

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

YOUNGSTOWN CITY SCHOOL DISTRICT : CASE NO.
BOARD OF EDUCATION :
20 W. Wood Street : JUDGE:
Youngstown, Ohio 44503 :

And :

OHIO COUNCIL 8, AFSCME :
6800 North High Street :
Worthington, Ohio 43085 :

And :

YOUNGSTOWN EDUCATION ASSOCIATION : **COMPLAINT FOR**
319 W. Rayen Avenue : **DECLARATORY JUDGMENT**
Youngstown, Ohio 44502 : **AND APPLICATION FOR**
: **PRELIMINARY INJUNCTION**

And :

OHIO EDUCATION ASSOCIATION :
225 E. Broad Street :
Columbus, Ohio 43215 :

And :

JANE HAGGERTY :
3637 Risher Road :
Youngstown, Ohio 44511 :

PLAINTIFFS, :

v. :

STATE OF OHIO :
c/o Ohio Secretary of State :
180 East Broad Street, 16th Floor :
Columbus, Ohio 43215 :

Also Serve: :
MIKE DEWINE :
Ohio Attorney General :
30 East Board Street, 14th Floor :
Columbus, Ohio 43215 :

the Equal Protection Clauses of the United States Constitution and Ohio Constitution, as well as *Art. V, § 1* of the Ohio Constitution, because it eliminates the power granted by voters to the elected board of education of the Youngstown City School District

PLAINTIFFS

2. The Youngstown City School District Board of Education is a body corporate and politic organized and operating under *R.C. Chapter 33*, to provide educational instruction for students in the District's schools. The Youngstown City School District will be the first district to which HB 70 is applicable by its specific terms, as the Youngstown City School District became subject to an Academic Distress Commission in 2010 under *R.C. 3302.10*.
3. Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter Ohio Council 8, AFSCME) is the exclusive representative of a bargaining unit of approximately three hundred seventy two (372) educational support employees of the Youngstown City School District Board of Education.
4. In addition, Ohio Council 8, AFSCME, AFL-CIO is a statewide organization that represents an additional five thousand (5,000) educational support employees across the State of Ohio. Ohio Council 8, AFSCME's interests in this litigation include preserving the union's right to bargain collectively on behalf of the educational support employees it represents at the Youngstown City School District Board of Education and across the State of Ohio – a right that will be severely restricted or eliminated under the terms of HB 70. Ohio Council 8, AFSCME also has an interest in maintaining local control of Ohio's public schools

through the democratic election of local school boards to oversee public school districts rather than give unilateral authority to an appointed chief executive officer to oversee the district. Local boards of education currently act as the “legislative body” under *R.C. 4117.10*, with the power, as a collective body, to accept or reject negotiated agreements between Ohio Council 8, AFSCME and the Youngstown City School District Board of Education (and the other boards of education across the State with whom AFSCME bargains). Under HB 70, an appointed chief executive officer will have the authority to significantly impact the wages, hours and terms and conditions of employment of AFSCME members in Youngstown and across the State. Under HB70 local communities will lose their voice to impact how their local schools are operated and how employees in the district are supported.

5. The Youngstown Education Association ("YEA") is the exclusive bargaining representative of certificated employees of the Youngstown City School District Board of Education and is an affiliate of the Ohio Education Association ("OEA") and the National Education Association. YEA's interests in this litigation include preserving the right to bargain collectively on behalf of its members. YEA also has an interest in maintaining local control of Ohio's public schools through the democratic election of local school boards to oversee public school districts rather than give unilateral authority to an appointed chief executive officer to oversee the district. Local boards of education currently act as the “legislative body” under *R.C. 4117.10*, with the power, as a collective body, to accept or reject negotiated agreements between YEA and the Youngstown City School District Board of Education. Under HB 70, an appointed chief executive officer will have

the authority to significantly impact the wages, hours and terms and conditions of employment of YEA members in Youngstown and across the State. Under HB70, local communities will lose their voice to impact how their local schools are operated and how employees in the district are supported.

6. OEA is a statewide organization that represents educators and education support professionals. (See Resolution of OEA's Board of Directors setting forth OEA's and YEA's interest in this litigation attached as Exhibit "A"). Additionally, OEA's interests in this litigation include preserving the right of its affiliates to bargain collectively on behalf of their members. OEA also has an interest in maintaining local control of Ohio's public schools through the democratic election of local school boards to oversee public school districts rather than give unilateral authority to an appointed chief executive officer to oversee the district. Local boards of education currently act as the "legislative body" under R.C. 4117.10, with the power, as a collective body, to accept or reject negotiated agreements between OEA affiliates and the local school district boards of education. Under HB 70, an appointed chief executive officer will have the authority to significantly impact the wages, hours and terms and conditions of employment of OEA members in Youngstown and across the State. Under HB70 local communities will lose their voice to impact how their local schools are operated and how employees in the district are supported.
7. Jane Haggerty ("Haggerty") resides within the Youngstown City School District, and is a taxpayer and voter who voted in the 2011 and 2013 general elections, which included elections for the Youngstown City School District Board of Education. Haggerty has an interest in this proceeding challenging an

unconstitutional statutory scheme, because HB 70 violates her right to vote under the Equal Protection Clauses of the United States and Ohio Constitutions, and her rights under Article VI, § 3, Ohio Constitution.

DEFENDANTS

8. State of Ohio;
9. Richard A. Ross, in his official capacity as Superintendent of Public Instruction. Under *R.C. 330210(A)* as amended by HB 70, as Superintendent of Public Instruction, Ross will be required to establish an academic distress commission for the Youngstown City School District, including appointing three of the five members of the commission and designating the commission's chairperson. The academic distress commission will, then, appoint a chief executive officer who will assume total control over the Youngstown City School District.
10. The Ohio Department of Education oversees the state's public education system, which includes public school districts, joint vocational school districts, and charter schools. The department also monitors educational service centers, other regional education providers, early learning and childcare programs, and private schools. The department's tasks include: administering the school funding system, collecting school fiscal and performance data, developing academic standards and model curricula, administering state achievement tests, issuing district and school report cards, administering Ohio's voucher programs, providing professional development, and licensing teachers, administrators, treasurers, superintendents, and other education personnel.

OHIO CONSTITUTIONAL PROVISIONS

11. *Art. II, §15(C)* of the Ohio Constitution requires that “every bill shall be considered by each house on three different days, unless two-thirds of the members elected to the house in which it is pending suspend this requirement and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house.”
12. *Art. VI, § 3* of the Ohio Constitution states that “Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts”.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

13. On June 24, 2015, the 131st General Assembly passed Amended House Bill 70 (hereinafter HB 70). (A true and accurate copy of HB 70 is attached hereto as Exhibit “B”).
14. On July 16, 2015, Governor Kasich approved and signed into law HB 70.
15. HB 70 was introduced in the House of Representatives on February 18, 2015, addressing only the establishment of community learning centers. (See House Journal Notes, attached hereto as Exhibit “C”). On that date, HB 70 was read for its first consideration in the House of Representatives.

16. The sole purpose of HB 70 as originally stated was “To enact sections 3302.16, 3302.17, and 3302.18 of the Revised Code to authorize school districts and community schools to initiate a community learning center process to assist and guide school restructuring”. (See Exhibit “C”).
17. On February 25, 2015, HB 70 was referred to the Ohio House of Representatives Education Committee. On that date, HB 70 was read and passed for its second consideration in the House of Representatives. (See House Journal Notes, attached hereto as Exhibit “D”).
18. On May 6, 2015, the House Education Committee reported HB 70 to the House of Representatives. (See House Journal Notes, attached hereto as Exhibit “E”).
19. On May 19, 2015, HB 70, addressing only community learning centers, was passed after its third reading on that date in the House of Representatives. (See House Journal Notes, attached hereto as Exhibit “F”).
20. As passed by the House of Representatives on May 19, 2015, HB 70 addressed only the establishment of community learning centers, defined in the bill as a school or community school that “participates in a coordinated, community-based effort with community partners to provide comprehensive educational, developmental, family, and health services to students, families, and community members during school hours and hours when school is not in session.” HB 70 was ten (10) pages in length. (Exhibit “G”).
21. HB 70 was first read for consideration in the Senate on May 20, 2015 and addressed only the establishment of community learning centers. (See Senate Journal Notes, attached hereto as Exhibit “H”).

22. On May, 27, 2015, HB 70 was read for a second time in the Senate and referred to the Senate Education Committee. (See Senate Journal Notes, attached hereto as Exhibit "I").
23. On June 24, 2015, the Senate Education Committee reported Amended HB 70 to the Senate. Amended HB 70, as reported, was seventy-seven (77) pages in length instead of its ten (10) pages as introduced, as considered and passed by the House, and as first considered by the Senate. Amended HB 70 vitally altered the provisions of HB 70 by drastically changing the law with regard to academic distress commissions, a matter that was not addressed at all in the original version of HB 70.
24. On June 24, 2015, the same day Amended HB 70 was introduced, the Senate passed Amended HB 70 after one reading. (See Senate Journal Notes, attached hereto as Exhibit "J").
25. As passed by the Senate, Amended HB 70 addressed both community learning centers and the drastic overhaul of the law with regard to academic distress commissions. (Exhibit "K"). Amended HB 70 was read for the first time and passed by the Senate on June 24, 2015, without two more readings on two more days as mandated by *Art. II, §15(C)* of the Ohio Constitution.
26. Also on June 24, 2015, the Senate sent a message to the House regarding the amendments to HB 70. The House of Representatives concurred and accepted the amendments made by the Senate. (See House Journal Notes, attached hereto as Exhibit "L").
27. After the Senate amended HB 70, it was read and considered only one time in both the Senate and House of Representatives. The Senate amendments vitally

altered HB 70. (See Amended HB 70 as passed by the Senate and House of Representatives, attached hereto as Exhibit “B”).

COUNT I –
VIOLATION OF *Oh. Const. Art. II, §15(C)*

28. Plaintiffs incorporate paragraphs one through twenty-seven as if full rewritten herein.
29. *Art. II, §15(C)* of the Ohio Constitution requires that “every bill shall be considered by each house on three different days, unless two-thirds of the members elected to the house in which it is pending suspend this requirement and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house.”
30. As Justice Douglas stated in his concurring opinion in *Hoover v. Bd. of Cnty. Comm'rs, Franklin Cnty.*, 19 Ohio St. 3d 1, 8-9, 482 N.E.2d 575, 581-82 (1985):
- 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. The rule provides time for more publicity and greater discussion and affords each legislator an opportunity to study the proposed legislation, communicate with his or her constituents, note the comments of the press and become sensitive to public opinion. Adherence to this rule will help to ensure well-reasoned legislation.
31. The legislative journals clearly establish that Amended HB 70 was considered in the Senate and House of Representatives on one day only, June 24, 2015.
32. The three reading rule set forth in *Art. II, §15(C)* of the Ohio Constitution is a mandatory rule. *Hoover v. Bd. Of Franklin Cty. Commrs.*, 19 Ohio St. 3d 1 (1985).
33. “Where 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 v. Bd. Of Franklin Cty. Commrs., 19 Ohio St. 3d 1 (1985).

34. After the amendment of HB 70 in the Senate, the bill was so vitally altered that twenty-four of the original sponsors of the bill revoked their sponsorship and voted against its passage. Furthermore, one of the two house member who introduced the bill voted against it.

35. In amending HB 70, the Senate Education Committee “vitally altered” the legislation “triggering a requirement for three considerations anew of such amended bill”, *Hoover v. Bd. Of Franklin Cty. Commrs.*, 19 Ohio St. 3d 1 (1985). “Vitally altered” means departing entirely from a consistent theme. *Village of Linndale v. State*, 2014-Ohio-4024 (10th Dist.).

36. By passing the bill without adherence to the three reading rule, the Plaintiffs, the legislators, the citizens of the State of Ohio, and particularly the citizens of Youngstown, Ohio, were deprived of the opportunity to discuss and consider the merits of the bill, communicate regarding the merits of the bill, and have the press examine and opine on the merits of the bill.

37. As a result of the passage of the bill without adherence to the three reading rule, legislators were denied the opportunity to note the comments of the press and legislators were denied the opportunity to become sensitive to public opinion.

38. The manner in which HB 70 was amended and passed by the Senate and House of Representatives violated *Art. II, §15(C)* of the Ohio Constitution, also known as the “three reading rule”. Consequently, HB 70 is unconstitutional and invalid.

COUNT II -
VIOLATION OF *Oh. Const. Art. VI, § 3*

39. Plaintiffs incorporate paragraphs one through thirty-eight of this Complaint.

40. *Art. VI, § 3*, Ohio Constitution states:

Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

41. The Youngstown City School District is a "school district embraced wholly or in part within any city ***" as set forth in *Art. VI, § 3*, Ohio Constitution.

42. In contravention of *Art. VI, § 3*, Ohio Constitution, HB 70 allows for the complete elimination of a city school district, without consent, debate, or input from the voters in the city school district.

43. HB 70 grants one individual, the Chief Executive Officer, complete control over the operation of a city school district, thus eliminating all authority of the elected board of education. Among other things, HB 70 expressly grants the Chief Executive Officer the authority to: change the mission of the school and its curriculum; replace principals and administrative staff; make reductions in staff; contract with nonprofit or for-profit entities to manage any school within the district; establish employee compensation; allocate teacher class loads; conduct employee evaluations; set the school calendar; define employee responsibilities and job descriptions; create a budget; modify policies and procedures established by the school board; establish grade configuration; select instructional materials; and set class size.

44. Additionally, HB 70 gives the Chief Executive Officer authority to permanently close any or every school within a district, upon the approval of the unelected academic distress commission. Further, HB 70 provides no standards or measures for permanent school closure.
45. HB 70 violates *Art. VI, § 3*, Ohio Constitution, because it allows the Chief Executive Officer, subject only to the approval of the unelected academic distress commission, to eliminate every school within a city school district; thus eliminating the school district itself. Under HB 70, when a Chief Executive Officer eliminates all schools within a district, both the Chief Executive Officer position and the academic distress commission cease to exist. It is axiomatic that a school district must continue to exist for the electors to exercise the constitutional authority granted them by *Art. VI, § 3*, Ohio Constitution. By allowing the elimination of a city school district, HB 70 renders *Art. VI, § 3*, Ohio Constitution meaningless.
46. The Ohio General Assembly acted in bad faith when it passed HB 70. *See, State ex rel. Ach v. Evans*, 90 Ohio St. 243, 247, 107 N.E.2d 243 (1914).

Count III
VIOLATION OF RIGHT TO VOTE

47. Plaintiffs incorporate paragraphs one through forty-six of this Complaint.
48. The right to vote is a fundamental right.
49. Ohio law provides for the election of school board members. *R.C. 3313.01* and *3313.02*.

50. The Youngstown City School District Board of Education, as currently constituted, is an elected body that retains some power over and full responsibility for the fiscal and academic affairs of the school district.
51. HB 70 eliminates all power currently vested in the elected Youngstown City School District Board of Education and transfers that power, first to an unelected academic distress commission, and ultimately to an unelected Chief Executive Officer.
52. Those voters who voted in the most recent elections for members of the Youngstown City School District Board of Education did so without knowledge that the power conferred on the elected school board would be eliminated by HB 70.
53. HB 70 treats voters in the Youngstown City School District differently than voters in other school districts in violation of the Equal Protection Clauses of the United States Constitution and Ohio Constitution, as well as *Art. V, § 1*, Ohio Constitution, because it eliminates the power granted by voters to the elected Board of Education of the Youngstown City School District.

COUNT IV-
INJUNCTIVE RELIEF

54. Plaintiffs incorporate paragraphs one through fifty-three as if full rewritten herein.
55. Plaintiffs have a substantial likelihood and probability of success on the merits of the underlying claims in this action.
56. Without an injunction, Plaintiffs will suffer irreparable harm. As a direct and proximate result of the unconstitutional passage of HB 70, Plaintiffs will suffer

irreparable harm for which there is no adequate remedy at law, including but not limited to the disbanding of the current academic distress commission and appointment of a Chief Executive Officer with unfettered power to manage the Youngstown City School District, including the ability to completely dismantle the school district, and the complete elimination of all authority currently conferred on the elected school board to manage the school district.

57. Issuance of injunctive relief to Plaintiffs based on the facts, as set forth in this Complaint, will not unjustifiably harm Defendants or any third parties. Additionally, it will allow the Court to issue a meaningful decision on the merits of this claim.
58. The public interest will be served by the issuance of an injunction. The public has an interest in ensuring that the Ohio Constitution and its mandates for properly enacting laws are followed by our legislators.
59. Plaintiffs are entitled to injunctive relief staying the enforcement of unconstitutional HB 70 pending a final determination by this Court.

**COUNT V-
ATTORNEYS' FEES**

60. Plaintiffs incorporate Paragraphs one through fifty-nine as if fully rewritten herein.
61. If Plaintiffs prevail in this action, they shall be entitled to attorneys' fees pursuant to *R.C. 2335.39*.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the following relief:

- A. A Preliminary Injunction staying the enforcement of Amended House Bill 70, specifically, enjoining Dr. Richard Ross, Superintendent of Public Instruction, and all other public officials from establishing an academic distress commission as set forth in HB 70, pending a final determination by this Court;
- B. The Court declare the Ohio legislature's passage of HB 70 invalid, because of violation of *Art. II, §15(C)* of the Ohio Constitution in both the Senate and the House of Representatives.
- C. The Court declare HB 70 invalid under Article VI, § 3, Ohio Constitution, and/or the Equal Protection Clauses of the United States and Ohio Constitutions.
- D. Assess the costs of this action against the Defendants.
- E. Award the Plaintiffs their legal fees and expenses.
- F. Award such other relief as this Honorable Court deems appropriate.

Respectfully submitted,

/s/ James E. Roberts, Esquire

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Attorneys for Plaintiffs,
Youngstown Education Association, Ohio Education
Association, and Jane Haggerty

INSTRUCTIONS FOR SERVICE

To the Clerk:

Please serve Summons and copy of Plaintiffs' Complaint to the Defendants at the addresses listed in the caption above via Certified U.S. Mail, return receipt requested.

/s/ James E. Roberts, Esquire
James E. Roberts, Esquire (#0000982)
Attorney for Plaintiff

In the Court of Common Pleas, Franklin County, Ohio, General Division

Youngstown City School District Board of Ed.,

Plaintiff/Appellant,

vs.

Case No. _____

State of Ohio _____,

Defendant/Appellee,

Civil Case Filing Information Summary

Type of Action/Case Classification:

Professional Tort (Type A)
(\$225.00 Security Deposit Required)

Product Liability (Type B)
(\$225.00 Security Deposit Required)

Other Torts (Type C)
(\$225.00 Security Deposit Required)

Workers Compensation (Type D)
(\$225.00 Security Deposit Required)

Foreclosure (Type E)
(\$350.00 Security Deposit Required)

Administrative Appeal (Type F)
(\$100.00 Security Deposit Required)

All Other Civil Cases (Type H)
(\$225.00 Security Deposit Required)

Cognovit Confession of Judgment (H)
(\$100.00 Security Deposit Required)

JURY DEMAND? No
(\$300.00 Additional Security Deposit Required) (Yes or No)

Total Security Deposit \$ 225.00

Is a **TEMPORARY RESTRAINING ORDER** being requested at this time? No
(Yes or No)

Is this a case in which **ALL** the issues presented are a result of the defendant(s) having signed and defaulted on a **COGNOVIT NOTE**? No
(Yes or No)

Is this a **FORCIBLE ENTRY AND DETAINER** case? No
(Yes or No)

Does this case include allegations of **CONSUMER SALES PRACTICES ACT** violations under Chapter 1345 or any other statutory consumer protection provision of the Ohio Revised Code? No
(Yes or No)

Refiling Information:

If this is a **REFILING** of a previously dismissed case, please complete the following:

Previous Case No. _____

Original Judge _____

Attorney/Party Signature

Attorney Ohio Sup. Ct. Registration No.

Attorney/Party Name (Type or Print)

Telephone Number

Mailing Address

Facsimile Number

City State Zip Code

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

YOUNGSTOWN CITY SCHOOL DISTRICT	:	CASE NO.
BOARD OF EDUCATION, et al.	:	
	:	JUDGE:
Plaintiffs	:	
	:	MOTION FOR
vs.	:	PRELIMINARY INJUNCTION
	:	AND REQUEST FOR
STATE OF OHIO, et al.	:	EVIDENTIARY HEARING
	:	
Defendants	:	

Plaintiffs, Youngstown City School District Board of Education, Ohio Council 8, AFSCME, the Youngstown Education Association, the Ohio Education Association, and Jane Haggerty ("Plaintiffs"), move the Court for a preliminary injunction enjoining Defendant, Dr. Richard A. Ross, Superintendent of Public Instruction, from establishing an academic distress commission as set forth in House Bill 70, which will become law on October 14, 2015.

In support of this motion, Plaintiffs submit the attached memorandum and request that this motion be set for an evidentiary hearing.

Respectfully submitted,

/s/ James E. Roberts, Esquire

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Youngstown Education Association, Ohio Education
Association, and Jane Haggerty

MEMORANDUM

Introduction

The 131st General Assembly passed amended House Bill 70 ("HB 70") on June 24, 2015. On July 16, 2015, Governor Kasich approved and signed into law amended HB 70. Consequently, HB 70 will become law on October 14, 2015. Once HB 70 becomes law, Superintendent Ross will put the Youngstown City School District on notice that it is subject to revised Section 3302.10 and establish a new academic distress commission within a period of thirty days. (*See HB 70, revised Section 3302.10(B)(1)(c)*). Within sixty days of the appointment of a new academic distress commission and designation of a chairperson, the commission must appoint a chief executive officer for the district. (*See HB 70, revised Section 3302.10(C)(1)*). Among the CEO's unfettered powers are the authority to replace school administrators and office staff, make reductions in all staff, reconstitute any school as a charter school, and permanently close schools. (*See HB 70 revised Sections 3302.10 (C)(1)(a), (C)(1)(h), (H)(1)(e), and (H)(1)(f)*).

HB 70 originated in the House of Representatives on February 18, 2015 and dealt only with the establishment of community learning centers. Its original sole stated purpose was "To enact sections 3302.16, 3302.17, and 3302.18 of the Revised Code to authorize school districts and community schools to initiate a community learning center process to assist and guide school restructuring." Original HB 70 received three readings in the House of Representatives before it was passed by the House of Representatives on May 19, 2015.

As passed by the House of Representatives, HB 70 addressed only the establishment of community learning centers, defined in the bill as a school or community school that "participates in a coordinated, community-based effort with community partners to

provide comprehensive educational, developmental, family, and health services to students, families, and community members during school hours and hours when school is not in session.” As passed by the House of Representatives, HB 70 was ten pages in length. (Exhibit “A”).

HB 70 was first read for consideration in the Senate on May 20, 2015 and dealt only with the establishment of community learning centers. (*See Exhibit “A”*). On May, 27, 2015, HB 70 was read for a second time in the Senate and referred to the Senate Education Committee. On June 24, 2015, the Senate Education Committee reported amended HB 70 to the Senate. Amended HB 70 became seventy-seven pages in length instead of its original ten pages and drastically revised the law (Section 3302.10 of the Revised Code) with regard to academic distress commissions.

The Senate passed amended HB 70 on June 24, 2015. (Exhibit “B”). As passed by the Senate, amended HB 70 addressed both community learning centers and the drastic overhaul of the law with regard to academic distress commissions. Amended HB 70 was read for the first time and passed by the Senate in one day without two more readings on two more days as required by *Art. II, §15(C)* of the Ohio Constitution.

Also on June 24, 2015, the Senate sent a message to the House of Representatives regarding the amendments to HB 70. On June 24, 2015, the House of Representatives concurred and accepted the amendments made by the Senate without two more readings on two more days as required by *Art. II, Section 15(C)* of the Ohio Constitution.

After the Senate amended HB 70 to overhaul the law with regard to academic distress commissions, it was read and considered only one time in both the Senate and House of Representatives. In making its amendments, the Senate vitally altered HB 70 triggering a constitutional requirement “for three considerations anew of such amended

bill,” *Hoover v. Bd. Of Franklin Cty. Commrs.*, 19 Ohio St. 3d 1 (1985), a requirement that both the Senate and House of Representatives failed to fulfill.

Original HB 70 was aimed at using schools to build up not only the students of the district but the community at large. HB 70, as amended and passed, will enable the destruction of an entire school system, which has worked diligently with guidance from an academic distress commission to set the foundation for academic improvement.

Further, HB 70 violates *Art. VI, § 3*, Ohio Constitution, because it eliminates all power of an elected school board and allows an unelected chief executive officer to eliminate every school within a city school district, thus eliminating the right for electors in a city school district to determine the organization and number of members of a city school district board of education.

Finally, HB 70 violates the Equal Protection Clauses of the United States and Ohio Constitutions and unconstitutionally infringes the fundamental right to vote. HB 70 eliminates all power conferred by the electors in a school district on an elected board of education and grants that power to an unelected chief executive officer.

Legal Argument

In determining whether to grant a preliminary injunction, courts balance four factors: (1) whether there is a substantial likelihood that the plaintiff will prevail on the merits; (2) whether the plaintiff will suffer irreparable injury if the injunction is not granted; (3) whether third parties will be unjustifiably harmed if the injunction is granted; and (4) whether the public interest will be served by the injunction. *Vanguard Trans. Sys., Inc. v. Edwards Transfer & Storage Co. Gen. Commodities Div.*, 109 Ohio App. 3d 786 (1996) (citing *Valco Cincinnati, Inc. v. N&D Machining Service, Inc.*, 24 Ohio St. 3d 41 (1986)). In determining whether to grant injunctive relief, “no one factor

is dispositive.” *Escape Enters., Ltd. V. Gosh Enters., Inc.*, 2005-Ohio-2637 (10th Dist.) (citing *Cleveland v. Cleveland Electric Illuminating Company*, 115 Ohio App. 3d 1, 14 (1996)). Instead, “a balancing is required, and not the mechanical application of a certain form of words.” *Id.* (citing *Roth v. Bank of Commonwealth*, (C.A.6, 1978), 583 F.2d 527.)

Plaintiffs are likely to succeed on the merits of their claims.

Three reading rule

Oh. Const. Art. II, Sec. 15(C) provides that “every bill shall be considered by each house on three different days, unless two-thirds of the members elected to the house in which it is pending suspend this requirement, and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house.”

An act is invalid under the three reading rule if no entry appears in the legislative journals recording each legislative step, including three readings on three separate days in each house. This is a mandatory rule. The court need only look to the legislative journals to determine whether the proper procedure was followed. *Hoover v. Bd. Of Franklin Cty. Commrs.*, 19 Ohio St. 3d 1 (1985).

In order for the three reading rule to apply to an amended bill, the subject matter of the bill must be vitally altered by the amendment. Amendments which do not vitally alter the substance of a bill do not trigger a requirement for three new considerations of such an amended bill. “Vitaly altered” means departing entirely from a consistent theme. *State ex rel. AFL-CIO v. Voinovich*, 1994-Ohio-1, 2, 3, *Village of Linndale v. State of Ohio*, 2014-Ohio-4024 (10th Dist.).

After the amendment of HB 70 in the Senate, the bill was so vitally altered that many of the original sponsors of the bill revoked their sponsorship and voted against its passage and one of the two house members who introduced the bill voted against it. Representative Denise Driehaus best described the vital alteration of HB 70 during the House of Representatives' consideration of amended HB 70. Rep. Driehaus, who co-sponsored original HB 70, urged her fellow Representatives to not concur with amended HB 70 calling it the "antithesis" of original HB 70. According to Representative Driehaus, original HB 70 is about "community engagement" and "collaboration". She goes onto say:

The amendment turns the bill on its head. The amendment is about Youngstown and every other community that is going to go into academic distress...It talks about a process where a CEO is put in place, hired by five people, three of whom are chosen by somebody here in Columbus, and that person has ultimate authority over the school district eventually, according to this amendment, from my read, the entire school district could be dismantled...It's a top down approach to school districts...It's the opposite of what House Bill 70 is about. (Exhibit "C").

Representative Michele Lepore-Hagan, the only Representative residing in the City of Youngstown, also urged Representatives to not concur with the Senate amendments to HB 70:

While I still believe in the original intentions of HB 70, I cannot, in good conscience, support a bill with this amendment attached to it. What started as an organic, community based plan, for our children's futures has really been turned on its head and perverted by a fast track heavy handed takeover of Youngstown City Schools...I have concerns about the process and the content of this amendment and how it was rushed through at the last minute with no involvement from the legislative delegation or the community...Here we stand, given less than twenty-four hours to review a sixty-six page amendment that had one brief public hearing this morning. (Exhibit "C").

HB 70, as amended and passed with one reading by the Senate and House of Representatives, is a vital alteration of original HB 70.

- Original HB 70 was ten pages in length. The purpose of original HB 70 was the establishment of community learning centers. After a public information hearing and a vote by interested parties, a school board could transition a school building to a community learning center with a goal of providing educational, developmental, family, and health services to students, families, and community members.
- HB 70, as amended and passed, is seventy-seven pages in length. Amended HB 70 departs entirely from the theme of community learning centers, and community in general, and completely re-writes the law with regard to academic distress commissions, a subject not mentioned in the original bill. Amended HB 70 calls for the Superintendent of Public Instruction to appoint a new academic distress commission, who will, in turn, appoint a CEO to manage the distressed school system. The CEO holds all power to manage the school system unless he or she chooses to delegate power to other individuals such as the board of education. Despite the fact that the CEO need not have any background in the area of education, the CEO has the power to choose curriculum and materials, terminate specified classes of employees, reconstitute any school into a charter school, or permanently close schools.

The community learning centers created by original HB 70 would undoubtedly be an asset to any community. Conversely, amended HB 70 allows a CEO to come into an already struggling community, potentially take away more jobs, close the schools, and send the students to charter schools, which are also failing.

This vital alteration to HB 70 triggered the requirement that the bill be read anew three times in both the Senate and House of Representatives. There is no dispute that the General Assembly failed to meet this requirement, as amended HB 70 was presented, read, and passed by both the Senate and House of Representatives all on June 24, 2015. (See Exhibits “D” and “E”). Amended HB 70 was not read three times on three separate days as required by *Art. II, §15(C)* of the Ohio Constitution. Amended HB 70 is unconstitutional and must be invalidated.

Article VI, Section 3

Section 3, Article VI, Ohio Constitution, recognizes the right of electors in a city school district to vote for the number of members and organization of the city school

district school board of education and R.C. 3313.02 grants electors in the school district the power to elect their school board.

HB 70 violates Article VI, Section 3 because it grants an unelected CEO sole authority over a city school district, including the authority—subject only to the approval of the unelected academic distress commission—to eliminate every school in the city school district. Thus, HB 70 allows, indeed encourages, the closing of schools, thus rendering meaningless the right of electors to establish the organization and number of members of a city school district board of education.

Right to Vote and Equal Protection

The right to vote is a fundamental right. *Desenco, Inc. v. Akron*, 84 Ohio St.3d 535, 544 (1999), citing *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). The United States Supreme Court has held that, “whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election ***.” *Hadley v. Junior College Dist. of Metropolitan Kansas City, Missouri*, 397 U.S. 50, 56 (1970). While the legislature initially may have been free to select some other method, once it provided for the election of school boards, that process and the results of those elections became subject to fundamental rights analysis.

“[T]he right of suffrage can be denied by debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds v. Simms*, 377 U.S. 533, 555, (1964). Thus, the right to vote can be denied in two general ways: (1) denying the right to physically cast a ballot; and (2) dilution or debasement of the vote once cast. *See, generally, Stewart v. Blackwell*, 444

F.3d 843 (C.A. 6 (Ohio), 2006).

Because Plaintiffs' constitutional challenge involves a fundamental right, *i.e.*, the right to vote and not have the effectiveness of that vote debased or diluted, this Court must apply the strict scrutiny test. In *Bush v. Gore* 531 U.S. 98 (2000), the United States Supreme Court recognized that "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise." *Id.* at 104. *See, also, Stewart*, 444 F.3d at 856-860; *Conley v. Shearer* (1992), 64 Ohio St.3d 284, 289; *Hamilton v. Fairfield Twp.*, 112 Ohio App.3d 255, 275 (1996). Under the strict scrutiny test, the government has the burden to prove the challenged law is necessary to promote a compelling governmental interest. *Conley*, 64 Ohio St. 3d. at 289. Also, the challenged law must be narrowly tailored so as to effectuate only those interests. *Bd. of Educ. of City School Dist. of City of Cincinnati v. Walter* , 58 Ohio St.2d 368, 374 (1979). Thus, defendants have the burden to prove HB 70 is necessary to promote a compelling governmental interest, *Conley v. Shearer* (1992) 64 Ohio St. 3d. 284, 289, and that it is narrowly tailored so as to effectuate only those interests. *Bd. of Educ. of City School Dist. of City of Cincinnati v. Walter* (1979), 58 Ohio St.2d 368, 374.

The facts here are analogous to those in *Tully v. Edgar*, 664 N.E.2d 43 (Ill. 1996). In *Tully*, a voter challenged the constitutionality of an act that replaced the elected board of trustees of the University of Illinois with an appointed board. The voter argued the act amounted to a post-hoc negation of his right to vote. *Id.* at 46. The Illinois Supreme Court, applying the strict scrutiny test, agreed. The Court stated:

It strains logic to suggest that the right to vote *is* implicated by legislation that prohibits a citizen from casting a vote or from having that vote counted, but *is not* implicated by legislation that, in effect, deprives that

same vote of its natural and intended effect. The legislation challenged here basically eviscerates the election process ***. (Emphasis sic). Id. at 48.

The Court continued:

It distorts reality to argue *** that the right to vote is satisfied whenever a citizen is permitted to cast his vote and have that vote counted. The democratic form of government guaranteed by our constitution requires something more than an adherence to form. It is not merely the casting of the vote or its mechanical counting that is protected by our constitution. It is the effect given to the vote - namely, the office - that is protected.

We must vigilantly ensure that our constitution protects not just the right to cast a vote, but the right to have a vote fully serve its purpose. If the vote cast by all those who favor a particular candidate exceeds the number cast in favor of a rival, the result is constitutionally protected from nullification except by the voters themselves. When the people have chosen their representatives in a valid election, legislation that nullifies the people's choice by eliminating the right of the elected official to serve implicates the fundamental right to vote. Id. at 49.

Such is the case here. Plaintiff Haggerty and other voters validly elected a board of education to govern the Youngstown City School District. The legislature then enacted HB 70, which nullifies that vote by redirecting the authority the voters had given to the elected board of education to an unelected—and unaccountable—CEO. HB 70 eliminates the authority of an elected board of education in districts subject to its provisions, while leaving unaltered the authority of school boards in other districts. Thus, HB 70 treats voters in the school districts subject to its provisions differently than those in other school districts in violation of the Equal Protection clauses of the United States and Ohio Constitutions.

Without an injunction, Plaintiffs will suffer irreparable harm.

Without an injunction, Plaintiffs will suffer a complete disruption in operations and the authority of the elected board of education will be eliminated and granted to an

unelected CEO. The Youngstown City School District Board of Education, the employees of the Youngstown City School District, and most importantly, the students of the Youngstown City School District need stability. HB 70 is set to go into effect on October 14, 2015, shortly after the beginning of a new school year. It will cause disruption in the administration of the school district and in the education of the district's students.

The school district has been under the direction of an academic distress commission for the past five years, setting the foundation for academic improvement. Without a preliminary injunction, the appointed CEO has the power to change everything. The CEO can establish a new curriculum and choose new materials, terminate existing employees, and reconstitute and close the schools – all while this lawsuit is pending before the Court. If the Court, then, determines that HB 70 is unconstitutional and invalid, the school system, once again, has to reorganize, causing more years of disruption to the education of the children in the district. Pending judicial review, the status quo is the better alternative.

The balancing of hardships supports injunctive relief.

The granting of a preliminary injunction causes no undue hardship. The current academic distress commission, appointed and overseen by the Superintendent of Public Instruction will remain in effect, as will the elected board of education and its Superintendent. Consequently, there will be no void in school management.

The public interest will be served by the injunction.

The public, in general, for their own protection, has an interest in ensuring that the Ohio Constitution and its mandates for properly enacting laws are followed by our legislators. The manner in which HB 70 was pushed through in twenty-four hours,

without adequate study or input from legislators, is the exact type of conduct that *Art. II, §15(C)* of the Ohio Constitution seeks to prevent.

Further, the public has an interest in ensuring that the right to vote under Article VI, Section 3 and R.C. 3313.02 is not infringed and that voters are not denied the right to equal protection of the laws. A preliminary injunction serves the public interest because it permits the duly elected school board to retain the power conferred upon its members by voters.

Because all the relevant factors weigh in favor of granting preliminary injunction, Plaintiffs respectfully request that Defendant, Dr. Richard A. Ross, Superintendent of Public Instruction, be enjoined from establishing an academic distress commission as set forth in House Bill 70 during the pendency of this litigation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent via regular U.S. mail

this 21st day of August, 2015 to:

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