

**IN THE SUPREME COURT OF OHIO**

STATE EX REL. BOARD OF EDUCATION ) Case No. 2024-1425  
OF THE SPRINGFIELD CITY SCHOOL )  
DISTRICT, )  
Relator, ) Original Action in Mandamus  
 )  
v. )  
CLARK COUNTY AUDITOR, HILLARY )  
HAMILTON, )  
 )  
Respondent.

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**MERIT BRIEF OF AMICUS CURIAE, THE OHIO SCHOOL BOARDS  
ASSOCIATION (“OSBA”), THE OHIO ASSOCIATION OF SCHOOL  
BUSINESS OFFICIALS (“OASBO”), AND THE BUCKEYE  
ASSOCIATION OF SCHOOL ADMINISTRATORS (“BASA”) IN  
SUPPORT OF RELATOR’S COMPLAINT IN MANDAMUS**

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**AMICUS CURIAE OHIO SCHOOL GROUP'S STATEMENT  
OF INTEREST IN THIS CASE**

*Amicus curiae* the Ohio School Boards Association (“OSBA”), the Ohio Association of School Business Officials (“OASBO”), and the Buckeye Association of School Administrators (“BASA”) (collectively “Ohio School Groups”) respectfully urge the Court to grant the relief sought in Relator’s Complaint for a Writ of Mandamus. Respondent’s position is inconsistent with the plain language in the relevant provisions of the Ohio Revised Code related to the issuance of voter approved bonds and the levying of taxes to pay the bonds. The Revised Code expressly provides a mechanism for school districts like the Relator to issue voter approved bonds in multiple installments and at different times, and there are good financial reasons why the General Assembly provided for this. The provisions of the Revised Code also provide that for a 12-year repayment period for each installment of bonds, and there is nothing in the ballot language that approved the bonds in this case that is contrary to the clear provisions of the Revised Code in this regard. The denial of the relief sought by Relator in this mandamus action will imperil the ability of Ohio political subdivisions, including many of the hundreds of Ohio public school districts who are members of amicus curiae, to make future debt charges payments on their outstanding bonds and will increase the costs of large capital projects for Ohio school districts, placing additional burdens on Ohio property taxpayers. It also will limit their future ability to efficiently finance school construction projects to the detriment of Ohio’s taxpayers.

**A. Amicus Curiae Ohio School Groups represent the interests of most of Ohio’s elected public school boards, and superintendents and public school district business officials.**

OSBA is a not-for-profit corporation that serves Ohio’s public school board members and the diverse districts they represent. Its members include more than 700 of Ohio’s elected boards of education including numerous city, municipal, local, exempted village and career technical school districts and educational service centers throughout Ohio. OSBA provides extensive

informational support, advocacy and consulting, board development and training, legal information, and policy service and analysis to its school board members.

OASBO is a not-for-profit professional association of Ohio's public school district treasurer/CFOs, business managers, transportation directors, food service supervisors, and administrative support staff. It empowers Ohio's public school finance and operations professionals to achieve excellence through collaboration, continuous learning, and advocacy.

BASA is a statewide organization representing over 95% of school district superintendents in Ohio. BASA is a nonprofit corporation dedicated to assisting its superintendents to more effectively serve the needs of their school districts.

**B. There will be dire consequences to the Ohio school bond market if Respondent's incorrect interpretation of the relevant provisions of the Ohio Revised Code prevails.**

If Respondent's incorrect position prevails, the consequences for past and current Ohio school district bond issues, and the market for such bonds, will be catastrophic. Ohio school district voter-authorized ("voted") bonds, currently considered one of the safest investments in the U.S. public finance market, will suffer. Many of these bonds have been issued in multiple series over time and will face potential default. In addition, future investors will build an unhealthy mistrust of not only Ohio school district bonds, but the Ohio public finance market in general. In addition, the costs of large capital projects for Ohio school districts will likely increase, placing additional burdens on Ohio taxpayers.

There are several important policy reasons why the General Assembly has authorized Ohio school districts to issue voted bonds in multiple series and has provided for taxpayers to make tax payments to support those bonds during a period applicable to each issuance of the bonds. These policy reasons are important not only to Ohio public school districts, but to the citizens of the State.

First, large capital projects for Ohio school districts may take many years to complete and construction may need to be in different phases. Accordingly, Ohio law allows for school districts to issue and repay the bonds in series and not all at once at the start of a construction project. When a school district asks its voters for approval of a bond issue (which is different from a stand-alone tax levy), the purpose of the bonds usually involves the construction or significant rehabilitation of one or more school district buildings. These construction projects can take many years to complete due to space limitations during the construction and issues related to site access at times school children are present. Given extended project durations, it is inevitable that school will be in session during much of a construction project, and Ohio school districts have a Constitutional and civic mandate to provide for the efficient education of students regardless of whether a school district is pursuing a construction project. For these reasons, it is not uncommon for a school district construction project to stretch over five years or more. For such circumstances, Ohio law allows for school districts to issue and repay the voted bonds in series and not all at once at the start of the construction project. It is important that this financing technique remain in place so that school districts and their taxpayers do not have to bear the inefficiencies of issuing all the voter-approved bonds at the start of the project.

Second, the Internal Revenue Code of 1986, as amended (“IRC”), permits government entities such as Ohio school districts to issue debt for capital needs used for governmental purposes as “tax-exempt.” With a few exceptions as outlined in the IRC, bond investors are not required to pay income tax on the interest they earn on such debt, resulting in their willingness to accept a lower interest rate on the debt. This allows for a material cost savings in interest for school districts and lower overall project costs. However, obtaining federal tax exemption, as with most federal subsidies, requires strict adherence to a myriad of rules and regulations.

One such rule concerns the speed with which a school district spends the proceeds of the bonds. In most cases, the IRC requires at least 85% of the proceeds to be spent within three years from the date of issuance of the bonds (in certain limited cases that requirement can be expanded to up to five years). As a result, a school district may need to issue debt in several series over time because construction schedules extend longer than three to five years. To be clear, in those instances a school district should not, and cannot, issue debt in an aggregate amount that exceeds the amount of voter authorization, but to meet the IRC spend-down requirements, the issuance of multiple series of bonds over a period of a few years is necessary.

If the Respondent's position prevails, when a school district has a capital project that will take more than three to five years to complete, a school district will need to issue all the debt at one time and may not be able to meet the IRC spend-down requirements for this debt. Therefore, such debt would be issued without the benefit of tax-exemption, leading to higher interest rates on the bonds, and unnecessarily increasing the overall cost of the project for the school district and its taxpayers.

Third, responsible public fiscal policy dictates that a political subdivision should not borrow money that will not be spent for many years. Respondent's position would force school districts to issue all the voter-authorized bonds and pay interest on those bonds from the very beginning of a project, even if the school district does not need to expend those funds at that time. This will result in unnecessary borrowing costs, putting a greater burden on taxpayers.

Fourth, Ohio school districts with bonds currently outstanding with maturities extending beyond Respondent's incorrect deadline for the expiration of the related tax levy will face a very difficult and unpleasant choice: either (i) use other school district funds to pay debt charges on the bonds or (ii) default on the bonds. Expenditure of other funds for bond payments will not have

been budgeted and will materially alter these school district's ability to educate students, potentially limiting educational offerings, shutting down extracurricular programs and requiring layoffs of educators and school staff

Fifth, market repercussions could extend to other local governments in Ohio, untimely affecting the State's access to the public finance market. If a tax levy supporting a particular bond issue is permitted to expire before the maturity of a related series of bonds, it will materially change the security for such bonds (and not just for the school district that issued the voted bonds). Investors purchase a voted bond with a promise that a tax levy will be collected at whatever rate is necessary to pay debt charges on the related bond. If such a tax levy is permitted to expire prior to final maturity of the bonds, as Respondent proposes, affected school districts will be subject to potential lawsuits from investors even when school districts are able to continue to make scheduled debt charges payments. Rating agencies and investors will develop an understandable and unhealthy mistrust of the Ohio public bond market in general. This mistrust will result in lower ratings, fewer investors and a demand for higher interest rates for what will be perceived to be a riskier credit. Market skepticism will result in more costly school projects, which will raise costs for taxpayers.

## **LEGAL ARGUMENT**

**A. The General Assembly provided Ohio school districts with flexibility to issue bonds in multiple series under Chapter 133 of the Revised Code for numerous policy reasons.**

Relator's Complaint concerns the School District's ability to make debt charges payments on its outstanding bonds after 2025. Respondent contends that collection of the levy to pay debt charges on the Relator's bonds "cannot exceed 12 years under the ballot language and R.C. 133.19(B)(2)" and because the tax levy was first collected in 2014, collection can occur no later than 2025. (Answer, ¶ 23).

Respondent's contention starts with a generally correct premise, then draws an incorrect conclusion. The Revised Code grants Ohio political subdivisions with discretion on the timing of the issuance of voted bonds under R.C. 133.18(I)(5). In addition, the Revised Code expressly authorized the Relator to issue the bonds in two series with two-different 12-year repayment periods, a decision not subject to scrutiny by Respondent.

In the case of voted bonds such as Relator's bonds, the approval of the issuance of the bonds by Relator's voters included authorization for "an annual levy of property taxes to be made outside the ten-mill limitation ... to pay the annual debt charges on the bonds"). This means that a tax is levied at the necessary rate to pay debt charges on the related bonds. The question approved by Relator's voters also provided that the authorized bonds were "to be repaid annually over a period of 12 years." Although the bonds are thus limited to a maximum term of 12 years, the tax that is authorized to be levied to pay debt charges on the bonds is not so limited. This is a critical distinction.

The Revised Code authorized the school district to issue bonds in multiple series, each with 12-year terms, but covering **different** 12-year periods. Respondent's position would require the school district to issue the bonds authorized by the voters on May 7, 2013 all at once or face the loss of the collection of the related tax levy in later years. This is contrary to the flexibility regarding the timing of issuance of the bonds, as provided in R.C. Chapter 133.

Indeed, a primary value to a subdivision in seeking approval of a bond issue pursuant to R.C. 133.18 is that the question includes the authority both to issue the bonds and to levy a tax to pay for the bonds. The General Assembly provided express discretion to subdivisions as to the timing of the issuance of bonds under R.C. Chapter 133 (including to do so in multiple series), and it follows that these provisions also allow for the levy of the tax to pay debt charges on the related

bonds for so long as the bonds are outstanding. As noted above, there are many compelling policy reasons for the flexibility provided in R.C. Chapter 133 on the timing of issuance of voted bonds.

**B. Pursuant to the terms of R.C. Section 133.18, a subdivision need not issue bonds approved by voters all at one time.**

R.C. 133.18(I)(5) provides that “[t]he limitations of divisions (I)(1) and (2) of this section do not apply to any securities authorized at an election under this section if at least ten per cent of the principal amount of the securities, including anticipatory securities, authorized has theretofore been issued.” Accordingly, R.C. 133.18(I)(5) allows securities that are authorized at an election under R.C. 133.18 to be issued in multiple series or installments, so long as at least 10% of the principal amount of securities are issued before the first day of the sixth January following the election. It is common ground that Relator met this statutory threshold by issuing the Series 2013 Bonds.

R.C. 133.23(A) provides that if anticipatory securities are not to be issued, the taxing authority of the subdivision may pass legislation setting forth certain particulars regarding the bonds being authorized. R.C. 133.23(B) then provides that if the taxing authority “determines to issue bonds in installments, it shall pass similar legislation whenever a new installment of those bonds is to be issued.” The reason to allow issuance of voted bonds in multiple series is to obtain the benefits of having the debt outstanding and during which a tax is to be levied to pay debt charges on bonds.

Respondent concedes that Relator was authorized by R.C. Chapter 133 to issue the bonds approved at the May 7, 2013 election in multiple series, and it did so: one in 2013 consisting of \$5,5880,000 in bonds, and one in 2019 consisting of \$8,115,000. In addition, there is no dispute that the total issuance between these two series was within the amount (\$13,995,000) approved by the voters in May 2013. Agreed Facts, at ¶¶ 10-16.

**C. For bonds approved by voters pursuant to Section R.C. 133.18 and issued pursuant to R.C. Chapter 133, the tax authorized by voters to pay debt charges on those bonds must, absent other moneys available, be levied for so long as those bonds are outstanding.**

R.C. 133.18(H) provides that “[i]f a majority of the electors voting upon the question vote for it, the taxing authority of the subdivision may proceed under sections 133.21 to 133.33 of the Revised Code with the issuance of the securities and with the levy and collection of a property tax outside the tax limitation during the period the securities are outstanding sufficient in amount to pay the debt charges on the securities.” In addition, R.C. 133.25 provides that “[a]fter the issuance of general obligation securities ..., the taxing authority of the subdivision shall include in its annual tax budget, and levy a property tax in a sufficient amount, with any other moneys available for the purpose, to pay the debt charges on the securities payable from property taxes. The necessary property tax rate shall be included in the fiscal year tax budget that is certified by the subdivision to the county budget commission.”

As noted above, Relator issued the bonds approved at the election on May 7, 2013, in two series, i.e., the Series 2013 Bonds and the Series 2019 Bonds. Each series was limited to a term of 12 years as provided for in the question approved by the voters. Pursuant to (i) the question approved by the voters, (ii) the legislation authorizing the issuance of each series of bonds enacted by Relator’s Board of Education, and (iii) the provisions in R.C. 133.18(H) and R.C. 133.25, the related tax **must** be levied to the extent necessary to pay debt charges on each series of bonds so long as that series of bonds is outstanding. Here, each series would be outstanding for 12-years from the date of issuance. There is no language in the Revised Code restricting the term of collection to 12-years from the election as opposed to 12-years from the bond’s issuance.

The ballot language here did not expressly provide for the date under which the Relator was to issue the entire \$13,995,000 of voter approved bonds. The ballot language also did not

restrict the Relator from issuing the bonds in two series at different times. As explained above, Ohio law expressly provided the Relator with discretion on when to issue the bonds and if to issue them in separate installments at different times. Although Respondent expresses frustration that voters must be “fully aware of the ins and outs of bond issuance” (Motion for Judgment on Pleadings at page 10) to understand the Relator’s discretion in this regard, Relator ignores that R.C. Chapter 133 includes provisions governing authorization and issuance of bonds and the ballot form. See R.C. 133.18. These provisions reflect the General Assembly’s judgment as to the proper articulation of the question to be posed under R.C. 133.18 in the larger context of R.C. Chapter 133.

## **CONCLUSION**

Accordingly, for the above stated reasons, *amici curiae* urge the Court to grant the relief requested in Relator’s Original Complaint for Writ of Mandamus.

Dated: March 28, 2025

Respectfully submitted,

s/ Steven A. Friedman

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## **CERTIFICATE OF SERVICE**

I hereby certify that, on this 28<sup>th</sup> day of March 2025, a copy of the foregoing Amicus Brief was filed with this Court electronically, and that all counsel and parties of record shall be notified via the Court's Electronic Court Filing System. In addition, copies were sent to the following via e-mail:

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