District Board of Education (the "Board") is the locally-elected body that governs the District. In September 2018, the District became one of fourteen (14) Ohio public school districts foisted into the three-year process leading to an outside takeover pursuant to HB 70, now codified at R.C. 3302.10.[1] Notably, the demographics of the city of Canton (the "City") tell the tale of a community that needs both stability and consistency in its Board leadership in order to ensure future progress.

[1] The District is in year one of the three-year process prior to state takeover pursuant to Am.Sub.H.B. No. 70, as it received a failing grade on its State Report Card for the 2018-2019 school year. R.C. 3302.10(A)(1).

The City currently maintains an unemployment rate of 11.8%, while the state average is 6.5%. In addition, the State of Ohio median household income is currently $52,407; however, the City has a significantly lower median household income of $30,837. And, while 14.0% of Ohioans generally live in poverty, the City's poverty rate is a staggering 31.7%.[2] Other Ohio cities with public school districts subject to HB 70 evidence similar demographics:

Ohio Public School Districts Impacted by Am.Sub.H.B. No. 70[3]

District	Population	Unemploy-ment Rate	Median Household Income	Persons in Poverty	Owner Occupied Housing Units	Median Value of Owner-Occupied Housing Units
Ashtabula Area City	18,144	11.9%	$29,421	33.7%	44.9%	$ 70,100
Canton City	70,909	11.8%	$30,837	31.7%	47.9%	$ 70,200
Cleveland Municipal	385,525	16.0%	$27,854	35.2%	41.8%	$ 67,600
Columbus City	879,170	6.3%	$49,478	20.8%	45.1%	$136,500
Dayton City	140,371	12.9%	$30,128	32.7%	47.9%	$ 66,500
East Cleveland City	17.187	19.9%	$21,184	40.5%	34.0%	$ 56,800
Euclid City	47,201	9.7%	$37,141	21.9%	47.9%	$ 81,200
Lima City	37,149	12.4%	$32,894	25.8%	45.5%	$ 66,000

[2] Likewise, the state average for owner-occupied housing units is 66.1% and the median value of such units is $135,100; however, the city of Canton averages only 47.9% of owner-occupied housing units, which have a median value of $70,200.

[3] United States Census Bureau QuickFacts, https://www.census.gov/quickfacts/fact/table/US/PST045218 (accessed Dec. 18, 2018); Ohio Department of Education, https://reportcard.education.ohio.gov/ (accessed Dec. 18, 2018); United States Census Bureau American FactFinder, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (accessed Dec. 18, 2018).

District	Population	Unemploy-ment Rate	Median Household Income	Persons in Poverty	Owner Occupied Housing Units	Median Value of Owner-Occupied Housing Units
Lorain City	63,841	11.4%	$36,139	25.4%	56.8%	$ 84,300
Mansfield City	46,160	10.6%	$34,219	23.8%	52.2%	$ 77,000
N. College Hill City	9,309	6.5%	$44,265	16.5%	50.3%	$ 82,800
Painesville City	19,813	7.0%	$45,806	20.5%	51.9%	$ 97,100
Toledo City	276,491	10.8%	$35,808	26.5%	51.9%	$ 78,600
Youngs-town City	64,604	15.4%	$26,295	36.8%	56.6%	$ 43,500
State of Ohio	**11,689.442**	**6.5%**	**$52,407**	**$14.0%**	**66.1%**	**$135,100**

Instead of providing the vital assistance contemplated by the *original* H.B. No. 70 legislation for these districts, 2015 Am.Sub.H.B. No. 70 ultimately allows for the implementation of a targeted takeover process aimed at struggling, lower-income, urban school districts throughout Ohio.

This case poses critical questions which will ultimately have an impact on every public school district in Ohio, particularly those districts identified above:

- Whether the Ohio General Assembly's failure to abide by the terms of the Three-Reading Rule provided in Article II, Section 15(C), of the Ohio Constitution in passing 2015 Am.Sub.H.B. No. 70 renders the legislation unconstitutional and invalid?

- Whether the Ohio General Assembly's action in violating the provisions of Article VI, Section 3, of the Ohio Constitution by stripping locally-elected boards of education with authority and allowing an outside takeover by unelected individuals in passing 2015 Am.Sub.H.B. No. 70 renders the legislation unconstitutional and invalid?

This Court has an opportunity to uphold fundamental principles of the Ohio Constitution – principles which cannot and must not be ignored in a rush to pass hasty legislation. Indeed, the

future of the District, its Board, and its community will be directly impacted by the outcome of this case. As such, the Canton City School District urges this Court to reverse the Tenth District Court of Appeals' decision and render 2015 Am.Sub.H.B. No. 70 unconstitutional and invalid for the reasons set forth below.

STATEMENT OF FACTS

The Amicus defers to and adopts by reference the Statement of Facts as set forth in the Appellants' Merit Brief.

LAW AND ARGUMENT

A. The General Assembly's Violation of the Three-Reading Rule of Article II, Section 15(C), of the Ohio Constitution in Enacting 2015 Am.Sub.H.B. No. 70 Renders the Legislation Unconstitutional and Invalid.

The Ohio General Assembly's failure to comply with the mandated provisions of the Three-Reading Rule (the "Rule") requirement located in Article II, Section 15(C), of the Ohio Constitution renders the legislation at issue unconstitutional. Specifically, that section requires 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.

Article II, Section 15(C), Ohio Constitution. While the *original* HB 70 complied with this provision, Am.Sub.H.B. No. 70 – which vitally altered the original ten page bill by adding sixty-seven pages having nothing to do with the original purpose or theme of the legislation – failed to comply with the Rule's requirement.[4] Instead, Am.Sub. H.B. No. 70 was rushed through the Ohio Senate and House of Representatives for a vote in a period of less than a single day. Such

[4] At no time did two-thirds of the members of the Ohio Senate or House of Representatives vote to suspend the Rule's requirements with respect to the passage of Am.Sub.H.B. No. 70.

action violates the plain language of Article II, Section 15(C), of the Ohio Constitution and this Court's precedent regarding the implementation of this Rule.

1. This Court's Precedent Clearly Enunciates the Parameters for Utilization of the Three-Reading Rule.

This Court has previously addressed the parameters for determining whether legislation has violated the Rule while in the process of being enacted. The fundamental purpose behind the Rule was first articulated in *Miller v. State*, 3 Ohio St. 475 (1854), when this Court explained that "[w]hen the subject or proposition of [a] bill is… wholly changed [by amendment], **it would seem to be proper to read the amended bill three times, and on different days**; but when there is no such vital alteration, three readings of the bill are not required." *Id.* at 481 (emphasis added).[5] This rationale was further expanded in *Hoover v. Bd. of Cty. Commrs.*, 19 Ohio St.3d 1, 482 N.E.2d 575 (1985), where the Court held that a challenge to proposed legislation survived a motion to dismiss when "a substitute bill, completely different in content from [the original bill] [was] passed by the Senate." *Id.* at 5. In analyzing this claim, the Court reiterated the principle articulated in *Miller* by providing that "…amendments which do not vitally alter the substance of a bill do not trigger a requirement for three new considerations of such amended bill." *Id.* But, when a bill is "wholly changed" by amendment, "it would seem to be proper to read the amended bill three times, and on three different days." *Id.* (internal citations omitted). Justice Douglas expanded on this rationale in his concurrence:

> ...the purpose of the 'three reading rule **is to prevent hasty action and to lessen the danger of ill-advised amendment at the last**

[5] In *Miller*, the General Assembly considered the legislation at issue twice then referred it to committee. In committee, the bill was amended in such a way that it "[struck] out all after the enacting clause and insert[ed] a new bill." *Id.* at 479. While the *Miller* Court utilized an older version of the Three Reading Rule and determined the bill at issue had been validly passed, the rationale of allowing for the re-reading of an amended bill that has been vitally altered is, nonetheless, clearly articulated in the *Miller* Court's decision.

> **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. **Adherence to this rule will help to ensure well-reasoned legislation**."

Id. at 8-9 (emphasis added).

This Court again revisited the Rule in *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 1994-Ohio-1, 631 N.E.2d 582. In that case, the Court specifically explained that "…we must look to the underlying purpose of the three-consideration provision…[a]s articulated by Justice Douglas in his concurring opinion in *Hoover*[.]"[6] *Id.* at 233. Utilizing this rationale, the *Voinovich* Court opined that as opposed to *Hoover's* holding that a bill must be "wholly changed" to justify the Rule:

> …we feel that a more demanding constitutional test is one that examines whether a bill was 'vitally altered,' departing entirely from a consistent theme. We therefore hold that a legislative Act is valid if the requisite entries are made in the legislative journals and there is no indication that the **subject matter of the original bill was 'vitally altered'** such that there is no longer a common purpose or relationship between the original bill and the bill as amended."

Id. at 233 (emphasis in original). In order to determine whether a bill has been "vitally altered" by the incorporation of amendments, the *Voinovich* Court explained "[t]he difference between a valid bill that is heavily amended…and an invalid one…is one of degree…" *Id.*

In light of this precedent, this Court must determine whether the amendments to HB 70 "vitally altered" the bill such that:

(1) there was no common purpose or relationship between the original bill and the amended bill; or

(2) that the amendments depart entirely from a consistent theme.

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[6] *See also Village of Linndale v. State,* 19 N.E.3d 935, 2014-Ohio-4024 (10th Dist.).

If such a "vital alteration" took place, implementation of the Rule with respect to Am.Sub.H.B. No. 70 was mandatory. As discussed below, because the bill was vitally altered by amendments and the Rule was not utilized prior to the passage of Am.Sub.H.B. No. 70, the legislation is unconstitutional and invalid.

2. The Amendments to Original HB 70 Vitally Altered the Bill, Thereby Triggering the Mandatory Three-Reading Rule of Article II, Section 15(C), for Am.Sub.H.B. No. 70.

When HB 70 was introduced, it was a ten-page document with a single stated purpose: "To enact sections 3302.16, 3302.17, and 3302.18 of the Revised Code to authorize school districts and community schools to initiate a Community Learning Center process to assist and guide school restructuring." Specifically, original HB 70 empowered local boards of education to create and establish community learning centers. This proposed **voluntary** process planned to involve multiple public hearings with the community followed by a vote of parents, guardians, teachers, and non-teachers working with the applicable district. Following the creation of a learning center, the local board of education could then choose to create a "school action team" to review the school's needs, create an improvement plan, and conduct an audit of the school's performance. All such proposed activities were subject to the approval of the board of education, parents, guardians, teachers, and other employees. Further, not only did the centers provide for school services, but also the original bill contemplated the provision of developmental, family, and health services to students, families, and community centers. In the end, the proposed process was an entirely voluntary one, and at all times appropriately overseen by both the board of education and community.

Following the implementation of the amendments to the original HB 70, Am.Sub.H.B. No. 70 became a seventy-seven page monstrosity that bore no resemblance to the original

legislation. Instead of enhancing a local board of education's ability to provide services for students and families, Am.Sub. H.B. No. 70 strips away all local control through the creation of academic distress commissions ("ADCs"). This **involuntary** process, in which a single CEO (who may or may not have any experience whatsoever in education) is appointed to run an entire school district, completely confiscates all authority from the locally elected board of education. In the end, the CEO, who is not required to be a member of the community or have any previous experience in an educational setting, "shall exercise complete operational, managerial and instructional control of the district." R.C. 3302.10(C)(1).

After HB 70's initial passage by the House of Representatives on May 19, 2015, HB 70 received a first reading by the Senate on May 20, 2015 and was then referred to the Senate Education Committee. Following the Senate Education Committee's hearing on June 24, 2015, Am.Sub.H.B. No. 70 was reported to the Senate on the **same day**. The "vitally altered" bill was read only once prior to passage, in violation of Article II, Section 15 of the Ohio Constitution.[7]

Appellees' claim that the amendments to the original HB 70 did not constitute a "vital alteration" of the bill simply does not pass muster. This case constitutes a classic example of a "vital alteration" as contemplated by this Court because the entire purpose and theme of the original legislation was upended via sixty-seven pages of amendments. In a matter of mere hours, HB 70 advanced from ten pages focusing on the implementation of community learning centers for the benefit of public school districts to seventy-seven pages allowing for an outside and essentially ungoverned takeover of districts. Such a drastic change in purpose and theme justified the utilization and necessity of the Rule, in an effort to avoid "hasty action" and "lessen

[7] The same day, the Senate communicated with the House of Representatives regarding Am.Sub.H.B. No. 70, and the House voted to accept the amendments – also without the required two additional readings on two additional days. Governor Kasich then signed Am.Sub.H.B. No. 70 into law on July 16, 2015.

the danger of ill-advised amendment[s]" from being added at the eleventh hour. This case stands in stark contrast to the amended bill that this Court was faced with in *Voinovich*, as that bill's amendments had undergone hearings in which "the issues were openly debated," such that the legislature's action in passing the amended bill was not "hasty" or allowing for an "ill-advised amendment." *Voinovich*, 69 Ohio St.3d 225 at 233-34. Conversely, "there was no time under these facts to accomplish the purpose of the three-reading rule [with Am.Sub.H.B. No. 70]" as Judge Jennifer Brunner noted in her dissent. *Youngstown City Sch. Dist. Bd. of Educ. v. State of Ohio*, 10th Dist. Franklin No. 15AP-941, 2017-Ohio-555, ¶ 64 (J. Brunner, dissenting). Indeed:

> …Am.Sub.HB 70 was reported out of the Senate Education Committee, submitted to a vote of the full Senate, amended by the full Senate, referred to the House and considered by the House, which concurred with the Senate's amendments, all in the same day, June 24, 2015. This does not pass muster.

Id. at ¶ 65. Contrary to Appellees' claim that Appellants "seek to place 'this court in the position of directly policing every detail of the legislative amendment process,'" the revisions to original HB 70 exemplify the kind of alteration that Justice Douglas contemplated to be improper and unconstitutional in *Hoover v. Bd. of Cty. Commrs.*, *supra*.

Unfortunately, this analysis was not properly undertaken by the Tenth District Court of Appeals in this case. Instead of following the guidance articulated by Justice Douglas and reaffirmed by this Court in *Voinovich,* the Tenth District Court of Appeals looked only to the *subject* of the bill, instead of completing an analysis regarding the consistency of purpose or theme of HB 70. The Tenth District held that "[i]n this case, the original legislation and the amended final version not only involved the **same general subject area** of education, but the **specific subject** of improving underperforming schools." *Youngstown City Sch. Dist. Bd. of Educ. v. State of Ohio,* 104 N.E.3d 1060, 2018-Ohio-2532, ¶ 21 (10th Dist.) (emphasis added). **Not once** is the requisite standard of reviewing the consistent "purpose" or "theme" of the

original and amended legislation even mentioned by the Tenth District Court of Appeal. Instead, the Appellate Court's improper focus on the subject of the original HB 70 and Am.Sub.H.B. No. 70 fails to comply with the standard of review mandated by this Court. Yes, both the original and amended versions of HB 70 deal with the *subject* of education; however, the *purpose* behind the original and amended bills could not be further apart.

The differences in the purpose of the original HB 70 as compared to Am.Sub.H.B. No. 70 constitutes the epitome of this Court's contemplation in *Voinovich* that the Three-Reading Rule becomes mandatory when a bill is vitally altered such that there is no longer a common purpose or relationship between the original bill and the bill as amended. Moreover, the fact that Am.Sub.H.B. No. 70 was introduced in the Senate, passed, and rushed through the House in less than one day constitutes the exact action Justice Douglas sought to prevent when he explained that the Three-Reading Rule was necessary to prevent "hasty action" and to "lessen the danger of ill-advised amendment at the last moment." *Hoover v. Bd. of Cty. Commrs.*, 19 Ohio St.3d at 8.

Because HB 70 was "vitally altered" by amendment, the Ohio General Assembly's failure to utilize the Rule prior to Am.Sub.H.B. No. 70's passage renders the legislation unconstitutional and invalid.

B. Am.Sub.H.B. No. 70 Impermissibly Usurps the Powers of the Locally-Elected Board of Education in Direct Violation of Article VI, Section 3, of the Ohio Constitution.

Article VI, Section 3 of the Ohio Constitution confers the right for voters in each community to make a determination about the composition and organization of their city's board of education. Specifically, the Article provides that "each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself 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." Article VI, Section 3, Ohio

Constitution. Am.Sub. H.B. No. 70 unconstitutionally usurps the power of a city's citizens to make such a determination, and, as such, runs afoul of the Ohio Constitution.

A public school district experiencing academic difficulties is all the *more* in need of allowing the community to elect its local board of education to address the unique needs of the district in order to move forward in a meaningful fashion. However, Am.Sub. H.B. No. 70 ultimately renders the voting process for an elected board of education utterly meaningless, as it completely divests a board of education of all powers and responsibilities. This action is simply not allowable under Article VI, Section 3.

In finding otherwise, the Tenth District Court of Appeals improperly analogized this case to *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn.*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148. In that case, this Court recognized the fundamental principle that "school boards have authority over the districts they are elected to serve." *Id.* Given that backdrop, this Court went on to hold that:

> By choosing to create community schools as part of the state's program of education but independent of school districts, the General Assembly has not intruded on the powers of city school boards. Applying the facial challenge standard, **we hold that appellants have not proved, beyond a reasonable doubt, that the powers of city school districts have been usurped**, rendering R.C. Chapter 3314 unconstitutional.

Id. at 581 (emphasis added).

Similarly, any attempt to equate the facts of this case with *E. Liverpool Edn. Assn. v. E. Liverpool City Dist. Bd. of Educ.*, 177 Ohio App.3d 87, 2008-Ohio-3327, 893 N.E.2d 916 (7th Dist.) is likewise inappropriate. In that case, a financial planning and supervision commission was created to assist school districts in fiscal emergency; however, the locally-elected board of education still retained all other authority over the district. As the Seventh District Court of

Appeals noted, "[t]he elected board retained all other rights [with the exception of fiscal responsibilities] and duties attendant to a school board." *Id.* at ¶ 39. In addition, that decision specified that "…upon termination of the fiscal-emergency determination…the elected board will resume all duties, including those concerning fiscal management." *Id.*

Unlike the situations in *Parents & Teachers* and *E. Liverpool*, Am.Sub.H.B. No. 70 **entirely usurps** the power of a school district's locally-elected board of education. R.C. 3302.10 explicitly allows a state-appointed CEO to be granted with "complete operational, managerial, and instructional control of the district." The CEO's laundry list of powers include:

> replacing school administrators and central office staff; assigning employees to schools and approving transfers; hiring new employees; defining employee responsibilities and job descriptions; establishing employee compensation; allocating teacher class loads; conducting employee evaluations; making reductions in staff under sections 3319.17, 3319.171, or 3319.172 of the Revised Code; setting the school calendar; creating a budget for the district; contracting for services for the district; modifying policies and procedures established by the district board; establishing grade configurations of schools; determining the school curriculum; selecting instructional materials and assessments; setting class sizes; and providing for staff professional development.

R.C. 3302.10(C)(1). Moreover, unlike in *E. Liverpool*, the CEO not only usurps all powers and duties, but also the locally-elected board of education members are ultimately replaced if the CEO fails to meet the required statutory expectations. R.C. 3302.10(K)(2).

The General Assembly's hurried and reckless action of enacting legislation which allows an outsider to walk into an already struggling community and upend an entire educational system simply cannot stand. As outlined above, Am.Sub.H.B. No. 70 unconstitutionally strips the power and authority of a board of education and essentially renders community involvement meaningless; accordingly, it must be deemed unconstitutional and invalid.

CONCLUSION

For the reasons set forth above, the Canton City School District Board of Education respectfully urges this Court to reverse the Tenth District Court of Appeal's judgment and find that 2015 Am.Sub.H.B. No. 70 is unconstitutional and invalid.

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CERTIFICATE OF SERVICE

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