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IN THE COURT OF APPEALS
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO

YOUNGSTOWN CITY SCHOOL DISTRICT BOARD OF EDUCATION, *et al.*,	:	
Appellants,	:	Case No. 17 AP 775
vs.	:	
STATE OF OHIO, *et al.*,	:	REGULAR CALENDAR
Appellees.	:	

BRIEF OF AMICI CURIAE, OHIO SCHOOL BOARDS ASSOCIATION, BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS, AND THE OHIO FEDERATION OF TEACHERS, IN SUPPORT OF APPELLANTS

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INTRODUCTION AND STATEMENT OF INTEREST OF AMICI CURIAE

The Ohio School Boards Association ("OSBA") is a nonprofit 501(c)(4) corporation dedicated to assisting its members to more effectively serve the needs of students and the larger society they are preparing to enter and requires that its elected school board members remain involved and accountable for the operations of their local school districts. Nearly 100% of the 714 district boards in all of the city, local, exempted village, career technical school districts, and educational service center governing boards throughout the State of Ohio are members of OSBA, which provides extensive informational support, legislative advocacy and consulting activities, as well as policy service and analysis. The OSBA has adopted a Legislative Platform that stresses the importance of meaningful participation in the legislative process, noting the members' support of a "consistent and thorough deliberative process" in the General Assembly and opposing the passage of legislation that has not been "thoroughly and properly vetted and heard by both chambers of the General Assembly."

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The Buckeye Association of School Administrators ("BASA") is a statewide organization representing over 95% of school district superintendents in Ohio. BASA is a nonprofit 501(c)(6) corporation dedicated to assisting its members to more effectively serve the needs of school administrators and their districts. BASA provides extensive informational support, legislative advocacy, and professional development in an effort to support the professional practice of school administrators.

The Ohio Federation of Teachers ("OFT") is a union of professionals representing approximately 15,000 members, the majority of whom work in large, urban school districts. The OFT envisions an Ohio where all citizens have access to the high-quality public education and public services they need to develop to their full potential. The OFT supports the social and economic well-being of its members, Ohio's children, families, working people and communities and is committed to advancing these principles through community engagement, legislative action, collective bargaining and political activism through the work of its members.

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Amici regularly participate in the legislative process and serve as a voice for their members before the General Assembly on matters of concern to their constituents. The thousands of school board members, school officials, and educators who are members of the OSBA, BASA and OFT operate in a system that is grounded in the Ohio Constitution and dependent on strong community support. It is critical that amici and their members understand the needs of their local communities and remain accountable to their local constituencies.

OSBA, BASA and OFT members also operate in an environment that is highly regulated by Appellees in a broad range of categories. Thus, it is equally important that amici, like any other Ohio citizen, be able to engage in the legislative process in a meaningful way.

In the events leading up to this case, Appellees ignored and violated the fundamental principles of maintaining local accountability and participation in the legislative process. The impact on amici and their members is significant, and they file this brief in support of the Appellants here. For the reasons set forth below and in Appellants' Merit Brief, amici urge this Court to reverse the decision of the Court of Common Pleas.

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LAW AND ARGUMENT

A. History of Amended Substitute House Bill 70

It is clear from the record below that the procedural history of Amended Substitute House Bill Number 70 ("Am.Sub.HB 70") was unusual at best. Testimony before the trial court established that the process of amending House Bill Number 70 ("HB 70") was intentionally orchestrated to "minimize any negative pushback from the public" and, in particular, stakeholders in Youngstown. Transcript of Preliminary Injunction Hearing Page (Tr.) 105. Months of behind-the scenes work played out within a few hours on a single day—June 24, 2015—when HB 70 was amended, passed out of the Senate Education Committee ("Committee"), passed out of the Senate, sent to the House, and then passed out of the House.

Not only were Youngstown area legislators, the bill's sponsors, and the Appellants intentionally omitted from the months of private discussions that lead up to that day's events, (Tr. at 105, 263, 325), but stakeholders like amici were also kept in the dark until the very last minute.

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HB 70 actually began in 2014 as House Bill 460 ("HB 460") which sought to establish a community learning center model for public school districts. Representative Denise Driehaus testified that the model identified community needs and brought needed services, such as vision clinics, dental clinics, or after-school services into the schools for easier access by students. Tr. at 26-29. HB 460 passed through the House with near unanimous consent and passed through the Committee with broad support. The 2014 legislative session expired, so the bill was re-introduced in the 2015 legislative session as HB 70. *Id.* at 29-30.

As HB 70, the bill also enjoyed "overwhelming" bi-partisan support between February and May 2015, when the bill passed out of the House. *Id.* at 31. In the Senate, HB 70 was read twice, then sent to the Committee, still un-amended and still focused exclusively on the community learning center model.

It was not until the evening before HB70 was amended, that copies of a significant amendment to HB 70 started to trickle out to the public. Tr. at 237-240. The next day, HB 70 saw a flurry of activity—starting with the introduction of an amendment in committee that not only

dwarfed HB 70, but also altered the very purpose and fundamental objectives of the bill.

Even on the day of its introduction, the amendment was handled in such a manner as to squelch public participation. Melissa Cropper, the President of amicus OFT, was present in the Committee on June 24, 2015 and prepared to testify in support of HB 70. Having learned about the potential amendment the night before, Ms. Cropper attempted to testify against the amendment. But the Committee Chair interrupted Ms. Cropper and told her that the amendment was not yet ready and instructed Ms. Cropper that she could not testify about the amendment. Immediately after Ms. Cropper had completed her testimony in support of HB 70, and after she was prohibited from presenting any testimony against the amendment, the Committee introduced the amendment. Tr. at 240. Within a few hours, HB 70 was amended, flew through Committee and both chambers, and was passed.

The amendment to, and quick passage of, HB 70 took all but a select few by surprise. As Appellants point out in their Merit Brief, a number of seasoned legislators, including HB 70's sponsors, were taken by

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surprise by the quick passage of an amendment that they had not seen until mere hours before its introduction and passage. In the months that followed, and as detailed in Appellants' Merit Brief, it became clear that the amendment was the culmination of a series of confidential meetings and activities that occurred over the nine months leading up to Am.Sub.HB 70's passage these secret meetings were specifically designed to keep public constituents, like those represented by amici, in the dark and on the sidelines.

The trial court acknowledged the "conscious effort" to quietly formulate amendments to HB 70, but found that "[w]hile these closed-door meetings may function to undermine the public's confidence in this portion of the legislative process, it is not unconstitutional." Trial Court Final Decision and Judgment ("Decision") at 10.

Amici join Appellants in respectfully disagreeing. The "conscious effort" did more than just undermine public confidence. Amici submit that Am.Sub.HB 70 "vitally altered" HB 70 and violates the fundamental purpose of Article II, Section 15(C). The amendment turned the original purpose of HB 70 inside out. While HB 70 sought only to enhance

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local control and authority by establishing community learning centers to provide services for students, their families, and the community at large, Am.Sub.HB 70 achieved the opposite. It created a mechanism to strip locally elected school boards of all authority. As passed, the bill guts local authority and control over school districts, instead appointing an unelected chief executive officer who answers only to an unelected commission.

Rushing the amendment through to passage in this manner violated both the spirit and the letter of the Ohio Constitution in several respects and violates the most fundamental tenets of the democratic process.

B. Am.Sub.HB 70 violates Article II, Section 15(C) of the Ohio Constitution

In the watershed case of *State ex rel. AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 233, 631 N.E.2d 582 (1994), the Ohio Supreme Court considered Ohio Constitution, Article II, Section 15(C) (the "Three-Reading Rule") and expanded on its earlier holding in *Hoover v. Bd. of Franklin Cty. Commrs.,* 19 Ohio St.3d 1, 482 N.E.2d 575 (1985). In *Hoover*, amendments to a legislative bill resulted in a wholesale change

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and enactment of a bill that was "completely different in content" from the original bill. *Id.* at 5.

The *Voinovich* Court reaffirmed that in cases such as the one presented to the *Hoover* Court, where a bill was "vitally changed" through the amendment process but received no post-amendment readings, the Three-Reading Rule requires that the bill be stricken as unconstitutional. Based upon the distinct facts presented in *Voinovich,* however, the Court expanded on the *Hoover* analysis of the Three-Reading Rule.

The facts in *Voinovich* involved a heavily amended bill that maintained the same general subject matter and purpose. *Voinovich* held that the "difference between a valid bill that is heavily amended and an invalid one that is 'vitally altered' * * * is one of degree." *Id*. at 233. The Court went on, holding that it "would set a dangerous and impractical precedent" for the judiciary to attempt to "police any such difference of degree." *Voinovich* at 233.

Voinovich then instructed that, where the case turns on issues related to "any such difference of degree," courts instead "must look to the underlying purpose of the three-consideration provision." *Id.* at 233. *See*

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

Thus, the analysis of the Three-Reading Rule is twofold: 1) is there a commonality of purpose in the bill; and 2) is the purpose of the Three-Reading Rule met? If there is no commonality of purpose, the enacted law was "vitally altered" and should be stricken as unconstitutional, and the analysis can end there. Absent a "vital alteration," *Voinovich* instructs that the courts should instead analyze the underlying purpose of the Three-Reading Rule.

While the trial court decision references this two-step analysis, it was applied erroneously in two significant ways. First, the trial court erred in finding a commonality of purpose between HB 70 and Am.Sub.HB 70. Second, the trial court erred in failing to give proper deference to the *entire* purpose of the Three-Reading Rule, focusing instead on only a narrow portion of the test articulated in *Voinovich* and *Hoover*.

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1. The trial court erred in finding that HB 70 was not "vitally altered."

As Appellants point out in their Merit Brief, no commonality of purpose exists between HB 70 and Am.Sub.HB 70. Amici urge this Court to consider the enormous breadth of topics that fall under the large umbrella of "education" or even, as the trial court concluded, the topic of addressing low-performing schools.

The trial court cast an inappropriately broad net in this instance to find a "common purpose." HB 70 sought to enhance local control and authority by establishing community-learning-centers to provide services for students, their families, and the community at large. Am.Sub.HB 70 did precisely the opposite, stripping locally elected school boards of all authority. Instead, it shifts complete authority to an unelected Chief Executive Officer who answers not to the students, parents, voters, or taxpayers who rely on that school district, but to an appointed commission with no ties to the community.

The purpose of HB 70 was "vitally altered" on June 24, 2015 when it was amended drastically and passed. Amici join Appellants in urging

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this Court to reverse the trial court and hold that, to pass constitutional muster, a bill so completely and vitally changed as Am.Sub.HB 70 must comply anew with the Three-Reading Rule.

Because HB 70 was vitally altered, this Court could end its analysis here and declare Am.Sub.HB 70 unconstitutional. However, the trial court's determination also violates the second prong of the *Voinovich* analysis. To the extent additional analysis is needed, amici urge this Court to examine the trial court's findings related to the purpose of the Three-Reading Rule.

2. The trial court erred in finding that the process used to enact Am.Sub.HB 70 complied with the purpose of Article II, Section 15(C).

Even if this Court concludes that HB 70 was not vitally altered, it is apparent from the record that the purpose of the Three-Reading Rule was not met here, thus violating the second prong of the *Voinovich* analysis. As the *Voinovich* Court instructed, where the Three-Reading Rule analysis of an amended bill reveals a "difference of degree," courts instead "must look to the underlying purpose of the three-consideration provision." *Voinovich,* 69 Ohio St.3d at 233. The well-accepted purpose

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of the Three-Reading Rule, a violation of which also serves as grounds for finding that a legislative enactment is unconstitutional, is as follows:

> 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.

*Id.,*quoting *Hoover v. Bd. of Cty. Commrs, Franklin Cty*., 19 Ohio St.3d at 8, (Douglas, J. concurring.)

The trial court concluded that the purpose of the Three-Reading Rule was met because many members of the legislature spoke in opposition to the bill as amended, because a motion to recommit the bill failed, because at least two legislators were able to obtain a copy of the bill on the night before it was introduced, and because Am.Sub.HB 70 passed the House and Senate without any changes being made to the amendment. Decision at 9. The trial court also noted that a number of legislators expressed concern about the amendment and even asked that they be removed as sponsors, but did not move to have the amendments stripped

or altered. "Therefore, both the House and Senate decided to forgo their opportunity to further consider and debate the amended version of HB 70, and instead voted and concurred with the amended version." *Id.* at 10.

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By analyzing only the activity, or lack thereof, of the House and Senate on the purported third reading date of HB 70, the trial court ignored every articulated purpose of the Three-Reading Rule but one. The Supreme Court set forth seven components of the Three-Reading Rule's purpose:

1. to "prevent hasty action";
2. to "lessen the danger of ill-advised amendment at the last moment";
3. to provide time for "more publicity and greater discussion";
4. to afford legislators "an opportunity to study the proposed legislation";
5. to allow legislators to "communicate with his or her constituents";
6. to allow legislators to "note the comments of the press"; and

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7. to allow legislators to "become sensitive to public opinion." *Hoover*, 19 Ohio St.3d at 8 (Douglas, J., concurring).

The *only* purpose addressed by the trial court in this case was the fourth one listed above. Despite complaints by some legislators about the rushed nature of the proceedings, there was admittedly at least some opportunity for *legislators* to study the amendment. However, the trial court made no findings and provided no analysis of the other six components of the Three-Reading Rule's purpose. This singular focus on the legislators' ability to study the amendment improperly ignores all other purposes of the Three-Reading Rule.

It is difficult to conceive of a hastier and, amici submit, more ill-advised amendment being adopted at the last moment. And the secretive manner in which this amendment was drafted and rushed to passage was intentionally designed to avoid publicity, discussion, media review, and public opinion. Most important to amici, the manner in which Am.Sub.HB 70 was adopted completely and intentionally evaded the purpose of considering public opinion and allowing legislators to communicate with constituents and vice versa.

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The "process" used in the General Assembly to enact Am.Sub.HB 70 violated Article II, Section 15(C), and it struck at the very heart of amici curiae's purpose and mission. Among other things, members rely on amici to represent them before the General Assembly and to engage with legislators about issues of vital importance to all Ohio school districts. Amici and their members have a right to engage in the legislative process in this manner, not only on HB 70, but on all legislative enactments. Article I, Section 3 of the Ohio Constitution guarantees amici's right "to instruct their representatives; and to petition the general assembly for the redress of grievances." The purpose of the Three-Reading Rule is, as the Ohio Supreme Court has noted, consistent with that right.

By focusing only on the actions of the legislators to find that the purpose of the Three-Reading Rule was met, the trial court erroneously sanctioned a process that deliberately cut off all meaningful public discourse and prevented true consideration of the bill. The trial court erred in concluding that the secretive, closed-door meetings that lead to Am.Sub.HB 70 only undermined public confidence in the legislative process. Those meetings, and the orchestrated process of eliminating

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participation by the public and amici also violated the underlying purpose of Ohio Constitution, Article II, Section 15(C) and renders Am.Sub.HB 70 unconstitutional.

C. Am.Sub.HB 70 violates Article VI, Section 3 of the Ohio Constitution and the Equal Protection Clauses of the Ohio and U.S. Constitutions

Amici share a keen interest in preserving the local, community-centered autonomy of local school boards. Voters elect the members of their districts' school boards from their own communities, and school districts, in turn, have authority over their districts. But R.C. 3302.10, enacted in Am.Sub.HB 70, upends this system by unconstitutionally usurping the powers of school boards and, by extension, the will of the voters who elected the board members. And it does so in violation of Article VI, Section 3 of the Ohio Constitution as well as the Equal Protection clause.

1. This Court need not defer to the lower court on these issues but should review de novo matters of legal interpretation.

The trial court did not make any factual findings—or rely on any facts—in ruling against the Appellants on their Article VI, Section 3 and

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equal protection challenges. Decision at 11–13. Instead, the trial court reached a legal conclusion interpreting the relevant constitutional provisions and related case law. As such, this Court should review de novo the trial court's decision on this issue. *MA Equip. Leasing I, LLC v. Tilton*, 2012-Ohio-4668, 980 N.E.2d 1072 (10th Dist.), ¶ 13 (citations omitted) (holding that judgments based on an erroneous interpretation of the law are subject to de novo review).

2. Am.Sub.HB 70 unconstitutionally usurps the powers of school boards and the rights of local voters.

Ohio Constitution, Article VI, Section 3 provides that school districts "embraced wholly or in part within any city shall have the power by referendum vote to determine for [themselves] 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."

In a vacuum, that language addresses only "questions of size and organization, not the power and authority, of city school boards." *State ex rel. Ohio Cong. of Parents & Teachers v. State Bd. of Ed.*, 111 Ohio

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St.3d 568 ¶47, 2006-Ohio-5512, 857 N.E.2d 1148. However, the Ohio Constitution is not intended to be read in a vacuum.

As Appellants note, and amici support, *Parents & Teachers* turned on a finding that the "school boards have authority over the districts they are elected to serve." *Id*. The *Parents & Teachers* Court went on to hold that the plaintiff-appellants in that case failed to prove that the law then in question usurped city school districts' powers. *Id.* It is that failure of proof that saved the statute from a finding of unconstitutionality. *Id*.

In the instant case, the record is replete with evidence about the content and impact of Am.Sub.HB 70. This case does not suffer from the same defect that led to the ruling in *Parents & Teachers*. Appellants set forth the many draconian changes in Am.Sub.HB 70 which completely usurp all of a city school board's powers. The statute specifically reserves to the appointed chief executive officer the power to carry out all actions and wrests all power from a school board. And, in addition to the enumerated powers that are shifted to the chief executive officer, the statute broadly reaches out to grab any residual powers left behind by sweeping in all of the "including-but-not-limited-to" powers. As Appel-

lants note, it is this complete usurpation of school board authority that distinguishes this case from *Parents & Teachers*.

Parents & Teachers noted that "Section 3, Article VI governs questions of size and organization, not the power and authority, of city school boards." *Id.* at ¶ 47. But the *Parents & Teachers* Court was not faced with a situation where a statute usurped *all* power from the school board and, by extension, the voters. Similarly, the Seventh Appellate District applied Section 3, Article VI where a legislatively formed commission assumed "only the [school] board's fiscal responsibilities" but the "elected board retained all other rights and duties attendant to a school board". *E. Liverpool Edn. Assn. v. E. Liverpool City Dist. Bd. of Edn.*, 177 Ohio App.3d 87, 96, 2008-Ohio-3327, ¶39, 893 N.E.2d 916, 922.

There comes a point where stripping the power and authority of a school board necessarily renders the power to determine size and organ-ization meaningless. Am.Sub.HB 70 represents that point. Surely the Ohio Constitution is not intended to secure the right to engage in a completely pointless act. Where, as here, *all* power of a school board is

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legislatively stripped, the right to determine the number of members and organization of the district's board of education that is reserved to voters in city school districts is rendered completely and unconstitutionally meaningless.

For the same reasons, the laws enacted through Am. Sub. HB 70 unconstitutionally impinge upon the voters who chose their local school board members. As Appellants point out, being able to cast a ballot for school board members who have no power is meaningless and dilutes the rights of Ohio voters to an unconstitutional degree.

The Ohio Constitution recognizes that the cornerstone of public education is locally elected boards of education that can set educational policies and priorities based on the unique needs of local communities. Amici strive to help their members provide strong governance while remaining accountable to the citizens who elected each local school board. That accountability and connectivity to the local voters is not only undermined, but it is completely eviscerated when the voters of a community no longer have any power to impact the true governance of their own school systems.

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CONCLUSION

For the reasons set forth above, amici curiae respectfully urge this Court to reverse the trial court's judgment and declare Am.Sub.HB 70 to be unconstitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via electronic mail and regular U.S. Mail, postage prepaid, this 5th day

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