IN THE SUPREME COURT OF OHIO

WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT BOARD OF EDUCATION	:	Supreme Court Case No. _____
Appellant,	:	
v.	:	Eighth District Court of Appeals Case No. 108253
BEACHWOOD CITY SCHOOL DISTRICT BOARD OF EDUCATION	:	
Appellee.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT WARRENSVILLE HEIGHTS CITY SCHOOL BOARD OF EDUCATION

ON APPEAL FROM THE EIGHTH DISTRICT COURT OF APPEALS

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THIS CASE INVOLVES A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST

This case presents an important question of first impression: can one school district irrevocably contract to take territory or tax revenue from another school district, incident to a municipal annexation, without the approval of the Ohio Board of Education or certification of a fiscal officer? Before the decision below, the answer always had been no. Whether that answer is correct affects thousands of schools and millions of taxpayers—a quintessential question of public or great general interest.

Ohio's school district territory transfer and school funding mechanisms are established by Ohio's Constitution and statutes. Hanna, et al., *Baldwin's Ohio Practice, School Law*, § 4:1, at 38 (2019–2020 Ed.) ("[S]chool districts are creatures of the legislature, their powers, duties, and liabilities are limited to those prescribed by statute or necessarily implied from statutes."). They are complicated and interconnected schemes. Only this Court can provide the uniformity and consistency necessary for schools across Ohio to navigate that complex, statutory framework. *See, e.g.*, *State ex rel. St. Clair Twp. Bd. of Trs. v. City of Hamilton*, 156 Ohio St.3d 272, 2019-Ohio-717, 125 N.E.3d 863 (annexation statutes); *State ex rel. Xenia v. Greene Cty. Bd. of Commrs.*, —Ohio St.3d—, 2020-Ohio-3423 (statutory requirements for type-2 annexation); *State ex rel. Ohio Cong. of Parents & Teachers v. State Bd. of Edn.*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, ¶¶ 35–39 (community school funding); *DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750, 780 N.E.2d 529, ¶¶ 1–4 (fourth review of school-funding changes).

This case has equally divided the four judges who have wrestled with it, and generated four separate opinions. According to two judges on a fractured Eighth District Court of Appeals panel (with a concurrence and a dissent), a school board can take millions of dollars in property tax revenues from a neighboring school district with no approval from the Ohio Board of

Education and no oversight from county fiscal officers. But as the dissent and trial judge pointed out, that reading of the statutes violates two statutory safeguards that the Ohio General Assembly created to protect public schools, students, and public funds from what might well be hastily-made and short-sighted decisions made by local politicians—whose judgment might not include the long-term, "big picture" issues that the Ohio Board of Education is better suited to focus on.

First, a school board, as a creature of statute, does not have the statutory authority to enter a contract to transfer tax revenue related to a territory transfer request—even revenue that, as here, would not be received for decades—unless the proposed agreement is approved by the Ohio Board of Education. R.C. 3311.06(C)(2), (I). This protection makes sense. The "most important factor" in organizing a school district "is the district's financial ability to provide educational services meeting the minimum standards established by the state board of education." *Baldwin's School Law*, § 4:19, at 53. And because "[l]ocal property taxes are one of the two main sources of revenue" for public schools, "it would be futile to organize or maintain a district in which the tax resources cannot support its schools." *Id.* So before a school board can agree to give away tax revenues or territory, the Ohio Board of Education must approve the agreement. *See id.* § 3:8, at 24 (listing "finance of public education" as one of the Ohio Board of Education's "chief functions"). The General Assembly provided this needed check on school boards faced with tough decisions about property taxes and territory, which are often influenced by the turbulent whims of local pressures and politics. *Id.* § 4:27, at 57 ("Reorganization of school districts can be a sensitive matter in any case, but it is particularly sensitive with respect to territorial transfers brought about by municipal annexations, especially in urban areas.").

The decision below removes the Ohio Board of Education as a critical safeguard, leaving no check on ill-conceived, short-sighted agreements. Far from the "efficient system of common

schools" that the Ohio Constitution promises, and this Court has demanded, this new judicial construction invites inefficiency and abuse. The Eighth District's decision further exacerbates inequalities in Ohio's funding of public education and places a greater burden on state funding to make up the difference, since under Ohio's school district funding formula, "the main driver behind the distribution of state revenue through the foundation formula is each public school district's capacity to raise revenues at the local level for students residing in the district."[1]

Second, a school board cannot contract for the expenditure of money from its general fund unless that agreement includes a fiscal certificate. *See* R.C. 5705.41, 5705.412. Fiscal certificates require confirmation that a school district has appropriated funds for the expenditure and has adequate resources before it enters a contract. These certificates provide an extra layer of protection from "fraud and the reckless expenditure of public funds" by school boards. *See St. Marys v. Auglaize Cty. Bd. of Commrs.*, 115 Ohio St.3d 387, 2007-Ohio-5026, 875 N.E.2d 561, ¶ 49 (citation omitted). Any contract without the required fiscal certificates is a nullity.

But if the Eighth District's split-decision stands, these statutory protections will become meaningless. School boards could give away public funds and bankrupt schools—forcing school closures or mergers—with no state oversight. Or wealthy school districts (like Appellee Beachwood) could abuse territory transfer proceedings to take tax revenues from economically disadvantaged school districts (like Appellant Warrensville Heights)—again, with no state oversight. This would create an incentive for school boards to skirt the statutory requirements in favor of bait-and-switch tax grabs. The statutory scheme was intended to protect districts from a Faustian bargain. The opinion below eviscerates that protection, and hurts students across Ohio.

[1] Legislative Budget Office Ohio Legislative Serv. Comm'n, *School Funding Complete Resource*, at 5 (2019), *available at* https://tinyurl.com/yywxqedz.

Three of the four judges below recognized the deep problems with the result below. The dissent explained why the plain language of the relevant statutes and regulations means that approval from the Ohio Board of Education is a condition precedent to a transfer of property tax revenues. *Beachwood City Sch. Dist. Bd. of Edn. v. Warrensville Heights City Sch. Dist. Bd. of Edn.*, 8th Dist. Cuyahoga No. 108253, 2020-Ohio-4459, ¶¶ 69–99 [hereinafter "Op."] (Mays, J., dissenting); *see also id.* ¶ 21 (summarizing the trial court). To hold otherwise "would allow a school district to petition for annexation to induce the affected district to enter into an agreement that does not comply with the legislative intent and statutory purposes, policies, and history," and which "does not protect the welfare of the students." *Id.* ¶ 95.

The concurrence agreed, explaining "that historically, there have been disparities in Ohio's public-school financing system, which impacted under-resourced school districts that serve low-income communities." *Id.* ¶ 60 (Gallagher, J., concurring). And that these "disparities between school districts seemingly remain. This lawsuit is the very embodiment of those ongoing problems." *Id.* ¶ 64. Despite joining the majority, the concurrence "certainly underst[ood] the concerns raised by the dissent." *Id.* ¶ 60.

This Court should take jurisdiction over this appeal and resolve the fractured decisions in this case involving public and great general interest.

STATEMENT OF THE CASE

Ohio law allows a city to expand its borders by annexing adjoining territory. *See* R.C. 709.02; *State ex rel. Xenia*, 2020-Ohio-3423, ¶ 2. School districts are distinct from cities, so when a city annexes land, the land does not necessarily change school district territory. Op., ¶ 9 n.1. When a city annexes land that contains only part of a school district's territory, the land remains within the original school district's territory. R.C. 3311.06(C)(2). In this scenario, property tax revenues also remain with the original school district. *See* R.C. 3311.06(I). If a

neighboring school district associated with the annexing city wants to transfer the associated territory and all of the rights that go with that territory to its school district, it must get approval from the Ohio Board of Education. *Id.*; R.C. 3311.06(C)(2); O.A.C. 3301-89-02. The court below has allowed Beachwood to gut that statutory regime, permitting such a district to take the tax revenue derived from such territory with none of the obligations that go along with that territory—all without approval or oversight by the Ohio Board of Education.

The City of Beachwood Annexed Land from Cleveland.

Three decades ago, the City of Beachwood annexed certain territory from Cleveland. Op., ¶ 9. This land historically was part (but not all) of the Warrensville Heights school district. (All of the land has long been planned for commercial/industrial development—providing lucrative revenue to any political subdivision.) The annexed land became part of the City of Beachwood but "remained within the Warrensville Heights City School District." *Id.* The Beachwood School District wanted to change that.

Beachwood Petitioned the Ohio Department of Education under R.C. 3311.06.

"Beachwood requested that the Ohio Department of Education transfer the [annexed] Land for school-district purposes from Warrensville Heights to Beachwood pursuant to R.C. 3311.06." *Id.* ¶ 10. Warrensville Heights opposed the transfer. As a result, the Ohio Department of Education required the two school boards to "enter into good faith negotiations" to try to reach an agreement about Beachwood's transfer request.

The school boards did not reach an agreement, so the Department of Education provided recommended facilitators to mediate the dispute. *Id.* ¶ 10. After several years, the school boards chose Judge Robert M. Duncan. *Id.*, ¶ 71 (Mays, J., dissenting). Judge Duncan eventually issued a memorandum of recommendations. *Id.* ¶¶ 11–12. Neither school board signed the

memorandum. When the Ohio Board of Education asked for an update, the school boards "responded that they had received Duncan's recommendation and were in the process of preparing 'a formal agreement between the parties.'" *Id.* ¶ 13.

The School Boards Negotiated a Proposed Agreement under R.C. 3311.06.

Beachwood and Warrensville Heights negotiated a proposed agreement in 1997. The school boards were explicit: the proposed agreement resulted from Beachwood's territory transfer request "pursuant to Section 3311.06(C)(2) of the Ohio Revised Code, which request remains pending." *Id.* ¶ 15. The proposed agreement tracked Judge Duncan's recommendations, which included (1) Beachwood withdrawing its transfer request, (2) a split of the property tax revenues from the annexed land (subject to certain conditional requirements), and (3) joint educational programs and activities between the school districts. *Id.* ¶ 16. Notably, the proposed agreement has no expiration date, and cannot be terminated unless both school districts mutually agree to such termination. "The respective boards approved the [proposed] Agreement," *id.* ¶ 71 (Mays, J., dissenting), but they never sent the proposed agreement to the Ohio Department of Education for its review and consideration. As a result, the Ohio Board of Education never approved it. *See* R.C. 3311.06(C)(2). It is also undisputed that neither school district attached a fiscal certificate to the proposed agreement. Op., ¶ 46. Beachwood eventually withdrew its request. *Id.* ¶ 17.

Beachwood Sued Warrensville Heights. The Trial Court Sided with Warrensville Heights.

Beachwood claimed that the proposed agreement triggered the split of property tax revenues, commencing in 2013. *See id.* ¶ 19. Warrensville Heights refused to give Beachwood any of its tax revenues because no binding, approved agreement existed. Beachwood sued Warrensville Heights for breach of Judge Duncan's memorandum and the proposed agreement, and various torts. *See id.* ¶ 20. The trial court granted summary judgment for Warrensville

Heights because "the parties failed to complete the required steps to finalize an agreement pursuant to ORC 3311.06." *Beachwood City Sch. Dist. Bd. of Edn. v. Warrensville Heights City Sch. Dist. Bd. of Edn.*, Cuyahoga C.P. No. 18-902080 (Feb. 7, 2019).

A Fractured Eighth District Reversed.

The Eighth District reversed the trial court with a splintered decision. Op., ¶¶ 1–58 (Boyle, J.), ¶¶ 59–65 (Gallagher, J., concurring), ¶¶ 66–102 (Mays. J, dissenting). The Eighth District was split on whether the "extensive statutory mechanism" applied to the proposed agreement. The majority read the statutes in a way that allowed Beachwood to become the first non-urban school district to irrevocably and in perpetuity take real property tax revenues from another non-urban school district without approval from the Ohio Board of Education.

The majority erroneously decided that the first statutory safeguard—Ohio Board of Education approval—did not apply because the agreement did not "affect the physical school district boundaries." *Id.* ¶ 36. Relying upon a school district's general power to contract, it held that "a revenue-sharing agreement without an actual transfer of territory does not require approval from the Ohio Board of Education." *Id.* ¶ 33; *see also id.* ¶ 37 ("We therefore decline to interpret the transfer of territory to mean the sharing of tax revenue separate from the transfer of physical territory."). To reach that conclusion, however, the majority added words not found in R.C. 3311.06, such as a limitation to "physical" or "actual" school district boundaries. The court dismissed, without explanation, the plain language of R.C. 3311.06, which distinguishes between "transfer of school district territory **or** division of funds and indebtedness incident thereto," either of which triggers the need for Ohio Board of Education approval. R.C. 3311.06(I) (emphasis added). Finally, the court ignored a core tenet of Ohio jurisprudence that a board of education, as a creature of statute, has only those express powers given to it by the

Legislature, and nowhere does Ohio law permit a school district to permanently contract away its power to tax its territory to another school district without Ohio Board of Education approval.

The majority decided that the second statutory safeguard—fiscal certification—also did not apply because only contracts involving "expenditures" need fiscal certificates. According to the majority, an agreement to "share tax revenue in the future" does not qualify as an "expenditure" under R.C. Chapter 5705. *Id.* ¶¶ 50–51. But the majority ignored that an "expenditure of money" simply means an agreement that benefits another monetarily. *Id.* ¶ 51. Under the majority's opinion, Beachwood stands to take millions of dollars from Warrensville Heights for many years in the future.[2]

The concurrence was troubled by the disparities in Ohio's public-school financing system, calling this case "the very embodiment of those ongoing problems," but joined the majority "barring further action by the Supreme Court of Ohio." *Id.* ¶¶ 64, 65.

The dissent explained that "R.C. 3311.06 governs the annexation procedure for school district property," which involves much more than just the physical boundaries of the school district. *Id.* ¶ 70 (Mays, J., dissenting). The dissent carefully analyzed why the agreement was "was governed by R.C. 3311.06 and the corresponding [O.A.C.] requirements," and is void because the parties did not comply with the "entire process." *Id.* ¶¶ 76–93. Thus, "[t]he failure to secure ODE approval is fatal to enforcement" of the proposed agreement. *Id.* ¶ 99.

[2] There is no mechanism in the proposed agreement to cause the Cuyahoga County Auditor (now "Fiscal Officer") to divide the tax revenue pursuant to any formula, as there would have been had the Ohio Board of Education been involved. Thus, under the majority opinion, every year, the Warrensville Heights Treasurer will be obligated to write a check to Beachwood to pay tax revenue paid to Warrensville Heights by the County Fiscal Office.

PROPOSITIONS OF LAW AND ARGUMENTS IN SUPPORT

Proposition of Law I: R.C. 3311.06 and O.A.C. Chapter 3301-89 require the Ohio Board of Education to receive and approve any negotiated agreement related to a school district's request to transfer territory following a city's annexation of property, regardless of whether the proposed agreement involves the physical transfer of territory or just tax revenues.

I. The plain language of R.C. 3311.06 required the Ohio Board of Education to approve the proposed agreement before it could become binding.

Revised Code Chapter 3311 is a comprehensive scheme of statutes governing school districts. R.C. 3311.06 specifies the "procedure when part of [a school] district is annexed by [a] municipal corporation." When a city annexes territory that contains just a part of a school district, the territory remains in the original school district under R.C. 3311.06(C)(2). That default can be altered only by adhering to the specific statutory scheme.

> When the territory so annexed to a city . . . comprises part but not all of the territory of a school district, the said territory becomes part of the city school district . . . only upon approval by the state board of education[.]
>
> Any school district . . . desiring state board approval of a transfer . . . shall make a good faith effort to negotiate the terms of transfer with any other school district whose territory would be affected by the transfer. Before the state board may approve any transfer of territory to a school district . . . it must receive the following:
>
> (a) A resolution requesting approval of the transfer, passed by at least one of the school districts whose territory would be affected by the transfer;
>
> (b) Evidence determined to be sufficient by the state board to show that good faith negotiations have taken place or that the district requesting the transfer has made a good faith effort to hold such negotiations; [and]
>
> (c) If any negotiations took place, a statement signed by all boards that participated in the negotiations, listing the terms agreed on and the points on which no agreement could be reached.

R.C. 3311.06(C)(2). School districts must follow these three statutory steps to obtain Ohio Board of Education approval. These steps apply to any negotiated agreement under R.C. 3311.06 regardless of the terms of the agreement. For example:

> No transfer of school district territory **or** division of funds and indebtedness incident thereto, pursuant to the annexation of territory to a city or village shall be completed in any other manner than that prescribed by this section.

R.C. 3311.06(I) (emphasis added).

The proposed agreement falls into the latter category. The school districts agreed to share property tax revenues—*i.e.*, a "division of funds"—pursuant to an annexation of territory to a city. As a result, Beachwood still needed the Ohio Board of Education's approval under R.C. 3311.06(C)(2). Although Beachwood followed the first two statutory steps, neither school board sent the proposed agreement to the Ohio Board of Education. *See* R.C. 3311.06(C)(2)(c). As a result, the Ohio Board of Education never approved the proposed agreement, and under the plain language of the statute, it was not enforceable. R.C. 3311.06(C)(2), (I).

The majority rescued Beachwood by deciding that it did not have to comply with the statute at all. The majority justified its view with a novel and incorrect reading of the statute. It held that under "the plain language of the statute, a revenue-sharing agreement without an ***actual*** transfer of territory does not require approval from the Ohio Board of Education." Op., ¶ 33 (emphasis added). By using the word "actual," the majority really meant that the statute governs "only agreements that affect the ***physical*** school district boundaries." *Id.* ¶ 36 (emphasis added). But there is nothing in R.C. 3311.06(I) that limits the Ohio Board of Education's approval to agreements transferring the physical boundaries on a school district map. To get around this, the majority, without analysis, declared that a "division of funds" could not be "incident to" a territory transfer unless the physical transfer of school boundaries occurred. Op., ¶ 35. The implication of the majority's view is that a "division of funds" cannot be "incident to" a "transfer of school district territory" unless it directly results from an "actual transfer of territory."

But that is not what the statute says.[3] The key language, which the majority glossed over, is "incident to." "Incident to" means "relating to"—not resulting from. *See Kelm v. Kelm*, 92 Ohio St.3d 223, 225, 749 N.E.2d 299 (2001) (summarizing *Kelm v. Kelm*, 68 Ohio St.3d 26, 28, 623 N.E.2d 39 (1993)); *see also* Garner, *Garner's Modern Am. Usage*, at 453 (2009 3d Ed.) (explaining that "incident to" means "closely related to"). The Sixth Circuit agrees: something is "incident to" when it is "closely associated or naturally related" to it, even if it is not "directly involv[ed]" with it. *Woodside v. United States*, 606 F.2d 134, 141 (6th Cir. 1979).

The entire course of events here began with Beachwood's effort to transfer territory. Beachwood could not lay claim to the tax revenue without first making that request and following the statutory scheme. The proposed agreement is the result of that request under the statutory process. The "division of funds" is inextricably bound to the transfer, and would not exist without it, even if the transfer ultimately was withdrawn; it certainly is "incident to" it.

This view is consistent both R.C. 3311.06(C)(2)(c) and R.C. 3311.06(D). The third statutory step towards approval, R.C. 3311.06(c)(2)(c), says nothing about "physical school district boundaries." Instead, it instructs school boards to send the Ohio Board of Education the "terms agreed upon" between the parties "[i]f any negotiations took place." *Id.* That means *any* negotiated agreement related to *any* request to transfer territory.

R.C. 3311.06(D) says the same thing—listing examples of what a negotiated agreement could look like. For example, school districts "may agree to share revenues from the property

[3] But even if it did, R.C. 3311.06(I) still required Ohio Board of Education approval. A "territory" is broader than the majority's reading, which limited "territory" to the physical boundaries of a school district. Instead, a "territory" includes a bundle of rights associated with school district territory, including real property, school facilities, students, obligations, tax revenue, and more. *See State ex rel. Bd. of Edn. Of Worthington Exempted Sch. Dist. v. Bd. of Edn. of Columbus City Sch. Dist.*, 172 Ohio St. 237, 237–38 (1961) (addressing a transfer of "land, a school building and equipment" under R.C. 3311.06).

included in the territory to be transferred, establish cooperative programs between the participating districts, and establish mechanisms for the settlement of any future boundary disputes." *Id.* But whatever terms the school districts ultimately agree upon, the Ohio Board of Education still has to approve the agreement. R.C. 3311.06(C)(2).

As a result, the proposed agreement was not binding unless the school districts completed the third statutory step and the Ohio Board of Education approved it, which never happened. The proposed agreement is invalid. *See Worthington Exempted Sch. Dist.*, 172 Ohio St. at 241 (explaining that the failure to follow R.C. 3311.06 invalidates action under R.C. 3311.06).

II. The plain language of O.A.C. Chapter 3301-89 confirms that the Ohio Board of Education needed to approve the proposed agreement.

Chapter 3301-89 of the Ohio Administrative Code, which tracks R.C. 3311.06, confirms that the Ohio Board of Education must approve a negotiated agreement related to a territory transfer request.

Under O.A.C. 3301-89-02(A)(1), Beachwood made its initial request to transfer the territory to the Ohio Board of Education. *See also* O.A.C. 3301-89-04(D)(1). Then, the school districts engaged in "good faith negotiations," O.A.C. 3301-89-04(D)(3); O.A.C. 3301-89-01(C), which included selecting Judge Duncan as the "mutually agreed upon facilitator." O.A.C. 3301-89-04(A)(6). These negotiations included discussions about the "examples of terms that school districts may agree to," O.A.C. 3301-89-04(C), many of which Beachwood and Warrensville Heights chose to include. The negotiations also discussed the questions listed in O.A.C. 3301-89-02(D). So just like Beachwood and Warrensville completed the first two statutory steps toward approval, the school districts complied with these regulatory steps as well.

But Beachwood failed to meet the final regulatory requirement. "In situations where agreement has been reached between respective boards of education, the terms of the agreement

should be sent to the state board of education with reasonable dispatch." O.A.C. 3301-89-01(D); O.A.C. 3301-89-04(A)(7) ("A copy of the resolution and the negotiated agreement shall be transmitted by each board of education to the state board of education."). Then, "the state board of education shall adopt a resolution of approval of the negotiated agreement or may establish a hearing if approval is not granted." O.A.C. 3301-89-02(A)(6) (now at (A)(3)).

The majority made the same mistake here that it made with the statute. It escaped this plain language by adding words so that the negotiated agreement must include the "actual" or "physical" transfer of territory. But those words are found nowhere in the regulations. Instead, Chapter 3301-89 of the Ohio Administrative Code required the Ohio Board of Education to receive and approve "the negotiated agreement." O.A.C. 3301-89-02(A)(6); O.A.C. 3301-89-04(A)(7). Beachwood and Warrensville Heights never sent its proposed agreement to the Ohio Board of Education for approval; so it never became binding.[4]

Proposition of Law II: R.C. 5705.41 and 5705.412 apply to agreements to transfer tax revenues between school districts.

The proposed agreement is invalid for another reason that this Court should confirm. R.C. 5705.41 and 5705.412 prohibit school districts from "mak[ing] any contract . . . involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision." R.C. 5705.41(D)(3). "Every such contract made without a certificate shall be void." *Id.* This safeguard is important: it protects public schools and students from "fraud and the reckless expenditure of public funds" by school boards. *St. Marys*, 2007-Ohio-5026, ¶ 49.

[4] This result tracks the purpose of rule. "The ODE is unilaterally vested with authority to protect the best interest of the students and provide an objective body to weigh the pros and cons of such an agreement by utilizing the detailed and legislatively authorized standards and procedures set forth in R.C. 3311.06 and the Ohio Administrative Code." *Beachwood City School Dist. Bd. of Edn.*, ¶ 97 (Mays., J., dissenting). There is nothing in R.C. 3311.06 or the O.A.C. that allows school boards to contract around the required approval. And such a contract made without Ohio Board of Education approval is beyond the express statutory authority granted to school districts.

The majority recognized that the lack of fiscal certificates would void the agreement. Still, it incorrectly defined "expenditure" in a way that excused the missing certificates. The majority tried to explain that "[t]he collection of tax revenue is used to cover the expenditure of funds; it is not an expenditure itself." Op., ¶ 51. The majority, however, did not define "expenditure." And its unsupported conclusion looks at the issue backwards. The majority focused on where the money is coming from when it should have focused on where it is going.

Although Chapter 5705 of the R.C. does not define "expenditure," many other statutes define it consistently. An "expenditure" means money (or "anything of value") that "is made to, at the request of, for the benefit of, or on behalf of" a third party. R.C. 121.60(A)(1); R.C. 101.90(A)(1); R.C. 101.70(D)(2). This includes "[a] contract, promise, or agreement to make an expenditure, whether or not legally enforceable." *Id.* As a result, an "expenditure of money" simply means an agreement that benefits another monetarily. This is what the majority lost focus of—the monetary benefit going to Beachwood.

But that is exactly what the proposed agreement would do. Before the proposed agreement, Warrensville Heights received 100% of the tax revenues at issue. But after, it permanently would have to give up 30% of those revenues—totaling millions of dollars—which would now go to Beachwood. Op., ¶ 16. That is absolutely a contract that benefits Beachwood monetarily. Indeed, it would be extraordinary if a school board could contract away millions of dollars—from any funding source—with no requirement to attach a fiscal certificate. But that is exactly what the majority said school boards can now do.

Proposition of Law III: R.C. Chapter 2744 provides immunity from tort claims arising from a school district's negotiation of tax revenue-sharing agreements.

The majority also erred when it reversed the dismissal of the tort claims. Under R.C. 2744.02(A)(1), "a political subdivision is not liable in damages in a civil action for injury, death,

or loss to person or property allegedly caused by an act or omission of the political subdivision . . . in connection with a governmental or proprietary function." The Warrensville Heights school district is a "political subdivision." R.C. 2744.01(F). And its conduct related to Beachwood's transfer request and the proposed agreement qualifies as a "government function." *See* R.C. 2744.01(C)(1). Indeed, "the provision of a system of public education" is an enumerated example of a "government function." R.C. 2744.01(C)(2)(c).

If that were not enough, a "government function" also includes any "function that the general assembly mandates a political subdivision to perform." R.C. 2744.01(c)(2)(x). And it encompasses the enforcement or defense of legal rights. *See* R.C. 2744.01(c)(2)(i). As a result, the entire course of conduct here—starting with negotiations compelled under R.C. 3311.06 and O.A.C. Chapter 3301-89 due to Beachwood's transfer request, to Warrensville Height's steps to enforce its view of the law—is a government function. Warrensville Heights is immune from the promissory estoppel, unjust enrichment, fraud, and conversion claims.

CONCLUSION

This Court should accept jurisdiction over these questions of public and great general interest that effect public schools and students across Ohio.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This certifies that a copy of the above memorandum was served on the following on November 2, 2020 by email:

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