IN THE SUPREME COURT OF OHIO

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

BRIEF OF AMICUS CURIAE, EAST CLEVELAND CITY SCHOOL DISTRICT BOARD OF EDUCATION, IN SUPPORT OF APPELLANTS

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I. INTRODUCTION

This case will determine whether the Ohio Constitution's Three-Reading Rule permits the General Assembly to amend a bill in a manner which turns the purpose of that bill on its head and then pass that bill – all in the span of less than 12 hours. School districts across the State now are confronted with the consequences of the General Assembly's haste, consequences which were avoidable had the General Assembly simply followed the procedures the Ohio Constitution requires. Because the General Assembly violated the Three-Reading Rule when it rushed the passage of Am. Sub. HB 70, Am. Sub. HB 70 is unconstitutional and void.

Specifically, Article II, Section 15(C) of the Ohio Constitution requires in part that "[e]very 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[.]" While this Court has established a three-prong test for the Three-Reading Rule, the Tenth District's majority opinion in this case failed to follow that test in two ways. First, the Tenth District failed to consider the proper criteria for whether original HB 70 had been "vitally altered" by Am.Sub. HB 70 such that it triggered a requirement of three readings anew. Second, the Tenth District failed to consider the policy of the Three-Reading Rule as instructed by this Court's decision in State ex rel. Ohio AFL-CIO v. Voinovich, 69 Ohio St.3d 225 (1994). Indeed, the Tenth District's dissenting opinion in this case makes both errors clear. By deciding as it did, the Tenth District's majority opinion violates this Court's Three-Reading Rule precedent and renders the Three-Reading Rule meaningless to both the legislature and the public.

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." Hoover v. Bd. of Cty. Commrs., 19 Ohio St.3d 1, 3 (1985). Indeed, the Three-Reading Rule is meant to prevent precisely what happened with Am.

Sub. HB 70. By subverting the Constitution, the General Assembly avoided publicity, discussion, and communication with constituents on the consequences of the amendment. Now, those constituents and their children face the specter of ineffective and unreliable academic distress commissions ("ADCs") which have deprived school districts of control and administration of their own schools, disrupted communities, and failed to produce measurable positive results.

Additionally, this case will determine whether the Ohio Constitution's mandate set forth in Article VI, Section 3 that each school district shall "determine for itself the number of members and organization of the district board of education" (the "Local Board Rule") restricts the General Assembly from legislating duly-elected boards out of existence. Local control of school districts is a cornerstone upon which the Ohio public education system is built. The General Assembly has broad power when it comes to education, but that power is not absolute. Instead, the Constitution protects the longstanding tradition that the local community be empowered to manage its own affairs and decide how best to prepare their children for success within the State's overall system. Because the General Assembly used Am. Sub. HB 70 to legislate a matter which the Local Board Rule reserves to local voters, Am. Sub. HB 70 is further unconstitutional and void.

In particular, the Local Board Rule restricts the General Assembly from enacting legislation governing the size or organization of a local school board. This Court has indicated that legislation which usurps all control from a local board would be unconstitutional for violation of the Local Board Rule. Despite the fact that Am. Sub. HB 70's plain language takes all power of a local board of education and gives "complete" control to an unelected and dictatorial Chief Executive Officer ("CEO"), the Tenth District nevertheless found Am. Sub. HB 70 constitutional. In doing so, the Tenth District neutered the Local Board Rule and gave the General Assembly unlimited power to legislate in the name of education.

For these reasons, and as set forth below, the East Cleveland City School District ("District") Board of Education ("Board") offers this Amicus Brief in Support of Appellants and urges this Court to reverse the decision of the Tenth Appellate District in Youngstown City Sch. Dist. Bd. of Ed. v. State, 104 N.E.3d 1060, 2018-Ohio-2532.

II. STATEMENT OF FACTS

A. Statement of Amicus Interest

The District is a "city school district" as that term is defined under R.C. 3311.01 and 3311.03, and is a political subdivision of the State under R.C. 2744.01 *et seq*. The District's governing body is the Board, which is a body corporate and politic, created by statute, and charged with management and control of the District. The Board is vested with broad management rights, duties, and responsibilities pursuant to and in accordance with the provisions of Title 33 of the Ohio Revised Code. Importantly, and pursuant to Article VI, Section 3 of the Ohio Constitution, the District's voters "determine[d] for [themselves] the number of members and the organization" of the District's Board. The District and its Board have great interest in ensuring that legislation passed by the General Assembly which has the potential to usurp authority from its Board – and all other school district boards of education – adheres to all constitutional requirements, including both Article II, Section 15(C)'s Three-Reading Rule and Article VI, Section 3's Local Board Rule.

This case centers on the unconstitutional metamorphosis of original House Bill 70 ("HB 70"), which began as legislation which permitted local school boards of education to establish community learning centers in their districts. HB 70 was approved by the House and sent to the Senate. On June 24, 2015, HB 70 was shredded and completely replaced with a substitute bill, Am. Sub. HB 70. *Less than twelve hours* after it was introduced, Am. Sub. HB 70 was passed by both houses of the General Assembly. Am. Sub. HB 70 now focused on the authority of ADCs,

which were never remotely discussed in the original version of HB 70. Under Am. Sub. HB 70, ADCs usurp authority from local boards of education and appoint a CEO to take over all operations and control of their districts. If a district cannot escape the ADC within a certain period of time, Am. Sub. HB 70 mandates that the district's board of education be removed, and a new five-member board be appointed by the mayor and a nominating committee, without any vote, referendum, or other relevant input from the local community as to the size and organization of the new board. In other words, in less than a day, an innocuous bill to establish community learning centers was replaced with legislation creating a means to end local control of public school districts.

Until 2018, Am. Sub. HB 70 only impacted school districts with *pre-existing* ADCs, such as Youngstown and Lorain. However, Am. Sub. HB 70 also enacted a provision requiring *new* ADCs to take over school districts that failed to meet certain criteria for three consecutive years. *See* R.C. 3302.10(A)(1). Given that Am. Sub. HB 70 is now over three years old, *all* school districts in the State of Ohio potentially are subject to the takeover provisions of Am. Sub. HB 70. In fact, the District is currently being taken over by an ADC pursuant to Am. Sub. HB 70. The District is challenging the legality of the State's ADC takeover of the District in the Franklin County Common Pleas Court in East Cleveland City Sch. Dist. Bd. of Ed. v. State of Ohio, et al., C.P. No. 18 CV 009035. The District's litigation raises the same constitutional challenges to Am.Sub. HB 70 raised by Appellants in this case (among other legal challenges to the ADC takeover). In the District's litigation, the State of Ohio has argued that the outcome of this case will be dispositive for at least some of the District's claims below. Thus, this Court's review of Am. Sub. HB 70 is critically important to ensuring that school districts like the District are not taken over by ADCs pursuant to unconstitutional legislation.

B. Incorporation of Statement of Facts in Appellants' Merit Brief

Amicus adopts, by reference, the Statement of the Case and Facts contained in Plaintiffs-Appellants' Merit Brief.

III. ARGUMENT IN SUPPORT OF APPELLANTS

A. Standard of Review

This case turns on the interpretation of two provisions of Ohio's Constitution: the Three-Reading Rule in Article II, Section 15(C), and the Local Board Rule in Article VI, Section 3. It also requires interpretation of Am.Sub. H.B. 70. Because the interpretation of the Constitution and of statutory authority are questions of law, this Court reviews them *de novo*. State v. Consilio, 114 Ohio St.3d 295, 871 N.E.2d 1167, 1171 (2007); *see also* Ceccarelli v. Levin, 127 Ohio St.3d 231, 232 (2010) (a "question of statutory construction presents an issue of law that we determine de novo on appeal"); State v. Futrall, 123 Ohio St.3d 498, 2009-Ohio-5590, ¶ 6 ("When a court's judgment is based on an erroneous interpretation of the law, an abuse-of-discretion standard is not appropriate."). Accordingly, no deference should be given to the Tenth District's erroneous interpretation of the Three-Reading Rule, the Local Board Rule, or Am. Sub. HB 70.

B. Interpretation of Ohio's Constitution

This Court is the "ultimate arbiter of the meaning of the Ohio Constitution[.]" State v. Mole, 149 Ohio St.3d 215, 220, 2016-Ohio-5124, ¶ 21, 74 N.E.3d 368, 376. "The first step in determining the meaning of a constitutional provision is to look at the language of the provision itself. * * * Words used in the Constitution that are not defined therein must be taken in their usual, normal, or customary meaning.' * * * " State ex rel. King v. Summit Cty. Council, 99 Ohio St.3d 172, 2003-Ohio-3050, 789 N.E.2d 1108, at ¶ 35 (internal citations omitted). In interpreting the Ohio Constitution, "we apply the same rules of construction that we apply in construing

statutes. * * * Thus, the intent of the framers is controlling. If the meaning of a provision cannot be ascertained by its plain language, a court may look to the purpose of the provision to determine its meaning." State v. Jackson, 102 Ohio St.3d 380, 382, 2004-Ohio-3206, ¶ 14, 811 N.E.2d 68, 71 (internal citations omitted). This Court has recognized that the provisions of the Constitution should be interpreted broadly:

> We must remember that we are here construing the Constitution of the state of Ohio . . . We are not to use any millimeter measure of interpretation nor employ that strict construction peculiar to criminal law and procedure, but we are to employ that *broad-gauged liberal construction* that the general terms of constitutional provisions necessarily require in order to make them effective and carry out the real intention of the people in making the Constitution, through their representatives, and by adopting the Constitution by their own votes. *The polestar in the construction of Constitutions . . . is the intention of the makers and adopters*.

Hockett v. State Liquor Licensing Board, 91 Ohio St. 176, 179-180, 110 N.E. 485 (1915) (emphasis added).

This Court has held that the General Assembly is not entitled to unlimited deference when it comes to education matters, finding that "[t]o state that the General Assembly must be granted wide discretion and that it is not the function of this court to question the wisdom[1] of the statutes,

[1] Education policy analysts have questioned the wisdom of State takeover provisions like that in Am.Sub. HB 70. "Although takeovers regularly produce greater fiscal stability in school districts, *they consistently are unable to produce academic gains*." Bowman, Kristi L., "State Takeovers of School Districts and Related Litigation: Michigan as a Case Study," MSU Legal Studies Research Paper No. 11-13, The Urban Lawyer Volume 45 (July 30, 2013) (emphasis added). Bowman further explained:

> States also should be mindful of the *strong tradition of local control over education*, and what is often still a strong local investment in public schools by elected board members, appointed superintendents, parents, community members, and, of course, life-long educators. If public schools are to continue to be anchors for our communities, then state and *especially local level educators and elected educational officials should not be completely cut out of the process of reforming them*.

Id. (emphasis added). "The bottom line is that state takeovers, for the most part, have yet to produce dramatic and consistent increases in student performance, as is necessary in many of the school districts that are taken over." Todd Ziebarth, State Takeovers and Reconstitutions, Policy Brief, Education Commission of the States (Apr. 4, 2000).

is not to say that the General Assembly's discretion in this area is absolute." Bd. of Ed. of City Sch. Dist. of City of Cincinnati v. Walter, 58 Ohio St.2d 368, 386, 390 N.E.2d 813, 824 (1979) (emphasis added). As one Ohio court aptly stated, "[w]here the purpose and intent of the framers of the Constitution are clearly expressed[,] they should be followed by the courts without regard to . . . the inconveniences resulting from following the constitution." State v. Lengel, 1927 WL 2786, at *8 (Stark C.P. Dec. 13, 1927).

Appellants' 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.

The General Assembly vitally altered the original text of HB 70, triggering the Constitutional requirement for three new readings of the amended bill in each house. Because the General Assembly failed to consider Am. Sub. HB 70 on three different days, Am. Sub. HB 70 is unconstitutional and void. The Tenth District Court of Appeals misinterpreted and misapplied this Court's precedent and the test for determining whether the General Assembly has complied with the Three-Reading Rule. Accordingly, this Court should reverse the decision of the Tenth District and find Am. Sub. HB 70 unconstitutional and void for violation of the Three-Reading Rule.

A. The Three-Reading Rule is Mandatory and Can Only Be Suspended by a Two-Thirds Vote. The Rule Was Not Suspended in Either House for Am. Sub. HB 70.

The Three-Reading Rule is a mandatory constitutional provision, and the General Assembly's failure to either follow the Rule or lawfully suspend it renders Am. Sub. HB 70 void. This Court made clear in Hoover v. Board of Cty. Commrs., 19 Ohio St.3d 1 (1985), that the Three-Reading Rule is mandatory and not merely directory. Id., at 5; *see also* State ex rel. Ohio AFL-CIO v. Voinovich, 69 Ohio St.3d 225, 232 ("Thus, as a result of Hoover, the three-consideration

language of Section 15(C), Article II is no longer directory but is instead mandatory."). The consequence for the General Assembly's failing to follow a mandatory rule renders the offending legislation – here, Am. Sub. HB 70 – void. "'[A]n objection that [a directory provision was] not observed will be unavailing in the courts,' while 'a failure to observe [a mandatory provision] will render the statute void.'" In re Nowak, 104 Ohio St.3d 466, 473 2004-Ohio-6777, 820 N.E.2d 335, 341 (*quoting* State ex rel. Atty. Gen. v. Covington, 29 Ohio St. 102, 117 (1876) *and* Ex Parte Falk, 42 Ohio St. 638, 639 (1885)).

The record below shows that the General Assembly did not vote to suspend the Three-Reading Rule in either house for Am. Sub. HB 70. (*See* R. 35, at pp. 23-24; *see generally* Pltfs' Exs. 45-48.) "[W]here the Ohio Constitution mandates that a recordation be made in the legislative journals reflecting that a particular step in the enactment process had been taken, the absence of entries to that effect renders the enactment invalid." Hoover, 19 Ohio St.3d, at 4. Nothing in the legislative journals reflects that either house of the General Assembly voted to suspend the Three-Reading Rule for Am. Sub. HB 70. As the Constitution mandates that the General Assembly adhere to the Three-Reading Rule, any failure to do so renders Am. Sub. HB 70 void.

B. This Court's Precedent Establishes a Three-Prong Test for Whether Legislation Violates the Three-Reading Rule.

Despite this Court's clear directives in its precedent, the Tenth District majority opinion and the trial court below did not apply the correct test for whether Am. Sub. HB 70 violates the Three-Reading Rule. A legislative act is valid under the Three-Reading Rule only if it satisfies this Court's three-prong test:

1. the requisite entries are made in the legislative journals;[2]

2. there is no indication that the subject matter of the original bill was vitally altered[3] such that:

    a. there is no longer a common purpose or relationship between the original bill and the bill as amended;[4] or

    b. it departs entirely from a consistent theme;[5] *and*

3. there is no indication that the process by which the legislature enacted the bill is inconsistent with the underlying policy of the Three-Reading Rule.[6]

There appears to be no dispute below that Am. Sub. HB 70 meets the first prong of the test, as the legislative journals contain entries relative to House Bill 70. Thus, the relevant inquiry here is whether the passage of Am.Sub. HB 70 meets the second and third prongs of the Three-Reading Rule test. The Court's second prong asks whether there is any indication that 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. (original emphasis). Under the third prong, the Court also "must look to the underlying purpose of the three-consideration provision" and ask whether there was enough time "for more publicity and greater discussion and [to afford] 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." Id., at 233-34 (*quoting* Hoover, 19 Ohio St.3d, at 8-9 (Douglas, J., concurring)).

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[2] *See* Ohio Constitution, Article II, Section 15(C). *See also* Hoover, *supra*.

[3] *See* Miller v. State, 3 Ohio St. 475, 480 (1854) (presuming an act valid where proper journal entries have been made); *see also* Hoover, and Voinovich, *supra*.

[4] *See* Voinovich, *supra*.

[5] *See* Voinovich, *supra*.

[6] *See* Hoover and Voinovich, *supra*.

Despite this Court's clear directives, the Tenth District majority did not apply the correct test for determining whether Am. Sub. HB 70 violated the Three-Reading Rule. For the second prong, the Tenth District did not consider the *purpose* or *theme* of the bill in determining whether there was a "vital alteration." Instead, it reviewed the *subject* of the bill. The question of subject is much broader than purpose or theme, and is reserved to Article II, Section 15(D) of the Constitution, which was not at issue below. For the third prong, the Tenth District majority impermissibly narrowed the scope of the Three-Reading Rule's policy considerations. The Tenth District's narrow interpretation of the Three-Reading Rule is incompatible with this Court's precedent and must be overturned.

C. The General Assembly Violated the Three-Reading Rule by Vitally Altering HB 70 By Amendment and Failing to Consider Am. Sub. HB 70 on Three Different Days.

Am. Sub. HB 70 "vitally altered" the original HB 70, triggering the requirement of three readings anew. This Court has defined a "vital alteration" as one which changes the original bill such that "there is no longer a common *purpose* or *relationship* between the original bill and the bill as amended." Voinovich, 69 Ohio. St.3d, at 233 (emphasis added). An amendment may also be a "vital alteration" when it results in the bill "departing entirely from a consistent *theme*." Id. A bill does *not* need to be "wholly changed" in order to be "vitally altered." Id. *See also* Youngstown City Sch. Dist. Bd. of Edn. v. State, 104 N.E.3d 1060, 2018-Ohio-2532, ¶ 48 (Tyack, J. dissenting) ("A bill does not have to be wholly changed in order to be vitally altered.") Even a heavily-amended bill may not run afoul of the Three-Reading Rule so long as it "retains its common purpose" and "contain[s] a consistent theme." Id., at 234.

The Tenth District impermissibly analyzed the *subject* of the amendment rather than its *purpose* or *theme*, and it did so explicitly: "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** of improving underperforming schools." Youngstown City Sch. Dist. Bd. of Ed. v. State, 2018-Ohio-2532, ¶ 21 (emphasis added). In fact, the Tenth District's opinion never mentions the *purposes* and *themes* behind the two versions of the bill. The Tenth District's analysis of *subject*, a question which is reserved to the One-Subject Rule in Article II, Section 15(D) of the Ohio Constitution, is a broader question than that of "vital alteration." Because the Tenth District applied the incorrect test for the second prong of the Three-Reading Rule, and because Am. Sub. HB 70 vitally altered original HB 70, the Tenth District's decision must be reversed and Am. Sub. HB 70 declared unconstitutional.

1. HB 70 was "vitally altered" because Am. Sub. HB 70 changed the *purpose* or *theme* of the legislation.

Because Am. Sub. HB 70 contained a different purpose or theme from original HB 70, it was a "vital alteration" that triggered the need for three new readings prior to being passed. A "purpose" is "'the object to which one strives or for which something exists; an aim or a goal.'" Keeth v. State Farm Fire & Cas. Co., No. 1:11-CV-141, 2012 WL 13018745, at *12 (W.D. Mich. Mar. 29, 2012) (*citing* American Heritage Dictionary 1471 (3d ed. 1996.)); *see also* Black's Law Dictionary 1271 (8th ed. 2004) (defining "purpose" as "[a]n objective, goal, or end; specif., the business activity that a corporation is chartered to engage in"). A "theme" is "the 'unifying or dominant idea' inherent in a given work." Identity Arts v. Best Buy Enter. Servs. Inc., No. C 05-4656 PJH, 2007 WL 1149155, at *11 (N.D. Cal. Apr. 18, 2007), *aff'd sub nom.* Identity Arts, LLC v. Best Buy Enter. Serv., Inc., 320 F. App'x 772 (9th Cir. 2009). *See also* Random House Compact Unabridged Dictionary, 1966 (2d Ed. 1996) (defining "theme," in part, as "a unifying or dominant idea, motif, etc."). Thus, the relevant question under the Three-Reading Rule is whether

the goal, objective, or dominant idea of original HB 70 was the same as that of Am. Sub. HB 70, or whether they differed. The record before this Court demonstrates they differed fundamentally.

As is explained below, the *purpose* of original HB 70 was to empower a locally-elected board of education to decide whether to make changes to its own schools and for the board to engage the local community to develop community learning centers. (*See* 2015 H.B. No. 70, Pltfs' Ex. 67.) Conversely, the *purpose* of Am. Sub. HB 70 was for the State, through the Ohio Department of Education ("ODE") and the State Superintendent of Public Instruction ("State Superintendent"), to unilaterally remove local board control by effectively replacing school boards of education with unelected ADCs and placing the school district under control of a CEO. (*See* 2015 Am.Sub.H.B. No. 70, Pltfs' Ex. 77.) If original HB 70 had "Purpose A," then Am. Sub. HB 70 had "Purpose *Anti*-A." (*See* Pltfs' Ex. 47) ("So it turns out that this amendment [Am. Sub. HB 70] is the antithesis of House Bill 70.") Using the Tenth District's interpretation of the second prong, so long as a bill is introduced dealing with a certain subject – here, the *subject* of education or of improving schools – the purpose of the bill can be amended to achieve the literal opposite of the original purpose and not be "vitally altered" because the overall subject never changed. The Tenth District's erroneous interpretation is not the standard set forth by this Court.

A closer examination of HB 70 versus Am. Sub. HB 70 reveals how vastly different their purposes were. HB 70 empowered local boards of education by allowing them to propose establishing community learning centers.[7] Creating a center was completely voluntary, and could only be accomplished after a board of education held several public hearings educating the local community about the process. (*See* 2015 H.B. No. 70, Pltfs' Ex. 67.) The ultimate decision for

[7] The governing authority of a community school also could propose the creation of a community learning center.

whether to create a center was determined by a vote, and only specific locally-interested parties – parents and guardians of students, and teachers and nonteachers assigned to the school – could participate in the vote. (Id.) Once a community learning center was initiated, the local board of education could create a "school action team" consisting of parents/guardians, non-parent/non-guardian community members, teachers, and nonteaching employees. (Id.) The action team would conduct a performance audit, review the school's needs, and create and implement an improvement plan subject to the approval of parents, guardians, teachers, other employees, and the board. (Id.) The community would be responsible for creating and implementing plans for the school. (Id.) Those plans were to provide not only for educational services, but also comprehensive developmental, family, and health services to students, families, and community members – otherwise known as "wraparound services." HB 70, in only 10 pages, sought only to introduce three new sections to the Revised Code.

Am. Sub. HB 70 instead establishes ADCs to preside over school districts that fail to meet certain State-mandated performance standards. (*See* 2015 Am.Sub.H.B. No. 70, Pltfs' Ex. 77; *see also* R.C. 3302.10(A)). Establishment of an ADC is initiated by the State Superintendent, who appoints a majority of the ADC members. (Id.) Imposition of an ADC is involuntary and effectively strips the local board of education of any control.[8] (Id.) Once created, the ADC appoints a CEO to run the entire school district. (Id.; R.C. 3302.10(C)(1)). There is no requirement whatsoever that the CEO be a member of the community, nor that the CEO have any experience in schools or education; the CEO need only have "high-level management experience." (Id.) The CEO "shall exercise complete operational, managerial, and instructional control of the district."

[8] Indeed, after a period of time, the local board of education is eliminated entirely. *See* R.C. 3302.10(K)(2).

R.C. 3302.10(C)(1). Am. Sub. HB 70, which exploded to 77 pages in length, enacted four sections to the Revised Code, amended 10 existing sections, repealed and replaced one section, and enacted pages of uncodified law.

It is clear that HB 70 and Am. Sub. HB 70 had vastly different *purposes* – community-based school improvement through comprehensive academic, developmental, family, and health services, versus State takeover and destruction of the local school district – which is the relevant question for whether a bill has been "vitally altered." HB 70 was vitally altered by Am. Sub. HB 70, and the Tenth District majority erred when it decided otherwise based on the bill's alleged *subject*.

2. The question of *subject* is reserved to a separate and distinct Constitutional Provision and is not a proper consideration for a Three-Reading Rule challenge.

The question of "subject matter area" is a question for a One-Subject Rule challenge under Article II, Section 15(D) of the Ohio Constitution, *not* a Three-Reading Rule challenge under Article II, Section 15(C) of the Ohio Constitution. In this Court's Three-Reading Rule jurisprudence, notably absent from this Court's definition of a "vital alteration" is the question of whether the *subject matter* of the bill is wholly changed because of the amendment. This is because the question of subject is reserved to a separate provision of the Ohio Constitution, which requires that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title." Article II, Section 15(D) ("One-Subject Rule"). Under the Ohio Constitution and consistent with this Court's precedent, the question of whether a bill's purpose or theme has been "vitally altered" sufficient to trigger new consideration by both houses is a different question altogether than whether a bill contains more than one subject.

This Court's tests for whether legislation violates either the Three-Reading Rule or the One-Subject Rule are separate and distinct, and they must be treated as such. The Three-Reading Rule asks whether the legislation has been "*considered* by each house on three different days." Article II, Section 15(C), Ohio Constitution (emphasis added). It is meant to "prevent hasty action and to lessen the danger of ill-advised amendment at the last moment." Hoover, 19 Ohio St.3d, at 8 (Douglas, J., concurring). Thus, the Three-Reading Rule looks to the purpose, theme, proposition, and substance of a bill – *not* at its general subject. Conversely, the One-Subject Rule asks whether the legislature has introduced a bill which "contain[s] more than one subject." Article II, Section 15(D), Ohio Constitution. It looks to the subject matter area or topic covered by the bill in a general sense to ensure the legislature has not engaged in impermissible "log-rolling." Id., at 6. Thus, the One-Subject rule looks at the overall topics covered by the legislation.

The question of *subject* is thus much broader than purpose or theme. *Subject* is the thing, but *purpose* is the reason for the thing – and *theme* is what ties them together. They are interrelated, but they are not one and the same. Thus, the Ohio Constitution treats *subject* (Article II, Section 15(D)) separately from *purpose* and *theme* (Article II, Section 15(C)).

However, the Tenth District and Appellees impermissibly treated the tests for the Three-Reading Rule and the One-Subject Rule as one and the same. *See* Youngstown City Sch. Dist. Bd. of Ed. v. State, 2018-Ohio-2532, ¶ 21 (finding "the original legislation and the amended final version . . . involved the same general subject area . . . [and] specific subject"); (R. 52, at pp. 31-32) (arguing "it is only if the amendments change the entire subject matter area of a bill – from education to agriculture, for example – that each chamber must start over[.]"). Appellee argued, and the Tenth District decided, that the "subject" or "topic" of HB 70 and Am. Sub. HB 70 was the same – education, or improving schools, and therefore, no vital alteration occurred. (Id.) But

both the lower court and Appellees are answering the wrong question: whether the bills contained a consistent subject or topic. That question is reserved for the One-Subject Rule. The proper question is this: was the *purpose* of original HB 70 vitally altered by Am. Sub. HB 70? Worded differently, did Am. Sub. HB 70 depart entirely from original HB 70's *theme*? The answer to *that* question, as described *supra* in Section C.1, is yes.

In interpreting the meaning of the Ohio Constitution, it is crucial that the courts ask and consider the proper questions. In this case, the tests for the Three-Reading Rule and the One-Subject Rule contain similarities in language, but they cannot be interpreted to mean the same thing, because doing so would render one of the provisions a nullity. As the late Associate Supreme Court Justice Antonin Scalia and law professor Bryan A. Garner explain:

> Because legal drafters should not include words that have no effect, courts avoid a reading that renders some of the words altogether redundant. If a provision is susceptible of (1) a meaning that gives it an effect already achieved by another provision, or that deprives another provision of all independent effect, and (2) another meaning that leaves both provisions with some independent operation, *the latter should be preferred*.

Scalia and Garner, Reading Law: The Interpretation of Legal Texts, Section 26, at 176 (2012) ("Reading Law") (emphasis added) (*citing* Lowe v. SEC, 472 U.S. 181, 207 n. 53 (1985) ("[W]e must give effect to every word that Congress used in the statute."); Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979) ("In construing a statute, we are obligated to give effect, if possible, to every word Congress used."); Burdon Cent. Sugar Ref. Co. v. Payne, 167 U.S. 127, 142 (1897) ("[T]he contract must be so construed as to give meaning to all its provisions and . . . that interpretation would be incorrect which would obliterate one portion of the contract in order to enforce another part[.]")).

The tests for the Three-Reading Rule and the One-Subject Rule contain similarities in language, but they are not the same. In particular, the One-Subject Rule looks solely to whether

there is a "practical, rational or legitimate reason for combining provisions in one act[.]" State ex rel. Ohio Civ. Serv. Emps. Assn. v. State, 146 Ohio St.3d 315, 2016-Ohio-478, 56 N.E.3d 913, 919. In contrast, the Three-Reading Rule looks not only to commonality between the original and amended versions of a bill, but at the *process* employed by the legislature in making that amendment – i.e., whether the bill was "vitally altered" using a process which runs counter to the underlying policy considerations for the Three-Reading Rule. *See* Voinovich, 69 Ohio St.3d, at 233-34. Thus, even if this Court has used some of the same language in the tests for the Three-Reading Rule and the One-Subject Rule, the Rules themselves (and their respective tests) should be interpreted in a manner that leaves both provisions with independent operation of one another.

Notably, both the Three-Reading Rule and the One-Subject Rule are restraints on legislative power, and "[w]hen the people use their power to place specific restraints on government, this court has a responsibility to honor and enforce that decision." Capital Care Network of Toledo v. Ohio Dept. of Health, 2018-Ohio-440, at ¶¶ 66-69 (O'Connor, C.J., dissenting). Otherwise, compliance with the One-Subject Rule would automatically mean compliance with the Three-Reading Rule regardless of any question of vital alteration or legislative process. *See, e.g.*, Linndale v. State, 19 N.E.3d 935, 948, 2014-Ohio-4024 (10th Dist.) (Sadler, P.J., dissenting in part) (finding error where, in order to reach the conclusion that legislation did not violate the Three-Reading Rule, "it appears the majority employs the same test as that used to determine whether [the bill] violated the single-subject rule."). Because the Tenth District applied the wrong standard for the Three-Reading Rule's second prong, its decision was in error, and it requires this Court to overrule that decision and clarify the appropriate considerations for the Three-Reading Rule test standard.

D. The General Assembly Violated the Three-Reading Rule by Failing to Comply with the Three-Reading Rule's Overall Policy.

The process utilized by the General Assembly in enacting Am. Sub. HB 70 violated the purpose of the Three-Reading Rule, and Am. Sub. HB 70 is unconstitutional and void. This Court made clear in Voinovich that it would be "dangerous and impracticable" for the Court to "undert[ake] a duty to police any such difference of degree" between a valid heavily-amended bill and an invalid vitally-altered bill. 69 Ohio St.3d, at 233. Instead, the Court plainly stated, "we must look to the underlying purpose of the three-consideration provision" and determine whether the legislature engaged in "'hasty action' that precipitated 'ill-advised amendment at the last moment.'" Id., at 234 (*quoting* Hoover, 19 Ohio St.3d at 8 (Douglas, J., concurring)).

This Court's consideration of the policy underlying the Three-Reading Rule, and whether the General Assembly employed the proper process, is consistent both with rules of Constitutional interpretation and with similar rules in other state constitutions. In interpreting the Ohio Constitution, "the intent of the framers is controlling," and "a court may look to the purpose of the provision to determine its meaning." State v. Jackson, 102 Ohio St.3d 380, 382, 2004-Ohio-3206, ¶ 14, 811 N.E.2d 68, 71 (internal citations omitted). The policy of the Three-Reading Rule is broad: it asks whether "each legislator [had] 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." Hoover, 19 Ohio St.3d, at 8 (Douglas, J., concurring).

Other states whose constitutions contain similar reading rules articulate the same policy behind the rule. *See, e.g.*, State v. Buckley, 54 Ala. 599, 612 (1875) (noting the purpose of Alabama's reading requirement is "[t]o prevent hasty and inconsiderate legislation, surprise and fraud"); Witmer v. Polk Cty., 222 Iowa 1075, 270 N.W. 323, 327 (1936) (finding that Iowa's

reading rule is in place "[f]or the protection of the citizens of Iowa" so that "every member of the Legislature [will] know exactly what he is voting upon"); Casey v. S. Baptist Hosp., 526 So.2d 1332, 1336 (La. Ct. App. 1988) (stating that Louisiana's reading requirements are intended "to facilitate informed and meaningful deliberation on legislative proposals"). For example, the Idaho Supreme Court explained that a bill which is "materially changed" by amendment in one house which then returns to the originating house "must go through the same procedure as to reading and final vote as if it was an original bill" because the amended substitute bill is "not the bill which the senate passed and sent to the house." Cohn v. Kingsley, 5 Idaho 416, 49 P. 985, 989 (1897). Going a step further, that court found that, "The mere declaration by the senate that 'we concur in the house amendments' does not answer the requirements of the constitution." Id.

Similarly, the Alabama Supreme Court has held that "[T]he addition by amendment of an entirely new and major subject, incorporating two or more distinct amendments in one, followed by the passage of the amended proposal through both houses *on the same legislative day*, violates the letter and spirit of [the Constitution]." In re Opinions of the Justices, 223 Ala. 365, 136 So. 585, at syllabus (1931) (emphasis added). The Illinois Supreme Court likewise found that "[t]he object of [the Illinois Constitution's three-reading rule] is to keep the members of the General Assembly advised of the contents of the bills it is proposed to enact into laws, by calling them specifically to their attention three several times, on three different days." Giebelhausen v. Daley, 407 Ill. 25, 48, 95 N.E.2d 84, 95 (1950).

Ohio's Three-Reading Rule and similar rules in other states ensure that the legislative branch and the process employed by it are held to an appropriately high bar. The Supreme Court of the United States has noted:

> '[I]t is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. . . . *The informing function of*

> *Congress should be preferred even to its legislative function.*' * * * 'From the earliest times in its history, the Congress has assiduously performed an "informing function." * * * 'Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them.'

Gravel v. United States, 408 U.S. 606, 636 (1972) (internal citations omitted; emphasis added). The General Assembly has the paramount duty to ensure the legislators inform their constituents, seek their input, and, in the end, ensure that they know precisely what they are voting on and why. Simply put, the Three-Reading Rule asks, "Was there enough time for proper consideration?"

The Tenth District essentially answered "no," but nevertheless found that the Three-Reading Rule's purpose had been met. It did so by severely narrowing, even eliminating, the policy considerations required by this Court. The Tenth District asked only whether *any legislator* had *at least one* opportunity to review the amendment and could *minimally* communicate any impressions *to his or her colleagues*. *See* Youngstown, 2018-Ohio-2532, ¶ 23. It disregarded other required considerations: whether *all* legislators could study the changes, whether there was adequate publicity, whether legislators could communicate not just with colleagues but with constituents, and whether public opinion could even be assessed. In ignoring these factors, the Tenth District created a tragically low bar for the legislative process, a bar which fails to satisfy the policy for the Three-Reading Rule and which interferes with the fundamental duties of the legislators.

The Tenth District acknowledged that "amendment and adoption of [Am. Sub. HB 70] occurred quickly" and "[did] not involve the same sort of lengthy, deliberative process described by the Voinovich court[.]" This is an understatement. In Voinovich, the workers' compensation legislation at issue had been amended and deliberated by both houses for several months. 69 Ohio St.3d, at 234. The legislators had time to conduct hearings and openly debate the issues. Id. Moreover, "[t]he Governor stimulated the debate by announcing in the press that he would veto

any appropriations bill that did not also substantially reform the underlying workers' compensation system." Id.

In stark contrast, Am. Sub. HB 70 was introduced to the Senate, amended, sent to the House, rushed to a vote, and passed on party lines over strenuous objections, *all within the span of approximately 12 hours*. There were no hearings on the amendment, no public debate, no involvement of the press or the legislators' constituents. Indeed, the record in this case "is replete with evidence of how the process by which [the bill] was enacted stymied the underlying purposes of the three-reading rule and thwarted the constitutionally provided safeguards of 'publicity, discussion, and an opportunity for legislators to study the legislation and confer on the issues.'" Youngstown City Sch. Dist. Bd. of Ed. v. State, 10th Dist. Franklin No. 15AP-941, 2017-Ohio-555, at ¶ 65 (Brunner, J., dissenting). Am. Sub. HB 70 presents this Court with the exact type of "hasty action" the Three-Reading Rule seeks to prevent. Because the General Assembly violated the Three-Reading Rule, Am. Sub. HB 70 is unconstitutional and void.

E. Interpreting the Three-Reading Rule Consistently with This Court's Precedent Ensures Appropriate Checks and Balances and Keeps the Burden on Those Challenging Constitutionality.

The second and third prongs of the Three-Reading Rule test, as articulated and explained above, provide clear and consistent rules for courts to apply without implicating separation-of-powers concerns or adding undue burdens on the General Assembly. "[T]he people, possessing all governmental power, adopted constitutions, completely distributing it to appropriate departments." Hale v. State, 55 Ohio St. 210, 214, 45 N.E. 199, 200 (1896). In doing so, the people vested the legislative power in the General Assembly (Article II, Section 1, Ohio Constitution), the executive power in the Governor (Article III, Section 5, Ohio Constitution), and the judicial power in the courts (Article IV, Section 1, Ohio Constitution). Importantly, they

specified that "[t]he general assembly shall [not] * * * exercise any judicial power, not herein expressly conferred." Article II, Section 32, Ohio Constitution. Though the Court is "reluctant to interfere in the legislative process," it has firmly declared "we will not 'abdicate [our] duty to enforce the Ohio Constitution.'" Voinovich, 69 Ohio St.3d, at 229.

In the Tenth District below, Appellees argued (and Amicus anticipates they will continue to argue to this Court) that enforcing this Court's precedent for the Three-Reading Rule "would raise separation of powers concerns, as it 'would place [a] court in the position of directly policing every detail of the legislative amendment process when bills are passed containing a consistent theme.'" (R. 52, at p. 32) (*quoting* Voinovich, 69 Ohio St.3d, at 234). This argument ignores that the Three-Reading Rule test, like any test for the constitutionality of a statute, places the burden on the party challenging the constitutionality of the legislation to provide proof that the legislative process violated the Constitution. In fact, in considering the constitutionality of any given statute, this Court makes strong presumptions in favor of the legislature: "[i]n reviewing a statute, a court, if possible, will uphold its constitutionality. All reasonable doubts as to the constitutionality of a statute must be resolved in its favor. Courts have a duty to liberally construe statutes in order to save them from constitutional infirmities." Hughes v. Ohio Bur. of Motor Vehicles, 79 Ohio St.3d 305, 307, 681 N.E.2d 430, 432 (1997) (internal citations omitted). "However, this does not mean that [the Supreme Court] may turn a deaf ear to any challenge to laws passed by the General Assembly. The presumption that laws are constitutional is rebuttable." DeRolph v. State, 1997-Ohio-84, 78 Ohio St.3d 193, 198, 677 N.E.2d 733, 737, *opinion clarified,* 1997-Ohio-87, 78 Ohio St.3d 419, 678 N.E.2d 886, *and order clarified,* 1998-Ohio-301, 83 Ohio St.3d 1212, 699 N.E.2d 518. As with any rebuttable presumption, this Court's Three-Reading Rule precedent requires the challenger to prove there was a "vital alteration" and to prove that the process by which the

legislature enacted the bill is inconsistent with the underlying policy of the Rule. Thus, there is no danger of placing the court in the position of "policing every detail." Instead, the Court is in the position where the Constitution rightfully places it: to determine whether a challenger has rebutted the presumption of constitutionality based on the facts before it.

The fact-specific determination of constitutionality rests well within the Court's judicial powers. Perhaps anticipating an argument such as Appellees', Justice Douglas observed that the Three-Reading Rule, though it may "seem to be cumbersome in nature, it need not be when handled routinely. More importantly, the *constitutional provision is there to be observed and obeyed—not ignored*." Hoover, 19 Ohio St.3d, at 9 (Douglas, J., concurring) (emphasis added). In keeping with the doctrines of separation of powers and checks and balances, this Court has observed that "[t]he power and duty of the judiciary to determine the constitutionality and, therefore, the validity of the acts of the other branches of government have been firmly established *as an essential feature of the Ohio system of separation of powers*." State ex rel. Ohio Acad. of Trial Lawyers v. Sheward, 1999-Ohio-123, 86 Ohio St.3d 451, 462, 715 N.E.2d 1062, 1076 (emphasis added). *See also*, Beagle v. Walden, 78 Ohio St.3d 59, 62, 676 N.E.2d 506, 508 (1997) ("[i]nterpretation of the state and federal Constitutions is a role exclusive to the judicial branch").

Finally, requiring the General Assembly to follow the mandates of the Constitution does not impose an undue burden on the legislature as Appellees have claimed. Appellees have argued that, "as a practical matter, the end result of adopting [a] fact-intensive approach to the [Three-Reading Rule] would be a de facto requirement that the General Assembly undertake three new readings in each house after ***any*** amendment[.]" (R. 52, at p. 42; original emphasis). This fear is ill-founded and ignores the plain language of the Three-Reading Rule. First, the General Assembly need only undertake three new readings after an amendment which "vitally alters" a bill as

described above. Second, the General Assembly *need not* undertake *any* additional readings if it lawfully suspends the Three-Reading Rule: if "two-thirds of the members elected to the house in which [the bill] is pending suspend this requirement." Article II, Section 15(C). "This provision provides the mechanism for the legislature to act, when necessary, in rapid fashion *conditioned only on receiving the concurrence of two-thirds of its membership*." Hoover, 19 Ohio St.3d, at 9 (Douglas, J., concurring) (emphasis added). But the legislature did not pursue that lawful course here. Instead, the General Assembly engaged in the type of "hasty action" and "ill-advised amendment at the last moment" which the Three-Reading Rule seeks to prevent.

In striking down Am. Sub. HB 70 as unconstitutional for violating the Three-Reading Rule, this Court need not alter or overturn its precedent. Instead, it need only (1) reaffirm that an amendment which "vitally alters" an original bill such that it departs entirely from a consistent theme triggers the requirement of three readings anew, and (2) reaffirm that the General Assembly's process must comport with the letter and spirit of Ohio's Constitution. Because the General Assembly vitally altered original HB 70, and the process it employed to pass Am. Sub. HB 70 violated the spirit and letter of the Constitution's Three-Reading Rule, Amicus respectfully asks this Court to overturn the decision of the Tenth District Court of Appeals and find Am. Sub. HB 70 unconstitutional and void.

Appellants' Proposition of Law No. 2: Am. Sub. HB 70, which radically amended R.C. 3302.10 to include the appointment of an unelected chief executive officer who is 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.

As part of Am. Sub. HB 70, the General Assembly amended R.C. 3302.10 (the "ADC Statute") to usurp power from duly-elected local boards of education and governing boards and place it in the hands of an unelected CEO. The appointed CEO has "complete operational,

managerial, and instructional control of the district, *which shall include, but shall not be limited to*" the powers and duties outlined in the ADC Statute. R.C. 3302.10(C)(1) (emphasis added). Ultimately, the CEO has the power to totally dissolve the board; in that event, the mayor appoints a new five-member board of education using the procedures outlined in R.C. 3302.11. R.C. 3302.10(K)(2). By vesting total control of a school district in an unelected CEO and permitting the total dissolution of a duly-elected board of education, the General Assembly circumvented the requirement of Article VI, Section 3 of the Ohio Constitution (the "Local Board Rule") that "each school district . . . shall have the power . . . to determine for itself the number of members and organization of the district board of education[.]" Indeed, the General Assembly sought to amend the Constitution by statute, which itself is unconstitutional. Because the General Assembly used Am. Sub. HB 70 to remove local board control in violation of the Local Board Rule, it is unconstitutional and void. The Tenth District Court of Appeals misinterpreted and misapplied this Court's precedent for the Local Board Rule, and in doing so, thwarted the framers' intent in two ways: first, it ignored that public school districts were intended to remain under local control; and second, it permitted the General Assembly to effectuate an amendment to the Constitution without following the requirements of Article XVI. Accordingly, this Court should reverse the decision of the Tenth District and find Am. Sub. HB 70 unconstitutional and void for violation of the Local Board Rule.

A. The Local Board Rule is a Restraint on the General Assembly's Legislative Power, and It Mandates that School Districts Determine for Themselves the Size and Organization of the District Board of Education.

The Ohio Constitution is clear: while the General Assembly is to provide for the "organization, administration and control of the public school system of the state," it vests power in local voters in each school district "to determine for [themselves] the number of members and

the organization of the district board of education[.]" Article VI, Section 3. In Sections 1, 2, and 3 of Article VI, the General Assembly has the broad power "to provide a thorough and efficient system of common schools by taxation, and for the organization, administration, and control thereof." State ex rel. Core v. Green, 160 Ohio St. 175, 180, 115 N.E.2d 157 (1953). However, the Local Board Rule reserves "the number of members and the organization of the district board of education" to the school district's voters, not the General Assembly. The Local Board Rule thus limits the General Assembly's power when it comes to local control. Indeed, "the state Constitution is primarily a limitation on legislative power of the General Assembly; therefore, the General Assembly may pass any law unless it is specifically prohibited by the state or federal Constitutions." State v. Warner, 55 Ohio St.3d 31, 43, 564 N.E.2d 18 (1990) (*citing* State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas, 9 Ohio St.2d 159, 162, 224 N.E.2d 906 (1967)).

This Court has recognized that "Ohio has a rich tradition of local control of its public school districts," and that the Local Board Rule reaffirms that tradition. In re Suspension of Huffer from Circleville High Sch., 47 Ohio St.3d 12, 14, 546 N.E.2d 1308, 1311 (1989). That tradition provides important context for interpreting and applying the Local Board Rule consistently with the intent of the Constitution's framers. This Court has "previously noted the function of the proceedings of the constitutional convention in revealing the intent of a provision in the Constitution. '[D]ebates of the convention * * * may fortify [the court] in following the natural import of [the provision's] language, and legitimately aid in removing doubts.'" Toledo City Sch. Dist. Bd. of Edn. v. State Bd. of Edn., 2016-Ohio-2806, ¶ 27, 146 Ohio St.3d 356, 363, 56 N.E.3d 950, 957, *reconsideration denied*, 2016-Ohio-5108, ¶ 27, 146 Ohio St.3d 1473, 54 N.E.3d 1271) (internal citations omitted).

Accordingly, this Court has looked to the debates from constitutional conventions to confirm the intent of the framers. Id.

The debates from the Constitutional Convention of 1912, during which Article VI was discussed, reveal that the framers intended for the Constitution to maintain a balance between State oversight and local control:

> During the Constitutional Convention of 1912, a constitutional provision for centralized authority over the system—which the friends of education had sought for so many years—was finally adopted. . . . This first line of Article VI, Section 3, was proposed and adopted 'so that there can be no question about *the control of the school systems* as well as *the handling of the school funds*.'
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> * * *
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> The delegates did '*not* contemplate taking out of the hands of the local authorities *the control and administration of their local schools*, but gave to the state . . . the right to fix the standard and the right to organize an entire system, *leaving to each local community the determination of the schools in the system*.'

Molly O'Brien & Amanda Woodrum, The Constitutional Common School, 51 Clev. St. L. Rev. 581, 634–35 (2004) (*citing* 2 PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF OHIO, at 1499, 1504 (1913)) (emphasis added). Ohio's founders were "a class of people who were compelled to be self-reliant and to solve their own problems, educational as well as others." Id., at 308 (*quoting* Jim B. Pearson & Edgar Fuller eds., Education in the States: Historical Development and Outlook 948, 949 (1969)).

The tradition of local control remains relevant today, especially in urban or poverty-stricken districts like Youngstown (Appellants), Lorain (Amicus), and East Cleveland (Amicus). For example, districts located in "underresourced, often neglected African-American neighborhoods" are often more successful "in educating students and serving other community needs because they [are] seen as the primary institution for developing socioeconomic mobility in the next generation." Matthew Patrick Shaw, Creating the Urban Educational Desert Through

School Closures and Dignity Taking, 92 Chi.-Kent L. Rev. 1087, 1096 (2017) (*citing* Jerome E. Morris, A Pillar of Strength: An African American School's Communal Bonds, 33 Urb. Educ. 584, 587 (1999)). It is not just about physical proximity of the district to the students, but about culture: these schools' success is "rooted in how [the school] intentionally embedded itself in community life[;]" the school "and its community [become] interdependent, with long-tenured teachers and principals having taught multiple generations of the same family and the institution being a unifying force in the community." Id.

Thus, the Local Board Rule strikes a delicate balance between the General Assembly's need to provide for a state-wide system of education under Article VI, and local school districts being in the best position to establish appropriate local control to facilitate success within the state's established system under the Local Board Rule. In other words, while the General Assembly has power over the provision of a system of public education, that power is not absolute.

B. The Local Board Rule Prohibits the General Assembly from Eliminating School Boards.

This Court has interpreted the Local Board Rule to prohibit the General Assembly from determining "size and organization" of city school boards – in other words, the General Assembly cannot legislate local boards out of existence. Article VI, Section 3 permits the General Assembly to provide "for the organization, administration and control of the public school system of the state . . . *provided,* that each school district . . . shall have the power . . . to determine *for itself*" the size and organization of its board of education. Id. (emphasis added.) The Local Board Rule is a proviso: it is a "clause that introduces a condition by the word *provided*." Reading Law, Section 21, at 154 (original emphasis). "A proviso 'is introduced to indicate the effect of certain things which are within the statute but accompanied with the particular conditions embraced within the proviso'" and "modifies the immediately preceding language." Id. (*citing* James DeWitt Andrews,

"Statutory Construction," in 14 American Laws and Procedure 1, 48 (James Parker Hall & James DeWitt Andrews eds., rev. ed. 1948)). Thus, Article VI should be read to permit the General Assembly broad authority to enact legislation for the public school system *except for* the size and organization of the local board of education.

This Court implicitly recognized that limitation in 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 (hereinafter "Ohio Congress"). This Court explained that "[v]oters in city school districts have the right to vote on the members and the organization of their city school boards," and in turn, the school boards "have authority over the districts they are elected to serve." Id., at 581. The General Assembly's role in this regard is to decide which powers to confer upon that board. *See* Marion Local Sch. Dist. Bd. of Edn. v. Marion Cty. Bd. of Edn., 167 Ohio St. 543, 545, 150 N.E.2d 407 (1958) ("[b]oards of education have only such powers as are conferred by statute"). Article VI requires the General Assembly to provide "by law for the exercise of this power by such school districts." Article VI, Section 3, Ohio Constitution. In that sense, the board of education is an "instrumentality of the state to accomplish its purpose in establishing and carrying forward a system of common schools throughout the state." Cincinnati Bd. of Edn. v. Volk, 72 Ohio St. 469, 485, 74 N.E. 646 (1905).

While the General Assembly may legislate what a school board may or may not do, that does not mean it has the power to legislate whether the board may exist in the first place. The Local Board Rule "governs questions of size and organization, not the power and authority, of city school boards." Ohio Congress, 111 Ohio St.3d, at 581. But if a party can prove that "the powers of city school districts have been usurped" by statute, that statute may be found unconstitutional for violation of the Local Board Rule. *See* id. ("we hold that the appellants have not proved . . .

that the powers of city school districts have been usurped, rendering R.C. Chapter 3314 unconstitutional."). Thus, the General Assembly cannot enact a law which legislates a local board out of existence because such a law would violate the Local Board Rule.

C. Am. Sub. HB 70 Violates the Local Board Rule By Usurping the Role of the District Board of Education and Legislating School Boards Out of Existence.

Am. Sub. HB 70 violates the Local Board Rule by empowering ODE and the State Superintendent to usurp all power of the local board of education and ultimately eliminate the elected board altogether. Am. Sub. HB 70 enacted a new version of R.C. 3302.10 (the "ADC Statute") which permits a school district to be taken over by an ADC, the majority of whose members are appointed by the State Superintendent, not the residents of the school district. R.C. 3302.10(B)(1)(a). The ADC, in turn, appoints a CEO to take over "complete operational, managerial, and instructional control of the district." R.C. 3302.10(C)(1). Under the ADC Statute, the CEO's power "shall include, *but shall not be limited to*," the powers and duties listed in the statute:

> (a) Replacing school administrators and central office staff;
> (b) Assigning employees to schools and approving transfers;
> (c) Hiring new employees;
> (d) Defining employee responsibilities and job descriptions;
> (e) Establishing employee compensation;
> (f) Allocating teacher class loads;
> (g) Conducting employee evaluations;
> (h) Making reductions in staff under section 3319.17, 3319.171, or 3319.172 of the Revised Code;
> (i) Setting the school calendar;
> (j) Creating a budget for the district;
> (k) Contracting for services for the district;
> (l) Modifying policies and procedures established by the district board;
> (m) Establishing grade configurations of schools;
> (n) Determining the school curriculum;
> (o) Selecting instructional materials and assessments;
> (p) Setting class sizes;
> (q) Providing for staff professional development.

R.C. 3302.10(C)(1). If a District cannot escape the ADC within a certain period of time, the ADC Statute mandates that the district's board of education be disbanded, and a new five-member board be appointed by the mayor and a nominating committee, without any vote, referendum, or other relevant input from the local community as to the size and organization of the new board. R.C. 3302.10(K) ("A new board of education shall be appointed for the district in accordance with section 3302.11 of the Revised Code.").

1. The ADC Statute violates the Local Board Rule by usurping all powers of the elected board and granting them to an unelected CEO.

The ADC Statute passed within Am. Sub. HB 70 clearly and unambiguously removes all power from the local board, and the Tenth District erred in finding otherwise. Under the ADC Statute, the appointed CEO takes over "*complete* operational, managerial, and instructional control of the district[.]" R.C. 3302.10(C)(1) (emphasis added). By using the word "complete," the General Assembly granted the CEO power which was "entire, or with no part, item, or element lacking." Pressed Steel Tank Co. v. Comm'r, 46 B.T.A. 52, 58 (1942), *aff'd sub nom.* Pressed Steel Tank Co v. Comm'r, 133 F.2d 776 (7th Cir. 1943); *see also* Black's Law Dictionary (5th ed. 1979) (defining "complete" as "[f]ull; entire; including every item or element of the thing spoken of, without omissions or deficiencies"). Not only is the CEO's authority "complete;" the General Assembly saw fit to include examples of the CEO's authority by providing that the CEO's power "shall include, *but shall not be limited to*, the following powers and duties[.]" R.C. 3302.10(C)(1). "The word *include* does not ordinarily introduce an exhaustive list[.]" Reading Law, Section 15, at 132 (original emphasis). Instead, "the statutory phrase 'including, but not limited to' means that the examples expressly given are 'a *nonexhaustive* list of examples.'" State v. Anderson, 138 Ohio St.3d 264, 271, 2014-Ohio-542, 6 N.E.3d 23 (original emphasis; internal citations omitted). *See also,* Fed. Land Bank of St. Paul v. Bismarck Lumber Co., 314 U.S. 95, 100 (1941) ("the term

'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle"); United States v. Philip Morris USA Inc., 566 F.3d 1095, 1115 (D.C. Cir. 2009) (explaining that "including" indicates a nonexhaustive list and that "adding 'but not limited to' helps to emphasize the non-exhaustive nature").

In direct contradiction to the plain language of the ADC Statute and the rules of statutory construction, the Tenth District read R.C. 3302.10(C)(1) as a *limitation* on the CEO's authority. Specifically, the Tenth District found that "the phrase 'operational, managerial, and instructional control' in R.C. 3302.10(C)(1) *constitutes an implicit limitation on a [CEO]'s authority*." Youngstown, 104 N.E.3d, at 1072 (emphasis added). Compounding the error, the Tenth District stated that if the General Assembly had intended to "give the [CEO] authority to perform all of the school board's duties, it could have written the statute to provide that the [CEO] would exercise *complete control* of the district, without including the limiting phrase 'operational, managerial, and instructional control.'" Id. (emphasis added.) First, the phrase "operational, managerial, and instructional control" is in no way a "limiting phrase." Second, the General Assembly ensured that there was no limitation on the CEO's powers, stating that the CEO's control "shall include, *but shall not be limited to*," a nonexhaustive list of at least 17 examples of the CEO's power. Third, the General Assembly described the CEO's power as "*complete*" in R.C. 3302.10(C)(1), precisely as the Tenth District claimed it had not.

In reading the plain language of the ADC Statute, there can be no doubt that the General Assembly, in passing Am. Sub. HB 70, intended to (and actually did) grant ODE and the State Superintendent the ability to usurp all power of a local board of education through establishment of an ADC. This is the crucial distinction between the ADC Statute and other statutes which have been challenged for violation of the Local Board Rule. For example, in Ohio Congress, this Court

found that the General Assembly may "creat[e] additional schools that are located within city school districts but are not part of the district" because doing so does not usurp the powers of the city school district; thus, R.C. Chapter 3314 did not run afoul of the Local Board Rule. 111 Ohio St.3d, at 581. Likewise, the Seventh District rejected a Local Board Rule challenge to R.C. Chapter 3316, which permits a commission to assume financial control of a district determined to be in "fiscal emergency." East Liverpool Edn. Assn. v. East Liverpool City Sch. Dist. Bd. of Edn., 177 Ohio App.3d 87, 2008-Ohio-3327, 893 N.E.2d 916 ("East Liverpool"). The Seventh District based its holding, in part, on the fact that "the commission was appointed to assume *only the board's fiscal responsibilities*," and not any other powers. 2008-Ohio-3327, at ¶ 39 (emphasis added). Indeed, the Seventh District noted that "*diminishing* the powers of an elected board of education" was permissible in that instance. Id., at ¶ 41 (emphasis added). But *diminishing* power is not the same as *eliminating* power entirely.

In direct contrast, the General Assembly used Am. Sub. HB 70 to empower ODE and the State Superintendent to establish an ADC that will appoint a CEO to *replace* local boards of education that become subject to the provisions of the ADC Statute. By replacing the local board and transferring "complete" control to an all-powerful CEO, the General Assembly *eliminated* the powers of the board and rendered the board a nullity. In doing so, the General Assembly exceeded its authority under the Constitution and violated the Local Board Rule.

2. The ADC Statute violates the Local Board Rule by legislating boards of education *out of existence*.

The ADC Statute passed within Am. Sub. HB 70 gives the CEO authority over the size and organization of the local school board, making it further unconstitutional under the Local Board Rule. The ADC Statute explicitly provides that, after a school district under an ADC meets certain criteria, "[a] new board of education shall be appointed for the district in accordance with section

3302.11 of the Revised Code." R.C. 3302.10(K)(2). The appointed board remains powerless because "the [CEO] shall retain complete operational, managerial, and instructional control of the district" despite the new board. Id. Moreover, the new board is only subject to referendum "at least three years after the date on which the academic distress commission established for the district ceases to exist pursuant to [3302.10(N)(1)]." R.C. 3302.11(G)(1). In the meantime, the CEO remains free to "reconstitute" or even "[p]ermanently close the school" before any referendum ever takes place. R.C. 3302.10(H)(1)(f).

There can be no question that Am. Sub. HB 70 – in enacting the ADC Statute and R.C. 3302.11 – attempts to "govern[] questions of size and organization" of a school board in violation of the Local Board Rule. R.C. 3302.11 mandates that, regardless of any previous determination by local voters to the contrary, the new board of education consist of five members. R.C. 3302.11(C). Thus, it governs the question of size. R.C. 3302.11 further mandates that the new board be appointed, how that appointment occurs, and what role the new board plays – in other words, it governs the question of organization. Indeed, what saved the legislation in East Liverpool – that "the commission has no authority over the size or organization of a school board" – is violated here. 2008-Ohio-3327, at ¶ 42.

Am. Sub. HB 70 usurps all power from the local board, and it governs that which the General Assembly is prohibited from governing. Moreover, Am. Sub. HB 70 contains none of the limitations which have saved other statutes from running afoul of the Local Board Rule. Because Am. Sub. HB 70 violates the Local Board Rule, it is unconstitutional and void.

D. The General Assembly Cannot Commandeer Local Control Without Amending the Local Board Rule Pursuant to Article XVI's Amendment Procedures.

Finally, the General Assembly's attempt to amend the Constitution by enacting a statute cannot be permitted by the Court. The Ohio Constitution is subject to amendment only by the people of Ohio. Hoffman v. Knollman, 135 Ohio St. 170, 20 N.E.2d 221 (1939). "Neither the legislature by legislative enactment nor the courts by judicial interpretation can repeal or modify the expression of the will of the people or destroy the plain language and meaning of the constitution." 16 Ohio Jur. 3d Constitutional Law § 7. The requirements for amending the Constitution are typically held to be mandatory rather than directory, and "[t]he reason for such a construction is obvious. The Constitution is organic and fundamental law, and to permit a change in it without a strict adherence to the rules therein laid down would be a step in the direction of the destruction of the stability of the government." 11 American Jurisprudence 633, Section 28. The requirement of strict adherence is consistent with viewing the Constitution as "primarily a limitation on legislative power of the General Assembly," with the powers of the legislative branch subservient to the Constitution's provisions. State v. Warner, 55 Ohio St.3d, at 43; *see also* 16 Ohio Jur. 3d Constitutional Law § 212 (*citing* French v. Dwiggins, 9 Ohio St.3d 32, 458 N.E.2d 827 (1984)). Thus, the General Assembly is prohibited from amending the Constitution except by the methods authorized in Article XVI of the Ohio Constitution.

Essentially, what the legislature has attempted to do through Am. Sub. HB 70 is amend the Constitution's Local Board Rule by statute rather than by following the mandates of Article XVI. The General Assembly cannot do so. The Constitution mandates that each school district "*shall* have the power . . . to determine *for itself*" the size and organization of its board. Article VI, Section 3 (emphasis added). The Local Board Rule is a limitation on the General Assembly's

otherwise broad power to provide for a system of public education pursuant to Article VI. With Am. Sub. HB 70, Appellees would have this Court permit the General Assembly to amend the Local Board Rule to read that voters "*may* have the power . . . to determine for [themselves]" the size and organization of their board, or that voters shall determine it for themselves "*subject to* any restrictions placed by the legislature." Neither is consistent with the plain language of the Local Board Rule, and the General Assembly cannot amend the Constitution simply by passing a law that contradicts it. Permitting the legislature to do so would fundamentally violate separation of powers, overextend the General Assembly's legislative power, and upend hundreds of years of American jurisprudence.

IV. CONCLUSION

For the reasons discussed above, the General Assembly violated the Ohio Constitution when it passed Am. Sub. HB 70. After vitally altering the original bill, the legislature failed to consider the bill three times anew and instead employed a process which subverted the Three-Reading Rule. Additionally, the legislature exceeded its power by using Am. Sub. HB 70 to strip school districts of the power to determine for themselves the size and organization of their local boards of education. The Tenth District erred by misinterpreting and misapplying this Court's precedent for the Three Reading Rule and the Local Board Rule. In doing so, the Tenth District failed to hold the General Assembly accountable for following to the mandates of Ohio's Constitution. Accordingly, the East Cleveland City School District Board of Education urges this Court to reverse the Youngstown decision of the Tenth District Court of Appeals and find in favor of Appellants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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