IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

CHRISTINA COLLINS, *et al.*,	)	CASE NO. 23CV006611
	)	
Plaintiffs,	)	JUDGE KAREN HELD PHIPPS
	)	MAGISTRATE JENNIFER HUNT
vs.	)	
	)	**NOTICE OF FILING OF PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**
MIKE DEWINE., *et al.*,	)	
	)	
Defendants.	)	
	)	

Plaintiffs, Christina Collins, Michelle Newman, Stephanie Eichenberg, and the Board of Education of the Toledo City School District, pursuant to Magistrate Hunt's October 2, 2023 Order, as amended by the Court's October 3, 2023 Order, hereby give notice of filing their Proposed Findings of Fact and Conclusions of Law, which are attached as **Exhibit A**.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 16, 2023 a copy of the foregoing was filed with the Court, and served on the following individuals and entities via email:

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EXHIBIT A

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vs.	)	
	)	**PLAINTIFFS' PROPOSED FINDINGS OF**
MIKE DEWINE., *et al*.,	)	**FACT AND CONCLUSIONS OF LAW**
	)	
Defendants.	)	
	)	

Pursuant to Magistrate Hunt's order at the October 2, 2023, hearing[1] on their pending Motion for a Preliminary Injunction, Plaintiffs Christina Collins, Michelle Newman, Stephanie Eichenberg (collectively, the "Parent Plaintiffs"), and the Board of Education of the Toledo City School District (the "TPS Board" and, together with Parent Plaintiffs, "Plaintiffs") respectfully submit the following Proposed Findings of Fact and Conclusions of Law.

PROPOSED FINDINGS OF FACT

I. The Parties

1. Plaintiff Christina Collins is a citizen of Ohio and resident of Medina County. Dr. Collins is a parent of four children who attend Ohio public schools in Medina, Ohio, and one child who graduated from Ohio public schools in May 2023. Dr. Collins is eligible to vote in Ohio. Verified Am. Compl. at ¶ 17.

2. Plaintiff Michelle Newman is a citizen of Ohio and resident of Licking County. Ms. Newman is a parent of one child who attends an Ohio public school in Licking County. Ms. Newman is eligible to vote in Ohio. Verified Am. Compl. at ¶ 18.

[1] This order and the deadlines it set forth were subsequently revised by Judge Phipps' Order on October 3, 2023.

3. Plaintiff Stephanie Eichenberg is a citizen of Ohio and resident of Lucas County. Ms. Eichenberg is a parent of two children attending Ohio public schools, one attending a magnet school in Lucas County and the other attending a vocational high school in Wood County. She is also a past member and President of the TPS Board. Ms. Eichenberg is eligible to vote in Ohio. Verified Am. Compl. at ¶ 19.

4. The Board of Education of the Toledo City School District is a political subdivision of the State of Ohio.[2] The TPS Board is located at 1609 N. Summit Street, Toledo, Ohio 43604. The TPS Board oversees and provides services to Toledo Public Schools, which include 7 high schools, 36 elementary schools, and 11 magnet schools. The TPS Board is organized and operates under Ohio Revised Code § 3313 et seq., and its duties include setting education policy for the Toledo Public Schools and voting on subjects such as curriculum, personnel, and finances. Verified Am. Compl. at ¶ 20.

5. Defendant State of Ohio is the sovereign entity on whose behalf the Education Takeover Rider[3] was enacted. Verified Am. Compl. at ¶ 21.

6. Defendant Mike DeWine is the Governor of the State of Ohio. He is being sued in his official capacity as Governor. He signed H.B. 33 (defined below) into law and, as Ohio's chief executive, is charged with its implementation. Verified Am. Compl. at ¶ 22.

[2] For purposes of representation by the Attorney General, political subdivisions are not considered the "State" and their elected officials are not considered "Officers." *See* R.C. 109.36(A)(2), (B). Ohio law expressly vests boards of education of school districts with the power to sue. *See* R.C. 3313.17.

[3] The term "Education Takeover Rider" or "Rider" refers to pages 4200 (beginning with Section 130.11) through 5563 (up to, but not including, Section 130.108) of H.B. 33, as enrolled, *see* 2023 Am.Sub.H.B. No. 33, https://tinyurl.com/yc6st8c6.

II. The Constitutional and Statutory Background

A. At the time of the ratification of Section VI, Article 4 of the Ohio Constitution, the General Assembly and the people of Ohio intended to provide the core powers of statewide education governance to the State Board of Education, rather than a gubernatorial appointee.

7. In 1953, a constitutional amendment to establish a state board of education in Ohio (the "State Board") was proposed. The text of the amendment stated:

> There shall be a state board of education which shall be selected in such manner and for such terms as shall be provided by law. There shall be a superintendent of public instruction, who shall be appointed by the state board of education. The respective powers and duties of the board and of the superintendent shall be prescribed by law.[4]

8. Evidence in the record establishes that in 1912, the Ohio Constitution (the "Constitution") had provided that a superintendent of public instruction would be appointed by the Governor.[5] This provision marked the first time such an office was established within the Ohio Constitution. Prior to 1912, determinations regarding state educational governance in Ohio were treated as legislative matters, including consideration of bills to establish a state board of education.[6] Elevating these entities and decisions of governance to the Ohio Constitution carried weight.

9. Significant uncontroverted evidence demonstrates that in 1953, voters understood the constitutional referendum to be a question as to whether to transfer core education governance responsibility to a new state board of education or to keep that power with a governor appointee. For example, one article published at the time shared a stakeholder's view that "[a] state board of education would allow the people a voice in school matters at the state level," and would "[operate]

[4] Ohio Constitution, Article VI, Section 4.
[5] *See* PX 5 at 90.
[6] *See, e.g.*, *id.* at 87-90.

on a non-partisan basis."[7] Yet another article characterized the amendment as a "vote against concentration of too much administrative power in the hands of any one official."[8] And another stated that the movement to create a state board of education "was deemed to be essential to improve the quality of education in Ohio."[9] This proposed constitutional amendment was framed as a significant shift, central to how, and by whom, education was to be governed in Ohio.

10. The question posed to the people of Ohio was similar to one being considered in states across the country. Evidence also shows that in the 1950s, nationwide trends led to state boards of education being granted the power to govern and oversee public education.[10]

11. In Ohio, on November 3, 1953, citizens voted, by a significant margin, to ratify the constitutional amendment. Studies written shortly after the passage of the provision determined that "[i]n passing the constitutional amendment in 1953 creating a state board of education, the people in Ohio made a value judgement. They decided that education in the state would be served better by a board than by a department in charge of a state superintendent of public instruction appointed by the governor."[11]

12. The same month of ratification, the General Assembly created the "Ohio School Survey Committee."[12] The committee was established to "conduct a comprehensive study of the school foundation program and all laws pertaining or relating to public school education in Ohio,"[13] and was "charged with making recommendations to meet school needs."[14] These efforts included seeking feedback from Ohio residents "to ascertain the sentiment of the people of the

[7] PX 1.
[8] PX 2.
[9] PX 4 at 8.
[10] PX 3.
[11] *See* PX 5 at 440.
[12] *See* PX 17 at 62.
[13] *Id.*
[14] *See* PX 5 at 175.

state."[15] One topic studied by the Committee was "State Educational Organization," which focused on the recently passed constitutional provision.[16]

13. The School Survey Committee report (the "Report") confirmed that Ohio's ratification of the constitutional provision "followed the lead of 44 other states that have created state boards of education."[17] Other exhibits in evidence, also authored shortly after passage of the constitutional amendment, support this critical point. By 1958, 48 states had "either a state board of education or a state superintendent of public instruction with full or partial responsibility for administering the state's program for elementary and secondary education."[18] And by 1958, the state board of education was considered "the predominant form of state educational authority" and "the best answer to the problem of what kind of state agency is most suitable for carrying out the obligations of the state in the field of education."[19]

14. Similarly, a study conducted around the time that Ohio's constitutional amendment was considered found that more than half of state boards of education were responsible for the "[a]doption of rules and regulations which have the effect of law, prescription of minimum standards in specified areas, and determination of educational polices," among other duties.[20]

15. The Report also concluded that "[t]he board must have full responsibility for operation of state educational functions, subject to legislative enactments, if it is to exercise real leadership in the improvement of education."[21] The Report further recommended that the State

[15] PX 31 at 82.
[16] *Id.* at 80.
[17] *Id*. at 82.
[18] *See* PX 5 at 23.
[19] *Id*. at 31.
[20] *See* PX 5 at 25.
[21] PX 31 at 213.

Board take official actions "only in open meetings so that all may know the actions taken and the position of the board members on important issues."[22]

16. The General Assembly understood the weight that a constitutional provision carried, and following the 1953 ratification of the State Board amendment and publication of the Report shortly thereafter, in 1956, the legislature passed a law codifying the State Board's specific powers and duties.[23]

17. The legislation included almost all the responsibilities set forth in the Report and transferred the entire state-education apparatus to the State Board. The "powers and duties of the new board were consistent with those of other state boards."[24]

18. The powers and duties granted to the State Board, included, but were not limited to:

- exercising "policy forming, planning, and evaluative functions for the public schools of the state except as otherwise provided by law," R.C. 3301.07(A);
- exercising "leadership in the improvement of public education in" Ohio, R.C. 3301.07(B)(1);
- administering "the educational policies of th[e] state relating to public schools, and relating to instruction and instructional material, building and equipment, transportation of pupils, administrative responsibilities of school officials and personnel, and finance and organization of school districts, educational service centers, and territory," *id.*;
- developing "a standard of financial reporting which shall be used by each school district board of education and each governing board of an educational service center," R.C. 3301.07(B)(2);
- administering and supervising "the allocation and distribution of all state and federal funds for public school education under the provisions

[22] *Id*. at 87.
[23] *See* PX 18 at 555-56.
[24] PX 4 at 5.

of law, and may prescribe such systems of accounting as are necessary and proper to this function," R.C. 3301.07(C); and

- formulating and prescribing "minimum standards to be applied to all elementary and secondary schools in this state for the purpose of providing children access to a general education of high quality according to the learning needs of each individual, including students with disabilities, economically disadvantaged students, English learners, and students identified as gifted," R.C. 3301.07(D)(2).

19. In addition, the statute gave the State Board responsibility for education rulemaking and regulation in the state, R.C. 3301.07(N); submitting annually to the Governor and General Assembly a report on the status, needs, and major problems of the public schools of the state, R.C. 3301.07(F); and preparing budgets for the State Board, its agencies, and the state's public schools, R.C. 3301.07(G).

20. For almost 70 years, these core duties have remained the responsibility of the State Board.

B. The State Board is responsive to citizens of Ohio with an interest in public education in the state.

21. The State Board consists of 19 members—11 of whom are elected, and 8 of whom are appointed by the Governor. Verified Am. Compl. at ¶ 54.

22. The elected members of the State Board represent constituents and their interests from 11 different districts throughout the state. *Id*. at ¶ 55.

23. The 11 elected members are elected to four-year terms in even-numbered years by voters in Ohio's 11 State Board Districts, each of which contain anywhere from 35 to 80 individual school districts. *Id*. at ¶ 56**.**

24. Each State Board District has unique characteristics and concomitant challenges in the education context. *Id*. at ¶ 59.

25. Some State Board Districts are populated mainly by citizens in large urban areas, some are heavily rural, and some encompass a mix of urban, suburban, and rural school districts. *Id*.

26. The State Board takes concrete steps to make its activities and operations transparent and accessible to the public. *Id*. at ¶ 60.

27. For example, the State Board generally meets on the second Monday and Tuesday of each month. *Id*. at ¶ 61.

28. Those meetings, as required by law, are open to the public, and the State Board's schedules, agendas, and meeting minutes are published and publicly accessible, as are video recordings of the meetings. *Id*.

29. The State Board also solicits public testimony and public comments when it engages in rulemaking. *Id*. at ¶ 62.

30. State Board members routinely attend—both by invitation and of their own accord—meetings of the superintendents in their Board Districts and meetings of the local school boards within their districts. *Id*. at ¶ 64.

31. At these meetings, the State Board members deliver presentations on State Board activities and other matters of interest, hear from school administrators about issues affecting schools, and otherwise make themselves available as a resource for officials, educators, and parents. *Id*.

32. State Board members also attend community forums where local educational matters are discussed, and some even visit individual schools. *Id*. at ¶ 65.

33. State Board members also interact directly with their constituents. *Id*.

34. Educators seek assistance from the State Board to resolve licensing issues or understand the contours of new policies. *Id*. at ¶ 67.

35. Parents, including the Parent Plaintiffs, and families of public-school students regularly seek assistance with a range of issues, including: highlighting areas where policy change is needed, obtaining access to special-education funding and services for students with disabilities, scheduling adequate bus transportation, understanding curriculum materials or graduation requirements, and combatting racially discriminatory school-discipline practices. *Id*.

36. This engagement is crucial to the State Board members' work on behalf of the State Board, the work of local school boards like the TPS Board, and the experience of Ohio parents and their children. *Id*. at ¶ 68.

37. In short, the State Board members are a conduit between the on-the-ground experiences of their constituents and statewide education policy making. *Id*. at ¶ 72.

C. Senate Bill 1 ("S.B. 1"), the predecessor to the Education Takeover Rider, failed to garner enough support to become law.

38. S.B. 1, which was entitled "To rename the Department of Education as the Department of Education and Workforce; to create the position of Director of Education and Workforce; and to reform the functions and responsibilities of the State Board of Education and the Superintendent of Public Instruction,"[25] was introduced into the Senate on January 11, 2023.[26]

39. On January 17, 2023, S.B. 1 was referred to the Senate Economic Workforce and Development committee.[27]

40. S.B. 1 ultimately passed the Senate on March 1, 2023.[28]

[25] PX 9 at 6.
[26] PX 13.
[27] *Id.*
[28] *Id.*

41. S.B. 1, as passed by the Senate, sought to create a new department, the Department of Education and Workforce ("DEW"), which would replace the Ohio Department of Education, which was previously led by the Superintendent of Public Instruction (the "Superintendent") and ultimately reported to the State Board.[29]

42. S.B. 1 contemplated that the newly created DEW would be "headed by the director" of the DEW, who would "be appointed by the governor with the advice and consent of the senate."[30] S.B. 1 also sought to transfer "[a]ll powers and duties regarding primary, secondary, special, and career-technical education granted to the state board, the superintendent, or the former department of education… except those prescribed for the state board of education as described in section 3301.111 of the Revised Code" to the director of the DEW.[31]

43. S.B. 1 proposed leaving the State Board with limited perfunctory duties over, for example, "the adoption of requirements for educator licensure, licensee disciplinary actions, [and] school district territory transfer determinations."[32]

44. Proponents of S.B. 1 acknowledged that the bill would effect a "historic overhaul and realignment of the responsibilities and duties of the Department of Education (ODE) and State Board of Education."[33]

45. The Ohio Legislative Service Commission noted that S.B. 1's "effects on the state operating expenditures *appear to be limited*, as the reorganization of the Ohio Department of Education (ODE) into a renamed Department of Education and Workforce (DEW) and the transfer

[29] PX 9 at 405.
[30] *Id.*
[31] *Id*. at 405-06.
[32] *Id*. at 391.
[33] PX 27.

of most of the powers and duties of the State Board of Education and the Superintendent of Public Instruction into the DEW *do not alter the scope or operations of current programs*."[34]

46. The Ohio Legislative Service Commission went on to explain that those limited expenditures relate to salaries: S.B. 1 "creates the position of Director of Education and Workforce to lead DEW, with a total annual payroll (salary and benefit) cost that could be up to $254,000."[35]

47. S.B. 1 also purported to "create[] two deputy director positions to head the new divisions of Primary and Secondary Education and Career-Technical Education within the DEW," *id.*, and the "[t]otal annual payroll costs for each deputy director position may range from $151,000 to $189,000."[36]

48. Thus, out of a total state budget of approximately $191 *billion*, the estimated annual budget implications associated with S.B. 1 derive solely from three officials' salaries, totaling approximately $600,000.

49. On March 14, 2023, S.B. 1 was referred to the House Economic and Workforce Development Committee. It never made it out of that committee.[37]

50. H.B. 12—the House's companion bill to S.B. 1—fared no better.

51. H.B. 12 was introduced in the Ohio House on February 15, 2023, referred to the House Primary and Secondary Education Committee on February 16, 2023, and never reemerged from that committee.[38]

[34] PX 28 at 1 (emphases added).
[35] *Id.*
[36] *Id.*
[37] PX 13.
[38] PX 12.

D. The Education Takeover Rider was shoehorned into H.B. 33 at the eleventh hour and stripped the State Board of its core powers and duties.

52. On February 15, 2023, H.B. 33, the State's biennial budget bill—entitled: "To make operating appropriations for the biennium beginning July 1, 2023, and ending June 30, 2025, to levy taxes, and to provide authorization and conditions for the operation of state programs"—was introduced into the House.[39]

53. As introduced, H.B. 33 did not include the Education Takeover Rider.[40]

54. On April 26, 2023, the House voted to pass H.B. 33.[41]

55. The version of H.B. 33 that emerged from the House also did not include the Education Takeover Rider.[42]

56. On April 27, 2023, H.B. 33, as passed by the House, was introduced in the Senate.[43]

57. On June 15, 2023, H.B. 33 passed the Senate.[44]

58. The version of H.B. 33 that passed the Ohio Senate did contain the Education Takeover Rider.[45]

59. On June 21, 2023, the House refused to concur in the Senate's amendments to H.B. 1.[46]

60. The same day, the Senate insisted on its amendments to H.B. 33 and requested a committee of conference.[47]

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[39] *See* PX 6 at 11; *see also* PX 35 at 1.
[40] *See generally* PX 6.
[41] PX 36 at 3.
[42] *See generally* PX 7.
[43] PX 36 at 3.
[44] *Id*.
[45] *See* PX 8 at 6357-58.
[46] *See* PX 24 at 497.
[47] PX 25 at 12.

61. On June 22, 2023, the Conference Committee on H.B. 33 met for the first time.[48]

62. The meeting lasted only 20 minutes.[49]

63. On June 28, 2023, the Conference Committee on H.B. 33 met for a second time.[50]

64. At this meeting, the Conference Committee on H.B. 33 discussed the Education Takeover Rider for the first time, which the Conference Committee on H.B. 33 referred to as the "[t]ransfer of state K-12 education governance."[51]

65. On June 30, 2023, H.B. 33, with the Education Takeover Rider, reported out of committee and was read in the House *for the first and only time*.[52]

66. The General Assembly passed H.B. 33 on June 30, 2023—the last day of the state's fiscal year—and Governor DeWine signed it into law on July 4, 2023. Verified Am. Compl. at ¶¶ 135, 138.

67. The core provisions of the Education Takeover Rider had an effective date of October 3, 2023. *Id.* at ¶ 139.

68. The Education Takeover Rider, which was added to H.B. 33 at the last minute, fundamentally alters Ohio's public-education system, including by:

- creating the DEW, which "shall be headed by the director of education and workforce, who shall be appointed by the governor with the advice and consent of the senate," PX 39 at 4446;
- transferring "[a]ll powers and duties regarding primary, secondary, special, and career-technical education granted to the state board, the state super intendent, or the former department of education. . . except those prescribed for the state board of education as described in section 3301.111 of the Revised Code. . . to the director of education and workforce," id. at 4446-47 (emphasis added);

[48] PX 16.
[49] *Id*.
[50] PX 38.
[51] PX 15 at 7.
[52] PX 26.

- vesting the Director with the authority to "exercise under the acts of the general assembly general supervision of the system of public education in the state," *id.* at 4379, including: (1) the authority to "exercise policy forming, planning, and evaluative functions for the public schools of the state except as otherwise provided by law," *id*.; (2) the power to "develop the standard of financial reporting which shall be used by each school district board of education and governing board of educational service center," *id*.; (3) the authority to "administer and supervise the allocation and distribution of all state and federal funds for public school education under the provisions of law," *id*. at 4380; and (4) the power to "formulate and prescribe minimum standards to be applied to all elementary and secondary schools in th[e] state for the purpose of providing children access to a general education of high quality according to the learning needs of each individual, including students with disabilities, economically disadvantaged students, English learners, and students identified as gifted," *id*.; and

- leaving the State Board with limited authority over, for example, "the adoption of requirements for educator licensure, licensee disciplinary actions, [and] school district transfer determinations," *id*. at 4437.

69. Importantly, the Education Takeover Rider does not create a new body, separate and apart from the Board, but, instead, it unconstitutionally hollows out the constitutionally mandated, independent Board by transferring all of its core responsibilities to an agency controlled by the Governor. Verified Am. Compl. at ¶ 143.

70. The Education Takeover Rider removes the Board all together from Section 3301.07, the statute that had governed its duties for 70 years, simply by striking the words "state board of education" and replacing them with "department of education and workforce" throughout. *Id*.

71. By way of example, pre-Education Takeover Rider, Section 3301.07 stated: "The state board of education shall exercise the acts of the general assembly general supervision of the system of public education in the state." *Id*. at ¶ 144.

72. Now, however, because of the Education Takeover Rider, Section 3301.07 purports to state that "[t]he director of education and workforce shall exercise under the acts of the general assembly of the system of public education in the state."[53]

73. The Education Takeover Rider also strips the Superintendent of his or her duties and responsibilities and reassigns them to the Director of Workforce and Education. Verified Am. Compl. at ¶ 145.

74. For example, it takes the following duties and responsibilities, which belonged to the Superintendent, and reassigns them to the Director of the Department of Workforce and Education:

- "Provid[ing] technical and professional assistance and advice to all school districts in reference to all aspects of education, including finance, buildings and equipment, administration, organization of school districts, curriculum and instruction, transportation of pupils, personnel problems, and the interpretation of school laws and state regulations," *id*. at ¶ 146;
- "Prescrib[ing] and requir[ing] the preparation and filing of such financial and other reports from school districts, officers, and employees as are necessary or proper," *id*.;
- "Prescrib[ing] and requir[ing] the installation by school districts of such standardized reporting forms and accounting procedures as are essential to the businesslike operations of the public schools of the state," *id*.;
- "Conduct[ing] such studies and research projects as are necessary or desirable for the improvement of public school education in Ohio. . . [which] may include analysis of data contained in the education management information system established under section 3301.0714 of the Revised Code," *id*.;
- "Prepar[ing] and submit[ting] annually a report of the activities of the department and the status, problems, and needs of education in the state," *id*.; and

[53] PX 39 at 4379.

- "Supervis[ing] all agencies over which the board exercises administrative control, including schools for education of persons with disabilities." *Id*.

75. As the Ohio Legislative Service Commission explained, "the bill transfers . . . most of the powers and duties assigned to the State Board of Education and the Superintendent of Public Instruction" to the newly created DEW,[54] including:

- "Adopting minimum education standards for elementary and secondary schools, and minimum operating standards for school districts;"[55]
- "Issuing and revoking state charters to school districts, school buildings operated by districts, and nonpublic schools that elect to seek a charter;"[56]
- "Developing state academic standards and model curricula;"[57]
- "Establishing the statewide program for assessing student achievement through standardized assessments;"[58]
- "Establishing the state report card system for school districts, community schools, STEM schools, and college-preparatory boarding schools;"[59]
- "Administering state scholarship programs;"[60]
- "Performing prescribed functions regarding the creation and operation [of] vocational school districts;"[61]
- "Providing oversight to, and performing functions regarding, community schools, community school sponsors, and STEM schools;"[62] and
- Calculating and distributing all foundation funding payments."[63]

[54] PX 30 at 199.
[55] *Id.* at 200.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*

76. The Education Takeover Rider leaves the Board with responsibility over only a small subset of mostly perfunctory duties: "educator licensure, licensee disciplinary actions, school district territory transfers, and certain other areas." Verified Am. Compl. at ¶ 148.

77. Indeed, an internal memorandum dated July 6, 2023, from Tony Palmer, Chief Legal Counsel, to the State Board confirms these changes.[64]

78. In that internal memorandum, Mr. Palmer states that the State Board will be responsible for only: "(1) [t]he adoption of requirements for educator licensure; (2) [l]icensee disciplinary actions; and (3) [s]chool district territory transfer determinations."[65] Thus, the memorandum confirms that the State Board's new duties are greatly reduced in comparison to the State Board's pre-H.B. 33 duties and responsibilities.

79. Ms. Voltolini testified that H.B. 33, including the Education Takeover Rider, will reduce the State Board workforce to a mere *ten percent* of the Department of Education's pre-H.B. 33 workforce.[66]

80. On cross examination, Ms. Voltolini admitted that under the Education Takeover Rider, by fiscal year 2026, the State Board's budget will be *negative*.[67]

III. Plaintiffs Are Irreparably Harmed by Implementation of the Education Takeover Rider.

A. Plaintiff Christina Collins is irreparably harmed.

81. Plaintiff Christina Collins is a citizen of Ohio and resident of Medina County. Verified Am. Compl. at ¶ 17. Dr. Collins is a parent of four children who attend Ohio public

[64] *See* Voltolini Aff., Ex. B at 1.
[65] *Id.*
[66] 20213-10-02_16.22.37.11 at 00:03:00 to 00:04:05.
[67] 2023-10-02_15.24.46.150 at 00:55:20 to 00:55:35; *see also* Voltolini Aff., Ex. E at 3 (noting projections of "a low-fund balance in 4L20 by the end of FY25, with a negative cash position developing in FY26").

schools in Medina, Ohio, and one child who graduated from Ohio public schools in May 2023.[68] Dr. Collins is eligible to vote in Ohio.[69]

82. Dr. Collins believes that issues such as "standardized testing, "cut scores," school "report cards," and "standards in general" are the "most fundamentally important things" to her as a parent.[70] As such, Dr. Collins has worked with her successive State Board representatives on various issues related to her children's education.[71]

83. Dr. Collins is currently represented by Board Member Meryl Johnson ("Member Johnson"). Dr. Collins has had numerous conversations with Member Johnson to advocate for and better support her children and their educational needs.[72] The evidence presented shows that Dr. Collins has a demonstrated history of engaging with her elected State Board member, who was, prior to the Education Takeover Rider, vested with the power to shape education policy and meaningfully help Dr. Collins and her children.[73]

84. Most recently, Dr. Collins has spoken with Member Johnson about her son, a "struggling reader," and her concerns as a parent regarding districts implementing "dyslexia universal screeners."[74] She has shared with Member Johnson how he has been affected by the literacy policies developed and/or implemented by the State Board. Verified Am. Compl. at ¶ 89. Dr. Collins had concerns that the way in which the policy was implemented, and the "lack of guidance" would result in her son "fall[ing] through the cracks."[75]

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[68] *See also* 2023-10-02_11.31.19.507 at 00:04:20 to 00:05:12.
[69] 2023-10-02_11.31.19.507 at 00:09:42 to 00:09:53.
[70] 2023-10-02_11.31.19.507 at 00:10:35 to 00:10:56.
[71] 2023-10-02_11.31.19.507 at 00:10:59 to 00:12:04; 2023-10-02_11.31.19.507 at 00:18:25 to 00:19:23.
[72] *Id*.
[73] *See, e.g.,* 2023-10-02_11.31.19.507 at 00:10:59 to 00:21:32.
[74] 2023-10-02_11.31.19.507 at 00:11:07 to 00:12:04.
[75] *Id.*

85. Dr. Collins was aware that Member Johnson was involved in State Board committees that "publicly" and "transparently" considered the implementation of reading and dyslexia screening policies, and her hope was that Member Johnson would "take [her] concerns into consideration in any future consideration of the dyslexia guidance."[76] She has encouraged Member Johnson to work at the state level to resolve these issues and provide clarity to local schools struggling to implement this policy. Verified Am. Compl. at ¶ 90.

86. In addition, Dr. Collins was "extremely concerned" about standards that would impact "what [her] children would learn in terms of history and social studies, and whether or not they would get an accurate representation of facts and history."[77] Dr. Collins reached out to Member Johnson to discuss the importance of high-quality history standards and assessments, because she knew that the State Board is responsible for setting educational standards in Ohio, and that the standards developed and approved by the state become the "basis for assessments" in the state.[78]

87. Dr. Collins also had concerns regarding the "state's mandatory [third grade] retention policy," which had been a concern "since [her] son was in preschool."[79] Dr. Collins had fears that she would "not have any say" in her son being retained in third grade because he was unable to pass a test.[80] After Dr. Collins shared these concerns with Member Johnson, Member Johnson took these concerns to the State Board, and she and other members supported a resolution to change the third-grade retention policy. This resolution and related advocacy resulted in a

[76] 2023-10-02_11.31.19.507 at 00:12:08 to 00:13:21.
[77] 2023-10-02_11.31.19.507 at 00:13:22 to 00:14:48.
[78] *Id.*
[79] 2023-10-02_11.31.19.507 at 00:14:49 to 00:17:17.
[80] *Id.*

change in the policy.[81] From her testimony, it is clear that Dr. Collins's engagement with Member Johnson resulted in tangible change that benefitted Dr. Collins and her children.

88. Dr. Collins also spoke to Member Johnson regarding the state's peace officer curriculum and what her daughter, who is entering high school next year, would be taught about her rights as a student in dealings with police officers.[82] Because the State Board has for seventy years approved model curricula, Dr. Collins shared with Member Johnson her concerns about the proposed curriculum's content.[83] Dr. Collins benefited from having a board member, accountable to members of her district, to whom she could express such concerns.

89. Dr. Collins also has a demonstrated history of engaging with past elected members of the State Board, including Lisa Woods, who was her elected representative from 2016 to 2020.[84]

90. For example, Dr. Collins spoke extensively to Ms. Woods about standardized testing when her daughter was "going into third grade."[85] Specifically, Dr. Collins was concerned about the transition from a "paper and pencil test" to an "online test" and whether an online assessment would be a suitable representation of her daughter's learning.[86] Because the State Board was responsible for assessments, Dr. Collins advocated for changes to ensure her daughter's education was not negatively impacted by changes to the standardized testing process. Verified Am. Compl. at ¶ 85.

91. And over several years, Dr. Collins has had numerous conversations with her prior and current representatives on the challenges related to standardized testing and the ways in which

[81] *Id.*
[82] 2023-10-02_11.31.19.507 at 00:17:18 to 00:18:24.
[83] *Id.*
[84] 2023-10-02_11.31.19.507 at 00:18:25 to 00:19:23.
[85] *Id.*
[86] *Id.*

they are not appropriate measures of learning for her children and other students in their schools. *Id.*

92. Dr. Collins has also discussed workforce development and training with her elected representatives over the years. In anticipation of her own children's advancement, Dr. Collins has been very focused on understanding how schools and the state prepare students for life after high school. *Id.* at ¶ 86.

93. Dr. Collins has also submitted multiple comments to the State Board when the State Board undertakes its periodic review and revision of state minimum education standards. Specifically, when "the state was transitioning from Common Core standards to Ohio's new standards," Dr. Collins "made sure to comment" because she was "very concerned" about how changes to the standards, like the removal of "money management," would impact her daughter's education."[87]

94. Finally, Dr. Collins runs a program for high school juniors and seniors at risk of not graduating high school. She works with her elected representative to ensure that as her children advance through the Medina public-school system, the district provides opportunities for each of her children, and all students, to earn their diplomas. This program is directly affected by decisions made by the State Board; Dr. Collins's engagement with her elected representative is critical both to ensuring that the State Board is aware of the challenges faced at the local level and that Dr. Collins is aware of potentially applicable state-level policies. Verified Am. Compl. at ¶ 91.

95. Dr. Collins has benefited from each of these interactions, and many others that she has had with the State Board and its members.[88] Dr. Collins has benefitted as a parent from being able to "listen in on [the] committee meetings" that were important to her, and to hear from and

[87] 2023-10-02_11.31.19.507 at 00:20:22 to 00:20:40.
[88] 2023-10-02_11.31.19.507 at 00:20:40 to 00:22:58.

interact with "experts at the Department of Education, directors of the department, and [her] representative."[89] Dr. Collins was able to follow the committees and workgroups involved in the issues she cared about, which conducted their work in an open and transparent manner.[90]

96. Dr. Collins also benefitted from electing and engaging with a local representative State Board member empowered to effect change in state education governance. It is "important to [her] that that person will represent [her] voice" on education issues related to her children.[91]

97. Dr. Collins testified that based on her knowledge, and the information contained in the affidavit of defense witness Jessica Voltolini, the State Board would lose responsibility over its core education governance duties.[92] Specifically, Dr. Collins testified that for each of the concerns she has historically raised with her local, elected State Board member, the State Board would no longer have any power to govern or affect change.[93] This change would strip Dr. Collins of the ability to effectively advocate, with a local representative, for changes to education policy at the state level that directly impact her and her children.

98. This change would result in significant harm to Dr. Collins, as she would no longer be able to interact with an elected, local State Board member with the power to affect change on the issues that matter most to her and her children.[94] Dr. Collins also explained that, under the Education Takeover Rider, her ability to interact with the body that sets educational standards and policies in a "public and transparent nature" is "gone."[95]

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[89] *Id.*
[90] *Id*.
[91] *Id*.
[92] 2023-10-02_11.31.19.507 at 00:28:17 to 00:34:38.
[93] *Id*.
[94] *Id.*
[95] 2023-10-02_11.31.19.507 at 00:27:08 to 00:34:29.

99. Dr. Collins also explained why contacting the Department of Education is no substitute for the State Board and her elected member. Dr. Collins testified that in her experience, when she has contacted the Department of Education, "sections of the website will be read to [her] as a parent."[96] This is a significantly different level of information-sharing and interaction than she has previously had with Member Johnson or prior elected State Board members. Under the Education Takeover Rider, Dr. Collins would no longer have an elected representative with relevant authority who can assist when she has questions pertinent to her children's education and the policies affecting them and otherwise cannot get adequate, straightforward responses from the new Department of Education and Workforce.[97]

100. Dr. Collins explained that should the Education Takeover Rider go into effect, although Member Johnson would retain some responsibilities as a State Board member, she would "lack access to the appropriate people to be involved in conversations about [Dr. Collins's] specific areas of concern."[98] The committee structure and the public dialogue that Member Johnson is involved in as a State Board member, which allow her to effect change on the issues Dr. Collins cares about, would be gone.[99] Though Dr. Collins will continue to be able to vote for an elected a State Board member, that State Board member will be virtually powerless to respond to the concerns and issues that Dr. Collins raises.[100]

101. Member Johnson's loss of power directly and negatively impacts Dr. Collins's ability to advocate for and improve her children's education.[101]

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[96] *Id.* at 00:33:40 to 00:34:06.
[97] *Id.* at 00:28:16 to 00:34:29.
[98] *Id.* at 00:29:36 to 00:31:34.
[99] *Id.*
[100] *Id.*; *see also* 2023-10-02_13.32.49.836 at 00:16:50 to 00:18:05.
[101] 2023-10-02_11.31.19.507 at 00:28:16 to 00:34:29; *see also* 2023-10-02_13.32.49.836 at 00:16:50 to 00:18:05.

B. Plaintiff Michelle Newman is irreparably harmed.

102. Plaintiff Michelle Newman is a citizen of Ohio and resident of Licking County. Verified Am. Compl. at ¶ 18. Ms. Newman is a parent of one child who attends an Ohio public school in Licking County. Ms. Newman is eligible to vote in Ohio. *Id.*

103. Ms. Newman has been deeply involved in her child's education since her child has been enrolled in Ohio public schools. She is keenly aware that policies that affect her child's education are set at the state level by the State Board. *Id.* at ¶ 96.

104. Recognizing the significant impact of the State Board on state education policy-setting, and having a strong desire to have the body responsible for setting education regulations and policy include parent perspectives, Ms. Newman made the decision to campaign for an elected seat on the State Board to most significantly affect her daughter's education and the education of other students in Ohio. *Id.* at ¶ 97.

105. Should the Education Takeover Rider go into effect, Ms. Newman will be left with little recourse—whether at the ballot box or otherwise—to voice her support for or opposition to developments in education policy in the State of Ohio. *Id.* at ¶ 169.

C. Plaintiff Stephanie Eichenberg is irreparably harmed.

106. Plaintiff Stephanie Eichenberg is a citizen of Ohio and resident of Lucas County. *Id.* at ¶ 19.[102] Ms. Eichenberg is a parent of two children, ages 17 and 15, who attend Ohio public schools, one attending a magnet school in Lucas County and the other attending a vocational high school in Wood County. *Id.* She is also a past member of the TPS Board, having served between

[102] *See also* 2023-10-02_13.32.49.836 at 00:20:07 to 00:20:42.

2016 and 2021, including as the TPS Board President. *Id.*[103] She has voted for and intends to continue voting for members of the State Board of Education.[104]

107. Ms. Eichenberg has long depended on the State Board's decision-making and worked with her State Board representatives on various issues related to her children's education. For example, she served as a parent-community representative on an audit committee of the Toledo Public Schools, then her kids' school system, to ensure that its operations were fiscally efficient and consistent with state standards established by the State Board. Verified Am. Compl. at ¶ 92. That experience gave her a clear understanding of the state educational standards that TPS struggled to meet, as well as the role of the State Board in setting those standards.[105]

108. She subsequently joined the TPS Board, where she regularly communicated with elected State Board members to ensure that the State Board was cognizant of TPS's needs, and that the schools were compliant with state requirements. Verified Am. Compl. at ¶ 93.[106]

109. Ms. Eichenberg's concern about the Third Grade Reading Guarantee assessment was one of the reasons that she decided to run for a seat on the TPS Board and "one of the first big things" on which she engaged as a TPS Board member with the State Board.[107]

110. As she engaged on the Third Grade Reading Guarantee issue, Ms. Eichenberg appreciated that the State Board members were accessible such that she "could walk up to them," "have a conversation," describe "the impact" she was worried about or the issue she was seeing in

[103] *See also* 2023-10-02_13.32.49.836 at 00:25:15 to 00:26:00.
[104] 2023-10-02_14.30.35.193 at 0:06:31 to 0:07:14.
[105] 2023-10-02_13.32.49.836 at 00:23:22 to 00:24:13; *id*. at 00:24:19 to 00:25:01; *id*. at 00:25:07 to 00:25:12.
[106] *See also* 2023-10-02_13.32.49.836 at 00:25:15 to 00:25:24; 2023-10-02_13.32.49.836 at 00:28:18 to 00:28:24.
[107] 2023-10-02_13.32.49.836 at 00:28:18 to 00:29:09 (describing her concerns as a parent and noting that she heard similar concerns expressed by other parents of TPS students).

her kids' school, ask if the State Board members were hearing similar concerns from other parents in other districts, and discuss what could be done to address the problem.[108]

111. Moreover, Ms. Eichenberg testified that the State Board was receptive to her input and advocacy, particularly with respect to the Third Grade Reading Guarantee issue.[109] Specifically, she observed that State Board members brought her input "to meetings and to hearings" and, eventually, the State Board changed the third-grade assessment to permit greater parent involvement in the decision to promote or hold back a student. Verified Am. Compl. at ¶ 93.[110]

112. Ms. Eichenberg also provided other examples of her work with the State Board while she was on the TPS Board. These included advocacy around "the possibility of an academic distress commission coming to Toledo Public Schools" and her concern that the standards by which decisions to impose an academic distress commission on a school district "were not really based on what was going on in the schools well," but were rather "founded on poor data and they were founded on old data."[111] As a result, Ms. Eichenberg observed that a school could be "making massive improvements" but nevertheless "have this commission take over basically the entire governance of your schools."[112] She was particularly concerned about the possibility that an academic distress commission might make changes to gifted and special education programming at TPS, which are services from which her own children have benefitted. Verified Am. Compl. at ¶ 94.[113]

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[108] 2023-10-02_13.32.49.836 at 00:29:11 to 00:31:16.
[109] 2023-10-02_13.32.49.836 at 00:31:17 to 00:31:29.
[110] *See also* 2023-10-02_13.32.49.836 at 00:31:35 to 00:32:16.
[111] 2023-10-02_13.32.49.836 at 00:32:23 to 00:33:31.
[112] *Id.*
[113] *See also* 2023-10-02_13.32.49.836 at 00:33:39 to 00:34:03.

113. While she was President of the TPS Board, the TPS Board passed a resolution spelling out their concerns with the methodology used by Ohio to determine whether a district should be placed under the supervision of an academic distress commission, and then submitted that resolution to the State Board.[114] Subsequently, both the State Board President and the State Board member representing Toledo came to tour TPS schools, which allowed the TPS Board to "show them the things" that TPS schools "were doing that helped students learn," which were not "reflected in the data that was being considered as part of the academic distress commission requirements."[115] "[L]ess than two weeks later," the State Board passed a resolution disapproving of the legislation that created the academic distress commission process, leading ultimately to a moratorium on the use of academic distress commissions.[116]

114. In Ms. Eichenberg's view, this successful outcome was due, in large measure, to the TPS Board's ability to advocate directly to the State Board, which helped "the State Board understand that there are great things happening that they couldn't see in the data."[117]

115. Ms. Eichenberg's reliance on the State Board continues to this day. For instance, she is currently seeking a physical education waiver so that her daughter, a gymnast, can maximize her academic classes in school, given her physical education outside of school. Because her daughter attends a magnet school in another district, the issue requires cross-district coordination. Ms. Eichenberg intends to contact elected State Board members to assist in this process. Verified Am. Compl. at ¶ 95.[118]

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[114] 2023-10-02_13.32.49.836 at 00:32:52 to 00:35:31.
[115] *Id.*
[116] 2023-10-02_13.32.49.836 at 00:38:01 to 00:38:33.
[117] 2023-10-02_13.32.49.836 at 00:38:20 to 00:38:27.
[118] *See also* 2023-10-02_14.30.35.193 at 00:04:00 to 00:05:22; 2023-10-02_14.30.35.193 at 00:06:03 to 00:06:11 ("You have to know somebody with authority to help you [get a special accommodation], and when you just call, you're not talking to somebody with authority, I can assure you of that.").

116. If Ms. Eichenberg's requested accommodation necessitates a change in Ohio's educational standards, that is something that the State Board currently possesses the authority to do but would lose the ability to do under the Education Takeover Rider.[119]

117. If the Education Takeover Rider goes into effect, Ms. Eichenberg will no longer have an elected official who shares in policy-setting authority to whom she can turn with her concerns about statewide policies, like the third-grade retention requirement or graduation requirements.[120]

118. To be sure, Ms. Eichenberg will continue to have an elected State Board member that she can direct inquiries to, but the "far more limited role" the State Board will have "means that [she] cannot use the State Board of Education" as a parent if she has "a concern" about her child's education, and would not have been able to use the State Board while she was a TPS Board member had the Rider been in force at that time.[121]

119. Nor is there comfort in the fact that the State Board will continue to process educator licenses. The issues on which Ms. Eichenberg has needed the State Board's input or assistance "were all about very specific rules and processes developed at the direction of the State Board," and so their ability to provide meaningful aid to a constituent, like Ms. Eichenberg, is necessarily tied to their authority to act on an issue.[122]

120. Both when she was a TPS Board member and now, as a parent of TPS students, Ms. Eichenberg relies on a responsive, transparent State Board for several purposes: to consider

[119] *See* 2023-10-02_14.30.35.193 at 00:06:14 00:06:30.
[120] 2023-10-02_13.32.49.836 at 00:54:22 to 00:54:39.
[121] 2023-10-02_14.30.35.193 at 00:00:48 to 00:01:16; 2023-10-02_13.32.49.836 at 00:56:44 to 00:56:57 ("If I take [an issue] to my State Board member but they're not making the rules, then I'm really taking it to somebody who is really just gonna have more knowledge, but I'm not sure what they're going to do with it.").
[122] 2023-10-02_14.30.35.193 at 00:01:30 to 00:02:11.

their local needs when determining statewide policy; to help them understand that policy and its implementation; and to work with them to improve local schools, such as Toledo area schools, and ensure compliance with statewide standards, among other things. Verified Am. Compl. at ¶ 163.[123]

D. Plaintiff TPS Board is irreparably harmed.

121. The TPS Board is a political subdivision of the State of Ohio. Verified Am. Compl. at ¶ 20. The TPS Board oversees and provides services to Toledo Public Schools, which include 7 high schools, 36 elementary schools, and 11 magnet schools. *Id.*

122. The TPS Board is organized and operates under Ohio Revised Code § 3313 *et seq.*, and its duties include setting education policy for the Toledo Public Schools and voting on subjects such as curriculum, personnel, and finances. Verified Am. Compl. at ¶ 20.

123. According to its current President, Sheena Barnes,[124] the TPS Board's mission is to ensure that "each child receiv[es] the best high-quality education for their best future."[125]

124. The TPS Board relies in numerous ways on the State Board's transparency, accessibility, and responsiveness and "works really well with the State Board" in its current form. Verified Am. Compl. at ¶ 73.[126] In particular, the TPS Board receives advice from the State Board about key legislative updates,[127] which helps the TPS Board anticipate needs that it might have, as well as ensure it remains in compliance with new and existing obligations.[128]

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[123] *See also* 2023-10-02_13.32.49.836 at 00:44:20 to 00:44:54; 2023-10-02_13.32.49.836 at 00:53:47 to 00:54:06 (Eichenberg: "Without people debating this in a deliberate, open arena, I don't think that this is a great idea because I would be very concerned as a parent, I would be concerned had I still been a Board member, that all sorts of things are going to happen without having been well thought out."); 2023-10-02_14.30.35.193 at 00:11:30 to 00:11:43 (Eichenberg: "They're not required to be discussed in public if a Director is making that decision. So I can't agree that we don't know that it could be worse. I believe that public discussion is fundamental to a good outcome for our students.").

[124] 2023-10-02_14.30.35.193 at 00:15:34 to 00:15:54.

[125] 2023-10-02_14.30.35.193 at 00:18:12 to 00:18:26.

[126] *See also* 2023-10-02_14.30.35.193 at 00:20:56 to 00:21:07; 2023-10-02_14.30.35.193 at 00:20:16 to 00:20:22 (describing the TPS Board's relationship with the State Board as "very vital").

[127] 2023-10-02_14.30.35.193 at 00:22:09.

[128] 2023-10-02_14.30.35.193 at 00:24:41 to 00:25:00; 2023-10-02_14.30.35.193 at 00:27:31 to 00:27:59.

125. The State Board's transparent process, like its practice of making its meeting minutes publicly available, also enhances the State Board's accessibility and utility for the TPS Board.[129] The meeting minutes, in particular, give TPS Board members a reliable way to stay apprised of any changes that might affect TPS, even if they could not have attended the State Board meeting in person. TPS Board members similarly depend on their relationship with their State Board representative to ensure that they have authoritative and current information about developments in education policy. Verified Am. Compl. at ¶ 81.

126. The State Board members are also accessible to the TPS Board members by phone and email.[130]

127. On several occasions, the TPS Board and its members have invited State Board members to tour schools within the TPS system. For example, in order to inform the State Board's decisions about what policies would best support technical education, State Board members toured technical schools within the TPS system. Verified Am. Compl. at ¶ 74.[131]

128. Similarly, the TPS Board has invited their elected State Board representative to their local Board meetings on various occasions, both to help inform the TPS Board's decision-making and to ensure that the State Board was aware of the needs of Toledo Public Schools and the impacts that various state policy choices would have on Toledo Public School students. Verified Am. Compl. at ¶ 75.

[129] 2023-10-02_14.30.35.193 at 00:22:55 to 00:23:16; 2023-10-02_13.32.49.836 at 00:41:55 to 00:44:09 (describing how Ms. Eichenberg used and relied on State Board meeting minutes while she served on the TPS Board, including to understand how school districts in other parts of Ohio were thinking about various education policy issues, which allowed her to improve and shape her advocacy).
[130] 2023-10-02_14.30.35.193 at 00:22:03 to 00:22:51.
[131] *See also* 2023-10-02_13.32.49.836 at 00:32:56 to 00:35:34.

129. And, when State Board members are not able to attend TPS Board meetings, the direct line of communication that exists between the TPS Board and the State Board means that the State Board can still be made aware of time sensitive issues or concerning trends for which additional state resources are needed, including increased gun violence, youth homelessness, and student struggles with mental health.[132]

130. In addition, the TPS Board has contacted its elected State Board members on countless occasions, both to understand state policies and requirements and to advocate for policies that are appropriate for Toledo schools. For example, the Ohio School Report Cards are of significant importance to Toledo Public Schools. If they were to fail three years in a row, they could be subject to takeover by an "academic distress commission." They therefore often seek advice from their elected State Board member about how to improve their performance. They have also advocated in the past for this process to be overhauled, helping to convince the State board to support a moratorium on new academic distress commissions. Verified Am. Compl. at ¶ 76.[133]

131. Ms. Barnes also explained the TPS Board's need for "someone [who can] give [them] real time information," and who will "respond[] to us when we ask questions," regarding whether plans to expand school voucher programs will affect TPS' funding.[134]

132. Similarly, the TPS Board frequently communicates with the State Board to ensure that TPS's curricula are consistent with statewide educational standards. Although the State Board is currently responsible for setting educational standards, R.C. 3301.07(D)(2), state law makes the

[132] 2023-10-02_14.30.35.193 at 00:28:10 to 00:29:12.
[133] *See also* 2023-10-02_14.30.35.193 at 00:32:59 to 00:34:22 (describing the TPS Board's ability to directly advocate to the State Board on the Ohio School Report Card issue); *id.*at 00:34:23 to 00:34:58 (noting importance of communicating TPS' concerns on the Ohio School Report Card directly to a body with decision-making authority); 2023-10-02_13.32.49.836 at 00:32:23 to 00:33:31 (Ms. Eichenberg testifying about her advocacy as a TPS Board member on the subject of academic distress commissions); *id.* at 00:38:01 to 00:38:35 (describing moratorium on academic distress commissions that resulted, in part, from the TPS Board's advocacy to the State Board).
[134] 2023-10-02_14.30.35.193 at 00:29:23 to 00:29:43.

TPS Board "the sole authority in determining and selecting all" instructional materials, textbooks, and academic curriculum to be used in its schools, *id*. § 3313.21. It is therefore important to the TPS Board that it is able to confirm with responsive State Board members that its curriculum choices comply with the statewide standards, as well as to advocate before the standard-setters themselves. Verified Am. Compl. at ¶ 77.

133. The TPS Board also benefits from the State Board's consideration of their input in setting educational standards. For example, the TPS Board presented to the State Board about the need for social-emotional learning in urban schools, where many students' educational success depends on their ability to process trauma. In part due to the TPS Board's urging, the State Board adopted standards regarding social-emotional learning, which helped the TPS Board build and maintain a consistent curriculum. Similarly, today, with the social-emotional learning standards under consideration by the legislature, the TPS Board works with its elected State Board members to ensure that the legislature is fully informed about the need for such classes. Verified Am. Compl. at ¶ 78.[135]

134. For example, Ms. Barnes testified that, when a curriculum was proposed to teach high school students about interacting with law enforcement officials, she was able to ensure that the State Board had in mind the experiences of TPS' Black and Brown students, many of whom have felt unfairly treated during their own interactions with law enforcement officials and could be traumatized by a curriculum that fails to account for those experiences.[136]

135. In addition to educational standards, the State Board is currently responsible for establishing administrative and operational standards, as well as other rules, procedures, and guidelines. The TPS Board relies on its elected State Board member to consider the concerns of

[135] *See also* 2023-10-02_13.32.49.836 at 00:40:06 to 00:41:52.
[136] 2023-10-02_14.30.35.193 at 00:25:05 to 00:26:23.

Toledo Public Schools when the State Board is adopting or amending such standards and rules, and to provide assistance in understanding and complying with them. Verified Am. Compl. at ¶ 79.[137]

136. For example, the TPS Board communicates with the State Board to ensure that their programs and policies for supporting students with special needs are appropriate. This helps the TPS Board evaluate and respond to concerns from parents, and to identify places they can improve their performance. Verified Am. Compl. at ¶ 80.[138]

137. In all of these matters, the TPS Board relies on the fact that the State Board is empowered to directly address issues of importance to TPS through its authority to set curricula, academic standards, and funding levels, among other things.[139]

138. As Ms. Barnes testified, however, the Education Takeover Rider leaves the State Board with powers and duties that are "very much watered down."[140] She thus expects that the State Board will no longer be the "vital" resource it currently is for the TPS Board,[141] but will instead be able to do nothing more than "listen, give advice, maybe a phone number, but that's probably it."[142] That will affect the TPS Board's ability to relay the voices and experiences of their constituents directly to decisionmakers, which has been an important advocacy strategy for the TPS Board on a range of policy issues, such as the Ohio School Report Card.[143]

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[137] 2023-10-02_13.32.49.836 at 00:44:10 to 00:44:54 (describing the "guideposts" that the State Board creates, which helped the TPS Board navigate changing legislative landscapes and comply with new obligations); 2023-10-02_14.30.35.193 at 00:21:22 to 00:22:03.
[138] *See also* 2023-10-02_14.30.35.193 at 00:27:31 to 00:28:02 (Ms. Barnes testifying that if the TPS Board "has questions on how to [support students with special learning needs], they help out with that, as well").
[139] *Id.* at 00:30:53 to 00:31:20.
[140] *Id.* at 00:38:52 to 00:39:12.
[141] *Id.*
[142] *Id.* at 00:40:10 to 00:40:16.
[143] *Id.* at 00:32:57 to 00:34:22.

139. Ms. Eichenberg similarly testified that, for many of the key issues on which the TPS Board successfully affected policy change during her tenure, the State Board will no longer have policymaking authority.[144] And, whereas the TPS Board's relationship with the State Board meant that their concerns were taken seriously and relayed at a public meeting, the Education Takeover Rider leaves the TPS Board without certainty that anyone will take their concerns seriously.[145]

IV. The Court Issued a Temporary Restraining Order Keeping the Education Takeover Rider from Taking Lawful Effect.

140. H.B. 33 was signed into law by Governor DeWine on July 4, 2023. Verified Am. Compl. at ¶¶ 135, 138.

141. This litigation was filed by Plaintiffs Dr. Collins and Ms. Newman on September 19, 2023, two weeks before the Education Takeover Rider was supposed to go into effect on October 3, 2023. *See* Verified Am. Compl.

142. Simultaneously with their Complaint, Plaintiffs moved for a temporary restraining order and preliminary injunctive relief to prevent the Education Takeover Rider from going into effect on October 3, 2023. *See* Pls.' Mot. for Temporary & Prelim. Inj. Relief.

143. Plaintiffs' filing provided sufficient time for the Court to consider its motion prior to the Education Takeover Rider's effective date. *Id.*

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[144] *See* 2023-10-02_13.32.49.836 at 00:52:45 to 00:52:59 (noting that the State Board will lose control, under the Education Takeover Rider, over academic standards, including graduation requirements and social emotional learning); *see also id.* at 00:56:24 to 00:56:58 (testimony from Ms. Eichenberg that the Education Takeover Rider removes State Board authority for "most of the things that the local board of education would be worried about").

[145] *Id.* at 00:54:22 to 00:54:39 (observing that, whereas before, the TPS Board would bring their concerns to the Toledo State Board member and "know that those would have then been represented in an open meeting," now the TPS Board's only recourse will be "to write somebody and hope that they talk to you, and they might not talk to you").

144. On September 21, 2023, this Court issued an Order Granting Plaintiffs' Motion for Temporary Restraining Order. *See* Sept. 21, 2023 Order Granting Pls.' Mot. for TRO (the "TRO Order").

145. In the TRO Order, the Court found that "the primary subject of H.B. 33 is balancing state expenditures against state revenues to ensure continued operation of state programs." *Id*.at 3.

146. The Court continued: "The provisions cited by Plaintiffs, R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07, appear to relate to a different subject." *Id*.

147. Based on these core factual findings, the Court ultimately determined that:

- "There is a substantial likelihood that Plaintiffs will prevail on the merits of their claims that inclusion of R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07 as part of H.B. 33 violates the Ohio Constitution's single-subject rule," *id.* at 4;

- "Plaintiffs have sufficiently alleged that they will suffer irreparable harm if this Court does not enter a temporary restraining order that enjoins the enforcement and implementation of R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07," *id.*;

- "No third parties will be unjustifiability harmed if Defendants, the State of Ohio and Governor Mike DeWine are enjoined from implementing and effectuating R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07," *id.*; and

- "Enjoining the implementation of R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07 while the merits of Plaintiffs' challenge are considered serves the public's interest in ensuring that the General Assembly passes, and the Governor enforces, only constitutional legislation," *id*.

148. Under the Temporary Restraining Order,

> Defendants, as well as their officers, agents, servants, employees, attorneys, and any other persons who are in active concert or participation with any of them, are enjoined from enforcing, implementing, complying with, or acting pursuant to R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07 in any way or manner, including by, without limitation: (1) creating the Department of Education and Workforce, as contemplated by Ohio Revised Code Section 3301.13(A); (2) appointing an individual to act as the director of the department of education and workforce, as contemplated by

> Ohio Revised Code Section 3301.13(A); and (3) transferring all of the Board's powers and duties regarding primary, secondary, special, and career-technical education to the director of the department of workforce and education, as contemplated by Ohio Revised Code Section 3301.13(C).

Id.

149. The Court's Order remains in effect through October 20, 2023.

150. Although Defendants argued that Plaintiffs unduly delayed in filing this lawsuit, they did not present any evidence that they were prejudiced in any way other than the fact that they had made plans and preparations for the Education Takeover Rider to go into effect on October 3, 2023.

151. Although Defendants argued that Dr. Collins and Ms. Newman, as members of the State Board, had access to information that could have allowed them to bring suit earlier, Defendants did not present any evidence that the ODE or any representative of the State of Ohio ever advised Dr. Collins or Ms. Newman, or presented any information to Dr. Collins or Ms. Newman, regarding the constitutionality of the Education Takeover Rider prior to the initiation of this litigation on September 19, 2023.

152. Defendants admit that "H.B. 33 created a sweeping and highly complex organizational restructuring of the responsibilities of the Board and the Superintendent of Public Instruction." Defs.' Mot. to Dismiss & Opp. to Pls.' Mot. for Prelim. Inj. at 14; Voltolini Aff. at ¶ 8.

153. Dr. Collins testified that on July 5, 2023, she began taking steps to challenge the Education Takeover Rider.[146] Specifically, on July 5, 2023, she began calling attorneys to learn how to challenge the Education Takeover Rider.[147] To learn how to challenge the Education

[146] 2023-10-02_11.31.19.507 at 00:08:50 to 00:09:40.
[147] *Id*. at 00:36:43 to 00:36:55.

Takeover Rider, she made calls to "any organization [she] could think of," including the Education Law Center, various other organizations that are connected to lawyers, and local lawyers.[148] Indeed, when she learned that the Education Takeover Rider was included in H.B. 33, she "started moving on [filing a lawsuit] as fast as [she] could."[149] And, although Dr. Collins was given information about the Education Takeover Rider from the State Board's Chief Legal Officer in her capacity as a member of the State Board, that information did not address the Education Takeover Rider's constitutionality, only its implementation.[150]

PROPOSED CONCLUSIONS OF LAW

I. Plaintiffs Are Entitled to a Preliminary Injunction.

154. "The power and duty of the judiciary to determine the constitutionality and, therefore, the validity of the acts of the other branches of government have been firmly established as an essential feature of the Ohio system of separation of powers." *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 116 (internal quotation omitted).

155. Both Ohio Rule of Civil Procedure 65 and Ohio Revised Code Sections 2727, *et seq*., vest this Court with the power and authority to enjoin the implementation of unconstitutional legislation. *See* Civ. R. 65; R.C. 2727, *et seq.*

156. The purpose of a preliminary injunction "is to preserve the status quo of the parties pending a final adjudication of the case upon the merits." *AK Steel Corp. v. ArcelorMittal USA, LLC,* 2016-Ohio-3285, 55 N.E.3d 1152, ¶ 9 (12th Dist.).

157. Temporary and preliminary injunctive relief is appropriate where the movant can show: (1) a substantial likelihood that the movant will prevail on the merits, (2) the movant will

[148] *Id*. at 00:36:55 to 00:37:40.
[149] *Id*. at 00:08:50 to 00:09:40.
[150] 2023-10-02_13.32.49.836 at 00:14:15 to 00:16:34.

suffer irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction. *Escape Enters., Ltd. v. Gosh Enters., Inc.*, 10th Dist. Franklin No. 04AP-834, 2005-Ohio-2637, ¶ 22 (internal quotation omitted). These four factors are meant to be flexible and "must be balanced," so that "no one factor is dispositive." *Id.* at ¶ 48; *see also Intralot, Inc. v. Blair*, 10th Dist. Franklin No. 17AP-444, 2018-Ohio-3873, ¶ 31 ("In determining whether to grant injunctive relief, no one of the four preliminary injunction factors is dispositive; rather, a balance should be applied" (quotation omitted)).

158. Here, for the reasons set forth below, each and every one of these factors weigh in favor of granting the preliminary injunctive relief sought by Plaintiffs.

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

1. Plaintiffs have standing to assert their constitutional claims.

159. To establish common-law standing, claimants generally must show that they have "suffered (1) an injury that is (2) fairly traceable to the [Defendants'] allegedly unlawful conduct, and (3) likely to be redressed by the requested relief." *Ohio Democratic Party v. LaRose*, 2020-Ohio-4664, 159 N.E.3d 852, ¶ 19 (10th Dist.) (quotation omitted). While Ohio courts "generally adhere to [these] traditional principles of standing," they "are not bound by federal standing principles derived from Article III" of the U.S. Constitution. *Smith v. Ohio State Univ.*, 10th Dist. Franklin No. 17AP-218, 2017-Ohio-8836, ¶ 10.

160. To satisfy the injury-in-fact requirement, plaintiffs must "have a direct, personal stake in the outcome of the case." *Ohio Democratic Party* at ¶ 18 (quotation omitted). The injury need not be "large or economic" in nature, only "palpable." *League of United Latin Am. Citizens v. Kasich*, 10th Dist. Franklin No. 10AP-639, 2012-Ohio-947, ¶ 21. "[E]ven slight injury is

sufficient to confer standing." *Ohio Democratic Party* at ¶ 19 (quoting *N.Y. Republican State Comm. v. SEC*, 927 F.3d 499, 504 (D.C. Cir. 2019)).

161. Moreover, an actual injury in fact is not necessary—only a significant possibility of future harm. Plaintiffs have standing where they "[have] suffered *or [are] threatened with*" direct and concrete injury. *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 469, 715 N.E.2d 1062 (1999) (emphasis added); *see also League of United Latin Am. Citizens* at ¶ 36 ("The alleged injury may be actual and immediate, or threatened.").

162. Plaintiffs' injury must be particular to plaintiffs themselves, meaning simply that the injury must "affect[] the plaintiff in a personal and individual way." *Ohio Democratic Party* at ¶ 19. "An injury that is borne by the population in general, and which does not affect the plaintiff in particular," does not confer standing. *League of United Latin Am. Citizens* at ¶ 21. A "generalized grievance" or mere "ideological opposition" to government action does not satisfy the injury-in-fact requirement. *Ohio Democratic Party* at ¶¶ 18, 23 (quotations omitted). Rather, "[i]n order to have standing to attack the constitutionality of a legislative enactment, the private litigant must general show that he or she suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general." *Sheward*, 86 Ohio St.3d at 469-70.

163. Crucially, the particularity requirement does *not* mean that a widely shared injury cannot confer standing. Even if "many Ohioans will suffer or have suffered the same sort of injury as [Plaintiffs], '[t]he fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance.'" *Ohio Democratic Party* at ¶ 23 (alteration in original) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016)). Hence, in *Ohio Democratic Party v. LaRose*, the court held that an Ohio voter had standing to challenge a new

law restricting the manner in which voters could submit absentee ballots, notwithstanding the fact that the individual plaintiff shared this injury with an enormous number of other registered voters in the state. *See id.* at ¶ 23. "[E]ven though multiple people will or have experienced the same type of injury, [the plaintiff's] injury remains particular to him." *Id.; cf. Fed. Elec. Comm'n v. Akins*, 524 U.S. 11, 23 (1998) (particularity concerns arise "in cases where the harm at issue is not only widely shared, but is also of an abstract and indefinite nature—for example, harm to the 'common concern for obedience to law'") (quoting *L. Singer & Sons v. Union Pac. R. Co.*, 311 U.S. 295, 303 (1940)).

164. Relatedly, courts take a broad view of the meaning of "the public generally," against whom plaintiffs must show that they suffer a more particular injury. *See League of United Latin Am. Citizens* at ¶ 36. "The public generally" does not mean *only* all people affected by the challenged legislation, which would "then require [plaintiffs] to show how they were impacted in a manner different from all other[s]" subject to the legislation. *Id*. Rather, courts have "incorporated a much broader view in categorizing those affected by the legislation." *Id.* (plaintiffs whose injury stemmed from requirement to provide additional information to the Bureau of Motor Vehicles regarding vehicle registration need not allege an injury different from any of the other 47,000 people who received the same notice, only different from the general vehicle owner).

165. When the Court is satisfied that one party has standing, it need not address the standing of additional plaintiffs, for "it is sufficient for purposes of jurisdiction that at least one plaintiff has standing for the claims of the remaining plaintiffs to be heard and the court to proceed to decide the case on the merits." *Beaver Excavating Co. v. Testa*, 134 Ohio St.3d 565, 2012-Ohio-5776, 983 N.E.2d 1317, ¶ 16; *see also Ohio Democratic Party v. LaRose*, 2020-Ohio-4778, 159 N.E.3d 1241, ¶ 15 ("Because we conclude ODP has standing, we need not reach the question of

whether [a second plaintiff], individually, has standing."); *Cincinnati Golf Mgmt., Inc. v. Testa*, 132 Ohio St.3d 299, 2012-Ohio-2846, 971 N.E.2d 929, ¶ 13 (where one party's standing is uncontested, "there is no jurisdictional necessity to determine [another party's] standing"); *Miller v. Blackwell*, 348 F. Supp. 2d 916, 920 (S.D. Ohio 2004) ("If the Court determines that any one of the Plaintiffs has standing, the Court has jurisdiction and may proceed with the case." (citing *Carey v. Population Servs. Int'l*, 431 U.S. 678 (1977))).

166. Thus, the Court need only find that one Plaintiff has standing to proceed to the merits of the case. In any event, all Parent Plaintiffs and the TPS Board have standing to assert their three constitutional claims.

a. Parent Plaintiffs have standing.

167. "Parents are responsible for the upbringing, education and discipline of their children, as parents have a fundamental liberty interest in the care, custody and management of a child." *State v. Ivey*, 98 Ohio App.3d 249, 258, 648 N.E.2d 519 (8th Dist. 1994).

168. Courts in Ohio and across the country have recognized that parents have standing to challenge governmental actions that they believe will detrimentally affect their children and their children's education.

169. In *Parents Defending Education v. Olentangy Local School District Board of Education*, __F. Supp. 3d__, 2023 WL 4848509, *1 (S.D. Ohio July 28, 2023), for example, the court held that parents of students who objected to a school-district-wide policy regarding harassment and bullying were injured by the policy, and thus parents of students attending schools in the district were injured by the policy and the parent organization had associational standing to pursue a First Amendment claim against the district. *See also Doe No. 1 v. Bethel Loc. Sch. Dist. Bd. of Educ.*, No. 3:22-cv-337, 2023 WL 5018511, *11 (S.D. Ohio Aug. 7, 2023) (parents had standing to challenge constitutionality of the school district's adoption of policy regarding

transgender students' use of bathroom facilities, given that "[t]he harm to the Parent Plaintiffs' right 'in the care, custody, and control of their children' is sufficiently tied to the School District's policy" (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)).

170. That holding is consistent with the holdings of courts across the country. *See, e.g.*, *Liddell v. Special Admin. Bd.*, 894 F.3d 959, 965-66 (8th Cir. 2018) ("Parents have standing to sue when practices and policies of a school threaten their rights and interests and those of their children," and thus plaintiff parents had alleged a cognizable injury in case regarding school desegregation); *Boudreaux v. Sch. Bd. of St Mary Parish*, No. 6:65-cv-11351, 2020 WL 5367088, *4 (W.D. La. Sept. 8, 2020) ("[P]arents have standing to sue when government policies affect their children's education."); *Forslund v. Minnesota*, 924 N.W.2d 25, 32-33 (Minn. Ct. App. 2019) (parents had standing to assert state-constitutional claims challenging new laws regarding teacher contracts and teacher tenure, where injury was based on parents' allegations that their children would be placed at greater risk of being taught by ineffective teachers); *Hernandez v. Grisham*, 494 F. Supp. 3d 1044, 1131 (D.N.M. 2020) (parents had standing to assert federal and state constitutional claims against state department of education over its school-closure orders in response to the Covid-19 pandemic); *Bd. of Sch. Dirs. v. Wisconsin*, 649 F. Supp. 82, 92 (E.D. Wis. 1985) ("There can be no serious doubt that the . . . two [school] board members, in their roles as parents and next friends, have alleged injuries sufficiently direct and palpable," namely, inter-district racial segregation in the public-school system); *Johnson v. Stuart*, 702 F.2d 193, 197 (9th Cir. 1983) (parents had standing equal to students to challenge constitutionality of statute dealing with selection of school textbooks, as parents "may assert claims of constitutional violation primarily affecting their children's education"); *Brach v. Newsom*, No. 2:20-cv-06472 SVW-AFM, 2020 WL 7222103, *4 & n.2 (C.D. Cal. Dec. 1, 2020) (concluding that "at least one" among

several parent and student plaintiffs had standing to "challeng[e] a statewide framework affecting third parties (namely, counties, public school districts, and private schools)," and rejecting defendants' arguments about parent standing as "inconsistent with case law holding that parents asserting similar educational injuries had standing"), *aff'd on standing*, 6 F.4th 904 (9th Cir. 2021); *Gifford v. W. Ada Joint Sch. Dist. #2*, 498 P.3d 1206, 1213 (Idaho 2021) (parents had standing to assert state constitutional claims challenging denial of free public education).

171. Parent Plaintiffs here have standing. The Education Takeover Rider deprives them of local, elected representation in state education governance and strips them of their voices in their children's education.

172. As described above, Parent Plaintiffs are no longer able to bring their individual experiences and perspectives to bear on statewide education issues. And they are no longer able to rely on their State Board members to help them navigate the complexities of the public-school system or address problems pertinent to their children's education. The result is that Parent Plaintiffs have lost access to an invaluable resource and avenue through which they can ensure that their children receive an adequate public-school education.

173. As Dr. Collins testified, for example, she has frequently advocated before the State Board and engaged her own elected State Board member regarding standardized testing, academic standards, and related issue areas that affect her children and their education. *See supra* at ¶¶ 90-91. She has benefitted from interacting with and advocating to her Board Member and the experts that sit on the Board committees holding open meetings. *Id*. at ¶ 95. Guided by her desire to see her child progress through grade levels in accordance with his ability, she successfully advocated to her Board Member for changes to the third-grade retention requirement, which otherwise might have resulted in his being retained on the basis of a test score. *Id.* at ¶ 87. And she has sought to

shape state policy, overseen and implemented by the State Board, regarding dyslexia screening to prevent her son from receiving an inadequate education as the result of poor policy implementation. *Id.* at ¶¶ 84-85.

174. Ms. Eichenberg, too, has engaged the State Board on issues affecting her children's public-school education, including advocating against the imposition of an academic distress commission on her school district. *Id.* at ¶¶ 112-114. And she presently anticipates needing her State Board member's assistance to help resolve a cross-school-district physical-education waiver issue for her daughter. *Id.* at ¶ 115.

175. Should the Education Takeover Rider go into effect, as described above, the State Board will lose its core education governance responsibilities, and hence parents will be left with little recourse to advocate for changes to state education policy and without an elected advocate to help them solve problems affecting their children's education.

176. Plaintiffs have submitted unrebutted testimony that the new Department of Education and Workforce and its Governor-appointed director is a poor substitute. *See, e.g., supra* at ¶ 92. It has no obligation to hold open meetings or report minutes from its decision-making and no incentive to speak with or respond to the views of constituents.

177. Similarly, while the Parent Plaintiffs may still be able to contact their representative on the State board, those representatives will no longer have any role in the setting of academic standards, curricula, school reporting requirements, foundation funding payments, or the many other powers that allow them to effectively address the concerns that the Parent Plaintiffs bring to them. *See, e.g.*, *supra* at ¶¶ 75-76.

178. These injuries are in line with the large and longstanding body of law conferring standing on parents to challenge state actions that may negatively affect their children's education.

179. Consequently, Defendants' arguments disputing Parent Plaintiffs' standing are unavailing.

180. In the main, Defendants contend that Parent Plaintiffs' injury is not particularized because their interest in their children's education is shared by the general public. *See* Defs.' Mot. to Dismiss & Opp. to Mot. for Prelim. Inj. at 5-7. Defendants' reliance on *State ex rel. Walgate v. Kasich*, 147 Ohio St.3d 1, 2016-Ohio-1176, 59 N.E.3d 1240, and related case law concerning parents' objection to the government's use of taxpayer dollars, misses the mark. In *Walgate*, a large cohort of plaintiffs challenged provisions that loosened restrictions on gambling in the state, shielded casino profits from the state's commercial-activity tax, and diverted casino-generated tax revenues away from the state education funds to which they were customarily allocated. *Id.* at ¶¶ 5-6. Among the plaintiffs were several parents who contended that the new provisions injured them and their children by generally reducing the amount of state funding for public schools that would come from taxes on gambling activities in the state. *Id.* at ¶ 31. The court rejected their standing argument, concluding that the parents' stated interest in a well-funded public-school system "is shared by the general public" and the "[m]any members of the general public"—parents or not—who pay taxes to fund public schools. *Id.* at ¶ 33.

181. Insofar as Defendants suggest that *Walgate* somehow forecloses parents of children attending public schools from ever asserting cognizable injuries relating to their children's education, they are mistaken. The court in *Walgate* did not deny parents standing because they were parents, or because a great number of parents may be injured by government action affecting the public-school system. It did so because the parents in that case alleged an injury as taxpayers—objection to the state's fiscal appropriations—that was shared by the general public. Indeed, *Walgate* stands for the uncontroversial proposition that standing to challenge an unlawful

government appropriation is not conferred by dint of a citizen's "contributions to the general revenue fund as a taxpayer." *Id*. at ¶ 19.

182. Other case law in Ohio bears out this distinction between parents with generalized, taxpayer grievances about how the government allocates funding, on the one hand (who generally do not have standing) and parents who allege that their children's education will be diminished in some material way, on the other hand (who do have standing). *Compare Toledo City Sch. Dist. Bd. of Educ. v. State Bd. of Educ.*, 2014-Ohio-3741, 18 N.E.3d 505, ¶¶ 57-59 (10th Dist.) (parents of public-school students did "not have standing based solely upon their status as taxpayers who own real property within the Districts" to challenge loss of funding), *rev'd on other grounds*, 146 Ohio St.3d 356, 2016-Ohio-2806, 56 N.E.3d 950, *with Columbus City Sch. Dist. v. State*, Franklin C.P. No. 22-cv-00067, at 11 (Dec. 16, 2022) (parents and students had standing to challenge voucher program when they alleged that their children would be denied educational opportunities arising from the diversion of government resources).

183. Parent Plaintiffs do not allege injuries arising from the misuse of taxpayers' dollars, but rather injuries that flow from their own loss of meaningful representation and the ability to engage regarding their children's particular educational needs with elected State Board members who have authority to make decisions affecting those needs. They have proven that they make use of the State Board to improve their children's education in concrete, particularized ways, and that their ability to do so will be diminished if the State Board no longer has authority to determine educational standards and other key aspects of state education policy. This provides the requisite "direct, personal stake in the outcome" of the litigation. *Walgate* at ¶ 33. The fact that the injuries that Parent Plaintiffs allege may be shared by other parents—even a large number of other parents—is of no moment. As described above, just because "many Ohioans will suffer or have

suffered the same sort of injury . . . does not of itself make that injury a nonjusticiable generalized grievance." *Ohio Democratic Party* at ¶ 23 (quotations omitted).

184. Defendants also argue that Parent Plaintiffs suffer no injury because parents purportedly have no right to elect State Board members in the first place and that consequently parents cannot assert rights that belong to the State Board. Defs.' Mot. to Dismiss & Opp. to Mot. for Pre. Inj. at 6, 11. Again, they are mistaken.

185. This argument confuses the injury-in-fact analysis with a merits analysis. Plaintiffs may suffer an injury flowing from unconstitutional government action—and thus have standing to challenge that action—regardless of whether the law specifically protects them from the injury complained of. *See Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 744 (Tex. 2005) ("We agree that the [challenged] provision creates no rights in school districts, but such rights are not a prerequisite for standing to assert that the provision has been violated. Standing to assert a constitutional violation depends on whether the claimant asserts a particularized, concrete injury.").

186. Indeed, in the context of single-subject challenges, the Ohio Supreme Court has explained that the injury-in-fact analysis turns not on whether the plaintiff has a stake in the unlawful legislative process that triggered the single-subject violation; rather, it turns on the harms that will befall the plaintiff should the unlawfully added rider take effect. *See Preterm-Cleveland, Inc. v. Kasich*, 153 Ohio St.3d 157, 2018-Ohio-441, 102 N.E.3d 461, ¶ 30 ("[A] party challenging multiple provisions in an enactment of the General Assembly as violating the Single Subject Clause must prove standing as to each provision the party seeks to have severed from the enactment by demonstrating it suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the general public because of each provision."); *see also Akron*

Metro. Hous. Auth. Bd. of Trs. v. State, 10th Dist. Franklin No. 07AP-738, 2008-Ohio-2836, ¶ 14 (rejecting state's argument that single-subject challenge could be brought only by entities who were the subject of the challenged provisions, and concluding instead that plaintiffs had standing "[b]ecause they alleged injury resulting from the enactment of the legislation" and "have a direct interest in the challenged legislation that is adverse to the legal interests of the state").

187. Finally, Defendants contend that Parent Plaintiffs are uninjured because they can still technically vote for State Board members, and alternatively that their injury is speculative because the effects of the Rider are uncertain. Defs.' Mot. to Dismiss & Opp. to Mot. for Prelim. Inj. at 6-7. But Parent Plaintiffs' injuries arise not from their ability to vote for a representative in the abstract, but to engage with elected State Board members vested with the power to set and implement education policy. Those injuries are anything but speculative; indeed, they are certain to occur by the plain terms of the Education Takeover Rider.

b. The TPS Board has standing.

188. Like parents of public-school students, local school boards have standing to challenge state government actions that affect their ability to educate the students in their communities. Courts in Ohio and around the country have held that school boards suffer cognizable injuries and thus have standing—both in their own right and on behalf of the parents and students in their school communities—stemming from state government actions that impinge on their ability to do so.

189. For example, in *Columbus City Sch. Dist. v. State*, at 10-11, a court recently concluded that school districts had standing to challenge a voucher program that would result in schools receiving less funding and thus inadequate educational programming. Another court specifically held that a school board had standing to assert a single-subject claim under the Ohio Constitution. *Plain Loc. Sch. Dist. Bd. of Educ. v. DeWine*, 486 F. Supp. 3d 1173, 1189 (S.D.

Ohio 2020). Courts around the country have reached similar conclusions in a wide variety of contexts. *See, e.g.*, *Akron Bd. of Educ. v. State Bd. of Educ.*, 490 F.2d 1285, 1289-90 (6th Cir. 1974) (local school board had standing to challenge state's reallocation of a portion of the school district to an adjoining district, both because it suffered a "loss of territory and tax dollars" and because it shared a sufficiently close relationship with students in the district and their parents such that it could assert the parents' and students' rights); *Cincinnati City Sch. Dist. v. State Bd. of Educ.*, 113 Ohio. App.3d 305, 314, 680 N.E.2d 1061 (10th Dist. 1996) ("School districts have standing . . . to assert the equal protection rights of their students directly on behalf of students."); *Harrisburg Sch. Dist. v. Hickok*, 762 A.2d 398, 404 (Pa. Commw. Ct. 2000) (school district had standing to challenge state law that authorized the state to strip the school district of its operating powers if the school district failed to meet certain test-score requirements); *Bd. of Sch. Dirs. v. Wisconsin*, 649 F. Supp. at 89 (noting that a range of jurisdictions "have allowed school boards to enforce the rights of the children within their school systems").[151]

190. The TPS Board has standing. The Education Takeover Rider strips the TPS Board of its ability to engage with an accessible, transparent, and responsive State Board (including its elected member) with the authority to set and implement education policy, thereby diminishing the TPS Board's ability to serve the students in its communities. Indeed, the TPS Board routinely

[151] Insofar as Defendants rely on *Avon Lake City Sch. Dist. v. Limbach*, 35 Ohio St.3d 118, 518 N.E.2d 1190 (1988), or *Toledo City School District Board of Education v. State Board of Education*, those cases have no bearing on the TPS Board's capacity to sue or standing in this case. *Avon Lake* arose out of an appeal from the Board of Tax Appeals and held that a school district could not bring an equal-protection or due-process challenge against the state because a school district is not a "person" protected under those clauses. *Avon Lake* at 120-22. But the Court specifically cabined its decision to those particular constitutional provisions and explicitly contemplated other "occasions where a political subdivision may challenge the constitutionality of state legislation." *Id.* at 122. *Toledo City School District* held much the same, nearly 30 years later, with respect to the Retroactivity Clause of the Ohio Constitution. *Toledo City Sch. Dist.* at ¶ 46. That holding likewise has no bearing whatsoever on the TPS Board's ability to challenge *other* provisions of the Ohio Constitution. Moreover, as explained above, in evaluating standing for single-subject challenges, Ohio courts have looked not to whether plaintiffs were injured in the legislative process or were the subject of challenged legislation, but whether they were injured by the legislation's effects on them. *See supra* at ¶ 185-186.

shares its local perspective and particularized needs with the State Board, giving it a direct line of communication to the body currently empowered to set educational standards, reporting requirements, and other crucial topics. The TPS Board likewise relies on its State Board member to help the TPS Board understand and implement state educational requirements, improve its schools' academic performance, and develop curricula, among many other matters. *S*ee *supra* at ¶¶ 124-37.

191. As TPS Board President Sheena Barnes and former President Stephanie Eichenberg testified, for example, the TPS Board relies on the State Board's public meetings, its publicly available meeting minutes, and its elected member's willingness to visit TPS schools and attend TPS Board meetings to stay apprised of new developments in education policy and communicate the needs of TPS schools to the State Board. *See supra* at ¶¶ 124-29, 131. Ms. Barnes testified that she has sought advice from the State Board on things like how to improve Toledo Public Schools' performance on the Ohio School Report Cards, whether a new voucher program would affect TPS's budget, and how to improve its programming for students with special needs. *Id.* at ¶¶ 130-31, 136. And Ms. Barnes likewise testified about the TPS Board's ability to elevate the needs of TPS schools to the State Board, including, for example, successfully encouraging the State Board to adopt standards related to social-emotional learning and ensuring that the experiences of TPS's Black and Brown students are incorporated into a curriculum on interacting with law enforcement. *Id.* at ¶¶ 133-34. Ms. Eichenberg provided further examples, such as bringing multiple members of the School Board to visit Toledo schools to help educate them on ways that the academic distress commission requirement disserved Toledo schools and students, contributing directly to a statewide moratorium on new academic distress commissions. *Id.* at ¶¶ 113-14. And both Ms. Barnes and Ms. Eichenberg explained how they rely on the transparency associated with the State

Board's open meetings and recorded minutes to ensure that the TPS Board understands and complies with state law and new statewide policies. *Id.* at ¶¶ 120, 124-125 .

192. These and the other uncontroverted examples throughout the testimony and the Verified Amended Complaint underscore the importance of the TPS Board's ability to both draw on the State Board's expertise and help shape its policymaking. By dissolving the core substantive functions of the State Board, the Education Takeover Rider erodes this partnership between the local school board and State Board, a partnership that is vital to the TPS Board's ability to provide TPS students with a "high quality education," as Ms. Barnes testified. *Id.* at ¶ 123. The Rider strips the TPS Board of its voice in advocating, through that constitutionally established, seventy-year-old avenue, for its students' specific needs in state education policymaking and of its access to an essential resource in its own education administration, all to the detriment of the schoolchildren that the TPS Board serves. The TPS Board and the students attending its schools are injured by government action that threatens to undermine the quality of public education that the TPS Board can provide, which is exactly what the Education Takeover Rider promises to do. That diminishment of educational opportunity is an injury widely recognized by courts in Ohio and elsewhere, and hence the TPS Board has standing here to challenge the constitutionality of the Education Takeover Rider.

2. Plaintiffs are likely to succeed on the merits of their claim that the Education Takeover Rider violates the Single Subject Rule in Article II, Section 15(D) of the Ohio Constitution.

193. The single-subject rule originates from Article II, Section 15(D) of the Ohio Constitution, which provides, in relevant part: "No bill shall contain more than one subject, which shall be clearly expressed in its title." This provision was added to the Constitution as a check on legislative power. *See Sheward*, 86 Ohio St.3d at 497.

194. The single-subject rule "exists to prevent the General Assembly from engaging in logrolling," *Arbino v. Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 78 (citing *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 142, 464 N.E.2d 153 (1984)), which "occurs when legislators combine a disharmonious group of proposals in a single bill so that they may consolidate votes and pass provisions that may not have been acceptable to a majority on their own merits," *id*.; *see also Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 16, 711 N.E.2d. 203 (1999) (stating that the purpose of the single-subject rule is to prevent "logrolling," *i.e.*, the practice of inserting unpopular bills into an unrelated legislative vehicle more likely to obtain majority approval, such that "the rider will secure adoption not on its own merits, but on the merits of the measure to which it is attached").

195. The test for whether a bill violates the single-subject rule is whether the bill has a "disunity of subject matter." *Sheward*, 86 Ohio St.3d at 496 (quotation omitted). In the "absence of common purpose or relationship" between the challenged provision and the legislation, *id.* at 497, where "there are no discernible practical, rational or legitimate reasons for combining" the provisions, "there is a strong suggestion that the provisions were combined for tactical reasons" in violation of the single-subject rule, *id*. (citing *Dix*, 11 Ohio St.3d at 145).

196. The single-subject rule "does not prohibit a plurality of topics, only a disunity of subjects." *State ex rel. Ohio Civ. Serv. Emps. Ass'n v. State*, 146 Ohio St.3d 315, 2016-Ohio-478, ¶ 17; *see also Sheward*, 86 Ohio St.3d at 496 ("[T]he one-subject provision is not directed at plurality but at disunity in subject matter."). "The mere fact that a bill embraces more than one topic is not fatal as long as a common purpose or relationship exists between the topics." *State ex rel. Ohio Civ. Serv. Emps. Ass'n* at ¶ 17.

197. That said, appropriations bills like H.B. 33 are particularly susceptible to logrolling, given their "importan[ce] and likel[ihood] of passage." *Simmons-Harris*, 86 Ohio St.3d at 16.

198. For that reason, "some have argued that appropriations bills warrant *more* scrutiny for non-appropriations riders than other bills." *Plain Loc. Sch. Dist. Bd. of Educ.*, 486 F. Supp. 3d at 1197.

199. Thus, "it is not surprising that Ohio courts have found with some frequency that provisions in appropriations bills violated the one-subject rule." *Id.* at 1197-98 (collecting cases). That is so even where a rider "impacts the state budget" in some fashion, *State ex rel. Ohio Civ. Serv. Emps. Ass'n, Local 11 v. State Emp. Rels. Bd.*, 104 Ohio St.3d 122, 2003-Ohio-1010, 818 N.E.2d 688, ¶ 33, or where "there is some appropriation in the bill that somehow relates to the [rider]," *Dublin v. State*, 2002-Ohio-2431, 769 N.E.2d 436, ¶ 49. Otherwise, "[g]iven the very wide variety of appropriations and potential appropriations in a biennial appropriations bill," adding any substantive regulation or program to a biennial budget bill "so long as there is some appropriation in the bill that somehow relates to the program or regulation . . . would render the single-subject rule meaningless and useless as a means of preventing logrolling." *Id.*

200. Importantly, when "a bill contains more than one subject, this court is permitted to ascertain which subject is primary and which subject is an unrelated add-on." *Sheward*, 86 Ohio St.3d at 500.

201. "[I]f a bill violating the one-subject rule has a discernable primary subject, 'the appropriate remedy ... is generally to sever the offending portions of the act to cure the defect and save the portions of the act that do relate to a single subject.'" *Plain Loc. Sch. Dist. Bd. of Educ.*, 486 F. Supp. 3d at 1208 (quoting *State ex rel. Ohio Civ Serv. Emps. Ass'n* at ¶ 22).

202. Under the standard set forth above, the Education Takeover Rider is a clear case of unconstitutional logrolling. As the Constitution makes clear, the Court's analysis begins with H.B. 33's title: "To make operating appropriations for the biennium beginning July 1, 2023, and ending June 30, 2025, to levy taxes, and to provide authorization and conditions for the operation of state programs."[152]

203. Consistent with this title, this Court has already determined that "the primary subject of H.B. 33 is balancing state expenditures against state revenues to ensure continued operation of state programs." TRO Order at 3.

204. The Education Takeover Rider is entirely unrelated to this primary subject, as discussed further below.

205. There also exists a clear "disunity of subject matter" between H.B. 33 and the Education Takeover Rider "such that there is no discernible practical, rational or legitimate reason for combining the provisions in one Act." *Local 11* at ¶ 28 (internal quotation omitted).

206. For the reasons set forth below, the evidence before this Court compels the conclusions that: (1) the Education Takeover Rider's inclusion in H.B 33 was the product of textbook logrolling, which is prohibited by the single-subject rule; (2) there is a disunity of subject matter between H.B. 33 and the Education Takeover Rider; and (3) there is no discernible practical, rational or legitimate reason for combining the budgetary provisions of H.B. 33 with the Education Takeover Rider.

207. *First*, this is unquestionably a case of a provision being "included in a bill that is so certain of adoption that the rider will secure adoption not on its own merits, but on [the merits of]

[152] PX 39 at 23.

the measure to which it is attached." *Simmons-Harris*, 86 Ohio St.3d at 16 (internal quotation omitted); *see also State ex rel. Dix*, 11 Ohio St.3d at 141.

208. The Education Takeover Rider's passage through the General Assembly, first as standalone legislation in the form of S.B. 1, then as a last-minute rider to H.B. 33, demonstrates that it is nothing more than an improper rider.

209. S.B. 1, which was titled: "To rename the Department of Education as the Department of Education and Workforce; to create the position of Director of Education and Workforce; and to reform the functions and responsibilities of the State Board of Education and the Superintendent of Public Instruction,"[153] started as standalone legislation aimed at overhauling Ohio's education system.[154]

210. As detailed above, S.B. 1 failed to garner enough support to become law. *See supra* at ¶ 49. It thus demonstrably could not "secure adoption … on its own merits," *Simmons-Harris*, 86 Ohio St.3d at 16 (internal quotation omitted).

211. Although this should have been the end of S.B. 1, it was not. Instead, S.B. 1 was shoehorned by the Senate into H.B. 33 at the eleventh hour in the form of the Education Takeover Rider. *See supra* at ¶¶ 52-66. H.B. 33, with the Education Takeover Rider, then emerged from the Senate on June 15, 2023, mere weeks before the budget bill's deadline.[155] Importantly, the House refused to concur in the Senate's amendments, again confirming that the Rider could not "secure adoption … its own merits," *Simmons-Harris*, 86 Ohio St.3d at 16 (internal quotation omitted).[156]

[153] PX 9 at 6.
[154] *See generally id.; see also* PX 13.
[155] PX 36 at 1; *see generally* PX 8.
[156] *See also, e.g.*, PX 24 at 497.

212. Although a committee of conference was created to reconcile the House's version of H.B. 33 and the Senate's version of H.B. 33, the Education Takeover Rider was discussed substantively by the conference committee only once, on June 28, 2023.[157] On June 30, 2023, H.B. 33, with the Education Takeover Rider, reported out of committee and was read in the House *for the first time*.[158] On June 30, 2023, H.B. 33, with the Education Takeover Rider, passed the General Assembly, and on July 4, 2023, it was signed into law by DeWine.

213. This undisputed legislative history compels the conclusion that the Education Takeover Rider was an improper rider that was appended to H.B. 33 to ensure its passage.

214. *Second*, as noted above, H.B. 33 is a biennial budget bill, and "the primary subject of H.B. 33 is balancing state expenditures against state revenues to ensure continued operation of state programs." TRO Order at 3. There is a clear "disunity of subject matter," *Sheward*, 86 Ohio St.3d at 496, between this primary subject and the Education Takeover Rider.

215. The Education Takeover Rider has virtually nothing to do with the State's budget. Instead, as the title of S.B. 1—the Education Takeover Rider's predecessor—makes clear, the primary subject of the Education Takeover Rider is "[t]o rename the Department of Education as the Department of Education and Workforce; to create the position of Director of Education and Workforce; and to reform the functions and responsibilities of the State Board of Education and the Superintendent of Public Instruction."[159]

216. Consistent with this title, the Legislative Service Commission determined that S.B. 1's "effects on state operating expenditures *appear to be limited*" because the bill merely sought

[157] PX 38.
[158] *See generally* PX 26.
[159] PX 28 at 1.

to "transfer . . . most of the powers and duties of the State Board of Education and the Superintendent of Public Instruction into the DEW."[160]

217. These facts compel the conclusion that the Education Takeover Rider is unrelated to Ohio's annual budget, and that there is a clear disunity of subject matter between H.B. 33 and the Education Takeover Rider.

218. Defendants contend that there is no disunity between H.B. 33 and the Education Takeover Rider because H.B. 33 creates other entities like the Department of Education and Workforce, such as the Department of Children and Youth, the Superintendent of Marijuana Control, the Nuclear Development Authority, the Commission on Eastern European Affairs, and the Office of Data Analytics and Archives. *See* Defs.' Mot. to Dismiss & Opp. to Mot. for Prelim. Inj. at 9.

219. As an initial matter, the fact that H.B. 33 may contain other line-items that could theoretically run afoul of the single-subject rule does not excuse the clear constitutional violation worked by the last-minute logrolling that inserted a failed 1300-page bill with no budgetary consequences into the annual budget bill. The inclusion of other potentially unconstitutional provisions in a bill cannot save a clearly unconstitutional provision. Those provisions are not being challenged as part of this lawsuit; the Education Takeover Rider is. This Court need not determine whether the purported creation of the departments and offices referenced by Defendants would pass constitutional muster.

220. Moreover, courts do not analyze single-subject challenges by looking at whether the rider in question has similarities with *anything* in the remainder of the bill; they look at whether it falls within the bill's *primary* subject. *See Sheward*, 86 Ohio St.3d at 500; *Plain Loc. Sch. Dist.*

[160] *Id.* (emphasis added).

Bd. of Educ., 486 F. Supp. 3d at 1208. Some arguable similarity to another provision that may belong within H.B. 33's primary subject—balancing state expenditures against state revenues to ensure continued operation of state programs—does not change the fact that the decimation of a constitutionally created body, with limited impact on state operating expenditures, is outside that subject.

221. In any event, Defendants' attempt to portray these five provisions as meaningfully similar to the Education Takeover Rider fails. The provisions fund offices and commissions within the executive branch to deal with new problems (as in the Commission on Eastern European Affairs and Superintendent of Marijuana Control), or reorganize powers that executive agencies already held (the Department of Children and Youth). None of these provisions transfer power from an independent, constitutionally created, and majority-elected body to the control of a single gubernatorial appointee. Any similarities are superficial in the context of Plaintiffs' claim.

222. *Third*, "there are no discernible practical, rational or legitimate reasons for combining" the Education Takeover Rider with the annual budget bill, *Dix*, 11 Ohio St.3d at 145.

223. Tellingly, Defendants have not even attempted to identify a practical or rational—much less legitimate—reason that the Education Takeover Rider was forced into H.B. 33. It is hard to conceive of one. The legislature already knew that the Rider had minimal budgetary impact.[161] It had repeatedly treated equivalent bills (both S.B. 1 and H.B. 12) as being appropriate for stand-alone consideration. Combine the absence of any comprehensible reason to combine the bills with the Rider's eleventh-hour introduction, and "there is a strong"—indeed, incontestable—"suggestion that the provisions were combined for tactical reasons," *Dix*, 11 Ohio St.3d at 145.

[161] *See* PX 28.

224. In sum, the record before this Court compels the conclusion that the Education Takeover Rider's inclusion in H.B. 33 violated the single-subject rule.

3. Plaintiffs are likely to succeed on the merits of their claim that the Education Takeover Rider violates the Three Readings Rule in Article II, Section 15(C) of the Ohio Constitution.

225. There is also a substantial likelihood that Plaintiffs will succeed on the merits of their three-reading rule claim.

226. Article II, Section 15(C) of the Ohio Constitution requires "[e]very bill [to] be considered by each house on three different days," and each individual consideration of a bill to "be recorded in the journal of the respective house."

227. The "purpose of the three-reading rule is to prevent hasty action and to lessen the danger of ill-advised amendment at the last moment." *Hoover v. Bd. of Cnty. Comm'rs*, 19 Ohio St.3d 1, 8, 482 N.E.2d 575 (1985) (Douglas, J., concurring).

228. An act violates the three-reading rule "if (1) the Ohio Constitution mandates a recording of a particular legislative step in the legislative journals, and (2) no such entry appears." *ComTech Sys., Inc. v. Limbach*, 59 Ohio St.3d 96, 100, 570 N.E.2d 1089 (1991).

229. Moreover, where the "substance of a bill" is "vitally alter[ed]" by amendment, the three-reading rule requires "three considerations anew of such amended bill." *Hoover*, 19 Ohio St.3d at 5.

230. In such a situation, the question is "whether the bill maintained a common purpose both before and after its amendment." *Youngstown City Sch. Dist. Bd. of Educ. v. State*, 161 Ohio St.3d 24, 2020-Ohio-2903, 161 N.E.3d 483, ¶ 15.

231. Here, for the reasons detailed above, the Education Takeover Rider's inclusion in H.B. 33 vitally altered the bill.

232. As noted above, the Education Takeover Rider started as standalone legislation, S.B. 1, which spanned more than 1,500 pages.[162] S.B. 1's title demonstrates that it had a completely separate purpose from H.B. 33.[163]

233. S.B 1 and the Education Takeover Rider both seek to completely overhaul Ohio's education system and divest the State Board of substantive duties and oversight related to education governance in Ohio.[164]

234. Thus, the Education Takeover Rider's inclusion in H.B. 33 vitally altered H.B. 33 for the purpose of this Court's three-reading rule analysis.

235. As a consequence, this Court's analysis is to determine whether H.B. 33 was read three times begins on June 15, 2023, the date on which the bill exited the Senate after being vitally altered by inclusion of the Education Takeover Rider.[165]

236. The record before this Court reveals that the Education Takeover Rider was read only once after June 15, 2023, on June 30, 2023, the day the General Assembly passed H.B. 33. *See* Verified Am. Compl. at ¶ 135.[166]

237. Thus, H.B. 33's passage, with the Education Takeover Rider, violated the three-reading rule.

238. Defendants' argument largely boils down to the claim that H.B. 33 satisfied the single-subject rule, and therefore it must satisfy the three-reading rule. They cite no authority for the proposition that the two rules are coterminous.

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[162] *See generally* PX. 9.
[163] *Id.* at 6 ("To rename the Department of Education as the Department of Education and Workforce; to create the position of Director of Education and Workforce; and to reform the functions and responsibilities of the State Board of Education and the Superintendent of Public Instruction[.]").
[164] *See, e.g.,* PX 27.
[165] PX 36 at 1.
[166] *See also* PX 26.

239. Defendants' cases illustrate the actual operation of the "vitally altered" test. In *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 234, 631 N.E.2d 582 (1994), a bill that began with the purpose of "modify[ing] the workers' compensation laws" was held to have not been vitally altered merely because other provisions funding and "reform[ing] the workers' compensation system" were included along the way. And in *Youngstown City School District Board of Education*, 161 Ohio St.3d at 24-25, a bill whose purpose was "to authorize school districts and community schools to create community learning centers at schools where academic performance is low" was not vitally altered by a provision changing another aspect of how school districts with low academic performance were regulated.

240. These have no resemblance to the Education Takeover Rider. Defendants have identified no cases allowing the legislature to forgo new readings after the addition of a legislative scheme remotely comparable to the Education Takeover Rider.

241. Finally, Defendants do not even attempt to deny that the Education Takeover Rider violated the *purpose* of the three-reading rule. The "purpose of the "three reading" rule is to prevent hasty action and to lessen the danger of ill-advised amendment at the last moment." *Hoover*, 19 Ohio St.3d at 8 (Douglas, J., concurring). Defendants do not and cannot deny that this is quintessentially "hasty action" and that, at a minimum, it posed "the danger of ill-advised amendment at the last moment," *id.*

4. Plaintiffs are likely to succeed on the merits of their claim that the Education Takeover Rider violates Article VI, Section 4 of the Ohio Constitution.

242. Since 1953, the Ohio Constitution has mandated that "[t]here shall be a state board of education."[167] That body must "be selected in such manner and for such terms as shall be

[167] Ohio Const., art. VI, Section 4.

provided by law," appoint "a superintendent of public instruction," and have other inherent "powers and duties . . . prescribed by law."[168] Although H.B. 33 leaves intact the State Board's responsibility for appointing the Superintendent, as well as some other miscellaneous tasks, the law otherwise strips the State Board of the constitutionally mandated education-governance responsibilities that it has held for nearly 70 years. This legislative action violates Article VI, Section 4 of the Constitution.

243. Though "legislative enactments are entitled to a strong presumption of constitutionality," *State ex rel. Ohio Cong. of Parents & Tchrs. v. State Bd. of Educ.*, 111 Ohio St. 3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, ¶ 20, this "is not to say that the General Assembly's discretion in this area is absolute," *Bd. of Educ. v. Walter*, 58 Ohio St.2d 368, 386, 390 N.E.2d 813 (1979). Indeed, the Ohio Supreme Court has made clear that it "may not turn a deaf ear to any challenge to laws passed by the General Assembly" and still "must conduct an independent review. *DeRolph v. State*, 78 Ohio St.3d 193, 198, 677 N.E.2d 733 (1997); *State ex rel. Ohio Cong. of Parents & Tchrs.* at ¶ 20.

244. Plaintiffs have demonstrated that in 1953, the General Assembly and people of Ohio, in proposing and ratifying the constitutional amendment creating the State Board, viewed the act as one that shifted power and control of state educational governance from the governor to an independent body.[169] Making such a change in the constitution, as opposed to by legislative or executive action, was a deliberate act; it demonstrated the significance of the State Board as a government body, and in doing so conferred on it inherent power. As the legislative history surrounding the General Assembly's activities following the passage of the constitutional amendment make clear, while there was much debate on certain issues related to the State Board

[168] *Id.*
[169] *See* PX 5 at 440.

(e.g., whether and how members should be elected or appointed), that debate did not extend to its the State Board's powers and duties.[170] The uncontested evidence presented by Plaintiffs demonstrates that there was an accord—among legislators, experts, stakeholders, and the people of Ohio—that, after the passage of the constitutional provision, the State Board was the primary entity responsible for education governance and oversight in the state.

245. Such legislative history is important in analyzing whether the acts of the General Assembly in passing H.B. 33 are constitutional. *See City of Maple Heights v. Netflix, Inc*., 171 Ohio St.3d 53, 2022-Ohio-4174, 215 N.E.3d 500, ¶ 37 (Kennedy, J., concurring) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." Otherwise, "we would deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations.") (quoting *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020))).

246. When similar attempts have been made in other states, they have been routinely rejected. Indeed, courts across the country have found similar attempts to remove core, inherent powers from constitutionally created bodies to be unconstitutional. For instance, in a similar case in Wyoming, the state superintendent of public instruction and two voters challenged an act that "removed the Superintendent as the administrator and chief executive officer of the Wyoming Department of Education" and "created the new position of Director of the Wyoming Department of Education and assigned to the Director nearly all of the duties that were formerly the responsibility of the Superintendent." *Powers v. State*, 318 P.3d 300, 302 (Wyo. 2014). As with H.B. 33, the newly created Director was appointed by the Governor and the power transfer—which removed from the Superintendent 68 distinct duties—was accomplished by merely "substitut[ing]

[170] *See id*. at 182-204.

'director' for 'state superintendent' in approximately 100 places" in the Wyoming code. *Id*. This is exactly what H.B. 33 did over the nearly 1300 pages of the Education Takeover Rider, replacing "the state board of education" or "the superintendent of public instruction" with "the director of education and workforce" in well over 100 places throughout Ohio code.[171]

247. Further, although the Wyoming law did not wholly "eliminate the office of Superintendent," the Wyoming Court recognized that the power transfer "effectively marginalize[d] the office and has left it an 'empty shell.'"[172] The Wyoming Court thus "conclude[d] beyond all reasonable doubt" that the act was unconstitutional.[173] Such is the case here.

248. Wyoming is not alone in its recognition that constitutionally created offices hold inherent power that cannot be taken away by statute. Supreme courts in other states have likewise recognized that "[t]he Legislature cannot take from a constitutional officer a portion of the characteristic duties belonging to the office, and devolve them upon an officer of its own creation," *Givens v. Carlson*, 157 P. 1120, 1122 (Idaho 1916), even where a constitutional provision "contains no express limitation on the power of the Legislature," *Wright v. Callahan*, 99 P.2d 961, 965 (Idaho 1940) (internal quotations omitted). "[A] limitation is necessarily implied from the definition of the office." *Id.*; *see also Hudson v. Kelly*, 263 P.2d 362, 369 (Ariz. 1953) ("It was long ago determined that the legislature has no power to take from a constitutional officer the substance of the office itself."). Nor does preserving "some miscellaneous duties" for a constitutionally mandated office, as H.B. 33 does for the State Board, make the power transfer constitutional. *See Powers*, 318 P.3d at 309. Doing so would turn the constitutional body into "an

[171] *See* 2023 Am. Sub. H.B. No. 33 (as enrolled, June 30, 2023), https://tinyurl.com/yc6st8c6.
[172] *Id.* at 322.
[173] *Id.*

empty shell," which violates the constitution just as if the legislature attempted to remove the body entirely. *Id*. at 322 (internal quotations omitted); *accord State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 780 (Minn. 1986) (finding a statute transferring most of the Treasurer's duties to the Commissioner of Finance unconstitutional, even where the law left the Treasurer "some miscellaneous duties"; the law reduced the office to "an empty shell").

249. In the present matter, Plaintiffs have presented significant evidence that the State Board has been stripped of its core powers and, under H.B. 33, is no longer responsible for education governance in the state, instead preserving only "some miscellaneous duties." *See supra* at ¶¶ 68-80.[174] A legislative worksheet itself describes the Education Takeover Rider as the "[t]ransfer of state K-12 education governance."[175] Although Defendants attempted to emphasize the State Board's remaining duties (most of which relate to teacher licensure), Plaintiffs proved that the State Board's post-H.B. 33 authority will exclude many of the core, characteristic duties and powers of a state board of education.

250. In addition, the harms articulated by Plaintiffs make clear that for almost every educational issue or need identified by Plaintiffs, the State Board and Plaintiffs' elected members are stripped of the power and ability to impact change on those issues. *See supra* at ¶¶ 75-78, 97, 116-17, 138-39.

251. Defendants' rote reliance on the phrase "shall be prescribed by law," does not rescue the General Assembly's unconstitutional act. "[T]he majority of courts [in Ohio's sister states] that have addressed similar language in their constitutions have concluded that the phrase

[174] *See also* Voltolini Aff., Ex. B at 1 (noting that the Board's responsibilities under the Education Takeover Rider will be reduced to only: "(1) The adoption of requirements for education licensure; (2) Licensee disciplinary actions; and (3) School district transfer determination"); Voltolini Aff., Ex. E (email from Interim Superintendent to the Board stating that the Board's budget will have "a negative cash position in FY26.").
[175] PX 15 at 07.

'*as prescribed by law*' does not permit the legislature to abolish or transfer, either directly or indirectly, the inherent powers of a constitutionally created office." *Powers*, 318 P.3d at 308 (emphasis added); *Kiedrowski* 391 N.W.2d at 780 ("[T]he prescribed-by-law provision does not allow a state legislature to transfer inherent or core functions of executive officers to appointed officials.").

252. Defendants rely on *State ex rel. One Person One Vote v. LaRose* to argue that "the authority to delineate the powers and duties of the Board and Superintendent lies squarely with the General Assembly." Defs.' Mot. to Dismiss & Opp. to Pls.' Mot. for Prelim. Inj. at 12 (citing *One Pers. One Voice*, 2023-Ohio-1992, __N.E.3d __, ¶ 18. However, in *One Person One Vote*, the court did not analyze whether the inclusion of "prescribe" in a constitutional provision meant that it is constitutionally permitted to prescribe something that conflicts with the constitution itself. *Id*. While the case stands for the general proposition that where the Constitution says the legislature "shall prescribe" something, it gives the legislature wide latitude as to the details, it does not stand for the proposition that the legislature can go beyond the bounds of the Constitution or contradict the original intent of its drafters. *Id*.

253. The case law presented by Defendants also supports Plaintiffs' contention that the legislative powers created by a popular referendum should be viewed "as a voter [at the time] would have seen it." *One Person One Vote* at ¶ 14. This approach has been taken by other courts as well. Where the "powers and duties" inherent to the office are not further specified by the constitutional text, courts have looked to "the nature of the office" to determine whether a power or duty could be constitutionally removed or transferred. *Am. Legion Post No. 279 v. Barrett*, 20 N.E.2d 45, 51 (Ill. 1939) (interpreting a provision specifying that the Treasurer "shall perform such duties as may be required by law"); *see also Kiedrowski*, 391 N.W.2d at 782 (stating that a

constitutionally created office's duties should be "necessarily implied" from the "title the drafters afforded the office"). Some courts have additionally found helpful historical evidence of "the nature of the duties pertaining to the office" by looking to practices around the country at the time of its creation. *Id*.[176]

254. At the time of the State Board's creation, state boards of education were "the predominant form of state educational authority," responsible for adopting rules and regulations, prescribing minimum standards, and determining educational policies. *See supra* at ¶ 14. By 1958, the state board of education was considered "the predominant form of state educational authority" and "the best answer to the problem of what kind of state agency is most suitable for carrying out the obligations of the state in the field of education." *See supra* at ¶ 213. The people of Ohio determined that education in the state would be served better by a board than by a department in charge of a state superintendent of public instruction appointed by the governor."[177] This undisputed evidence leads to the conclusion that the people of Ohio conferred on the State Board certain inherent powers at the time of the constitutional provision's enactment. The General Assembly may not transfer or remove powers or duties from the State Board that are implied by its title, central to its mandate, or which were understood to be core authorities of a board of education at the time of the State Board's creation.

255. In this case, responsibility for education governance is undoubtedly central to the State Board's mandate and clear in its title. Thus, the constitutional provision establishing the State Board and the Education Takeover Rider are incompatible, particularly "in light of the

[176] In addition to *One Person One Vote*, the Ohio Supreme Court has made clear that, in determining whether a statute violates a constitutional amendment, "[t]he purpose of the amendment, and the reasons for, and the history of its adoption, are pertinent in determining the meaning of the language used." *City of Cleveland v. Bd. of Tax Appeals*, 153 Ohio St. 97, 103, 91 N.E.2d 480 (1950), *overruled on other grounds by Denison Univ. v. Bd. of Tax Appeals*, 2 Ohio St.2d 17, 205 N.E.2d 896 (1965).
[177] *See* PX 5 at 440.

constitutional debates and history surrounding them." *DeRolph*, 78 Ohio St.3d at 203. As such, the Education Takeover Rider is highly likely to be found unconstitutional.

B. Plaintiffs are irreparably harmed by the Education Takeover Rider.

1. The Education Takeover Rider deprives Plaintiffs of their voice in their children's education (or the education of the children they serve) through local, elected representation.

256. "An irreparable injury is one for the redress of which, after its occurrence, there could be no plain, adequate and complete remedy at law, and for which restitution in specie [money] would be impossible, difficult or incomplete." *Ohio Democratic Party*, 2020-Ohio-4664, 159 N.E.3d 852, ¶ 60.

257. The Tenth District has explained that irreparable harm flows from enforcing a statute in a manner that would infringe upon constitutional rights. *Magda v. Ohio Elections Comm'n*, 2016-Ohio-5043, 58 N.E.3d 1188, ¶ 38 (quoting *United Auto Workers Local Union 1112 v. Philomena*, 121 Ohio App.3d 760, 781, 700 N.E.2d 936 (10th Dist. 1998)). A "finding that a constitutional right has been threatened or impaired mandates a finding of irreparable injury." *Id.* (*citing Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001)).

258. As set forth in the Findings of Fact above, should the Education Takeover Rider go into effect, the State Board would lose responsibility over its core education governance duties, and the State Board would no longer have any power to govern or affect change related to such duties. *See supra* at ¶¶ 18, 68-80. In addition, while the State Board's actions were fully transparent to the public, *see supra* at ¶¶ 26-29, 85, 95, 98, 98, 120, 125, 190. Defendants have failed to present any evidence that should the Education Takeover Rider go into effect, implementation of the core education governance duties that were stripped from the State Board would continue to remain public and transparent.

259. As a result, should the Education Takeover Rider go into effect, the Parent Plaintiffs will be stripped of the ability to effectively advocate for changes to education policy at the state level, through elected representation, that directly impact their children. *See supra* ¶¶ 75-78, 97, 116-17, 138-39. The Parent Plaintiffs will also lose their voice in their children's education and be deprived of access to a responsive, elected state body with authority to interpret and implement education policy, on which the Parent Plaintiffs rely to address their children's educational needs. *See id*.

260. Accordingly, the Parent Plaintiffs will be irreparably harmed if the Education Takeover Rider is permitted to go into effect.

261. Should the Education Takeover Rider go into effect, the TPS board will lose access to the State Board and its elected State Board representative related to the State Board's core education governance duties, which are being removed by the Rider. *See supra* at ¶¶ 138-39. The TPS Board relies on the State Board to perform such duties in a transparent, accessible, and responsive manner. *See id*. The TPS Board will also lose access to the information contained within the State Board's open meetings and minutes, which it uses to ensure compliance with state law and to understand policy changes. *See supra* at ¶¶ 124-25.

262. Thus, the Education Takeover Rider deprives the TPS Board of access to a responsive state body with authority to interpret and implement education policy, which the TPS Board depends on to provide appropriate, compliant, and ever-improving education for the children whom the TPS Board serves. *See* Verified Am. Compl. at ¶ 204.

263. As a result, the TPS Board will also be irreparably harmed if the Education Takeover Rider is permitted to go into effect.

2. Defendants fail to establish a defense of laches.

264. Defendants have failed to meet their burden to prove the elements of a laches defense because Plaintiffs[178] did not unreasonably delay when they filed their suit just over two months after the passage of H.B. 33 and two weeks before the bill was to become effective.

265. In order to invoke the defense of laches, the party asserting the defense must prove there was "(1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for such delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party." *State ex rel. Cater v. N. Olmsted*, 69 Ohio St.3d 315, 325, 631 N.E.2d 1048 (1994). The burden is on Defendants to prove that the defense of laches applies.

266. "A determination on a defense based upon laches is primarily a question of fact to be resolved based upon special circumstances of each case." *Bank One Tr. Co. v. LaCour*, 131 Ohio App.3d 48, 55, 721 N.E.2d 491 (10th Dist.1999).

267. A determination by the "trial court on the issue of laches will accordingly not be reversed absent a finding of an abuse of discretion." *Id*.

268. Defendants' argument fails three of the four elements of the laches test.

269. *First*, Defendants have not shown an unreasonable delay in filing. The approximately two-month period from when H.B. 33 was signed into law on July 4, 2023 to the filing of this action on September 19, 2023, is not an unreasonable delay or lapse of time sufficient to invoke a laches defense under Ohio law.

270. Indeed, the Ohio Supreme Court has held that delays of several months were insufficient to invoke laches. For example, in *Martin Marietta Magnesia Specialties, L.L.C. v.*

[178] Defendants only make a laches argument with respect to Dr. Collins and Ms. Newman, who were plaintiffs in the original Complaint in this action, filed on September 19, 2023, and in their independent role as members of the State Board based on information that was purportedly provided to State Board members. Defendants have not made a laches argument with respect to Ms. Eichenberg or the TPS Board.

Public. Utilities Commission, 129 Ohio St.3d 485, 2011-Ohio-4189, ¶ 45, the Court held that the plaintiff did not unreasonably delay where they waited *four months* from the termination of their public utility contracts to bring litigation over the termination of such contracts.

271. Likewise, in *Olmsted*, 69 Ohio St.3d at 324, the Court held that a taxpayer did not unreasonably delay filing his action against the city challenging removal of a city official where the action was filed *five months* from the public official's suspension, four months after formal notice of official's removal, three months after the administrative appeal period ended, and two months after a new official's appointment.

272. And in *Emrick v. Multicon Builders, Inc.*, 57 Ohio St. 3d 107, 111, 566 N.E.2d 1189 (1991), the Court held that the defendant's laches argument failed because "*[e]ight months* is not an unreasonably long period of time and an eight-month delay in filing suit is not so egregious as to shock the conscience" (emphasis added).

273. In the injunction context specifically, Ohio courts have held that delays of several months were not unreasonable. *See e.g. Fisher v. Amberley*, 2015-Ohio-2384, 37 N.E.3d 731, ¶ 22 (defense of laches did not apply to taxpayer's claim for injunctive relief to enjoin collection of tax for police services where taxpayer brought his action about *six months* after assessment of tax and immediately after attempted collection of tax); *Grand Bay of Brecksville Condo. v. Markos*, 8th Dist. Cuyahoga No. 73964, 1999 WL 166016, *5 (Mar. 25, 1999) (appellee did not unreasonably delay in bringing injunction action to remove encroaching structure even though appellee waited *18 months* from the time appellant was first served notice of being in violation of condominium declaration).

274. *Second*, even if two months could be an unreasonable delay, Plaintiffs have reasonably explained that timing. As Defendants admitted, the Education Takeover Rider contains

over 1,300 pages of sweeping and complex educational reforms that took time for Plaintiffs to understand and evaluate. *See* Defs.' Mot. To Dismiss & Opp. To Mot. For Prelim. Inj. at 10 n.2 & 14; Voltolini Aff. at ¶¶ 6-8. Moreover, Plaintiffs had little notice of the Education Takeover Rider before its passing because it was added as a last-minute rider to H.B. 33, the must-pass biennial budget bill.

275. Here, not only did Plaintiffs need to review and understand the Rider's complex implications before filing their Complaint, they needed to evaluate and understand whether they were able to bring any claims, including constitutional claims, challenging the Education Takeover Rider. They likewise needed to hire attorneys, and their attorneys needed to evaluate the Education Takeover Rider and its inclusion in H.B. 33 for constitutional issues, research the original understanding of a 70-year-old constitutional provision, and draft a 45-page Complaint challenging the Education Takeover Rider's constitutionality.

276. Defendants failed to establish or present any evidence that Dr. Collins or Ms. Newman knew of their constitutional claims shortly after H.B. 33 was signed into law. Defendants likewise failed to establish or present any evidence that the ODE or any representative of the State of Ohio presented any information to Dr. Collins or Ms. Newman regarding the constitutionality of the Education Takeover Rider.

277. Given the complexity of H.B. 33 and the Education Takeover Rider, and established Ohio case law, Plaintiffs Dr. Collins and Ms. Newman acted with reasonable diligence when they filed their Complaint challenging the constitutionality of the Education Takeover Rider approximately two months after H.B. 33 was signed into law, and two weeks before the Education Takeover Rider was supposed to take effect.

278. Thus, the two-month period between the Governor's signing of H.B. 33 into law and Dr. Collins' and Ms. Newman's filing of this action does not constitute an unreasonable delay.

279. Defendants rely primarily on the unreported case of *Ormond v. City of Solon*, 8th Dist. No. 79223, 2001 WL 1243959 (Oct. 18, 2001), for the proposition that Plaintiffs unreasonably delayed by waiting two months to bring suit, but *Ormond* is readily distinguishable.

280. In *Ormond*, the court held that the plaintiff's motion for an injunction seeking to halt the construction of a residential subdivision constituted laches where the plaintiff received notice that the city would start construction in January of 2000 but waited until June of 2000 to seek an injunction. *Id* at *3. As is initially apparent, the plaintiff in *Ormond* waited *more than five months* from when the city began construction, *id*., whereas Plaintiffs here filed their Complaint just over two months from when H.B. 33 was signed into law and two weeks before the Education Takeover Rider was to become effective.

281. Additionally, Plaintiffs here needed significantly more time to evaluate the complex 1,300-page Education Takeover Rider and analyze whether they had any cognizable constitutional claims, than the plaintiff in *Ormond* needed to file his complaint challenging a zoning classification. Thus, Defendants' reliance on *Ormond* is misplaced.

282. *Third*, even if this Court were to assume that a two-month delay was unreasonable and inexcusable in this case, Defendants' laches defense fails because Defendants have failed to prove that they were sufficiently prejudiced by the purported delay.

283. "A successful laches defense requires the person for whose benefit the doctrine will operate to show that he has been materially prejudiced by the delay of the person asserting the claim." *State ex rel. Cater*, 69 Ohio St.3d at 325.

284. "Material prejudice exists when the defendant shows (1) the loss of evidence helpful to the defendant's case or (2) a change in the defendant's position that would not have occurred if the plaintiffs had asserted their rights sooner." *State ex rel. Kenney v. City of Toledo*, 2018-Ohio-1737, 103 N.E.3d 836, ¶ 29.

285. Here, Defendants have failed to establish that they were materially prejudiced by what they claim was a two-month delay.

286. Defendants argue that "the State was using massive resources to implement these legislative changes," and that "it is too late unwind the transition." Defs.' Mot. to Dismiss & Opp. to Mot. for Prelim. Inj. at 13-14. But Defendants do not argue or present any evidence to support that they would have halted their transition had Plaintiffs brought suit sooner or that they would have otherwise changed their position from what it is today.

287. Their reliance on *Ormond* again shows the weakness of their argument. Defendants' purported prejudice derives entirely from the *preparations* they had made for the Education Takeover Rider to go into effect on October 3, 2023. In *Ormond*, by contrast, actual physical construction proceeded for months before plaintiffs sued. *Ormond*, 2001 WL 1243959, at *1. Waiting to sue until the ground has literally been broken and a physical foundation has been poured prejudiced the *Ormond* defendants in a way that asking the court to intervene *before* Defendants' plans become tangible does not.

288. Therefore, Defendants have failed to meet their burden of demonstrating that they were materially prejudiced by the approximately two month period between when H.B. 33 was signed into law and the initiation of this lawsuit.

289. In sum, Defendants have failed to meet their burden to establish a laches defense because (a) Plaintiffs did not unreasonably delay when they filed their Complaint just over two

months from when H.B. 33 was signed into law, and still two weeks before the Education Takeover Rider was to become effective; (b) any purported delay was justified in the context of the 1300-page Rider; and (c) even if Defendants could establish unreasonable delay (which they have not done here), they have failed to show that they were materially prejudiced by the two-month period. As such, Defendants' laches argument fails and does not weigh in favor of denying the requested injunctive relief.

C. The requested relief will not harm third parties, and any harm to Defendants in this case does not weigh against granting injunctive relief.

290. No third parties will be harmed if the Court enjoins the Education Takeover Rider from going into effect.

291. The purpose of temporary and preliminary injunctive relief is "to maintain the status quo pending a final determination on the merits." *Columbus v. State*, 10th Dist. Franklin No. 22AP-676, 2023-Ohio-195, ¶ 13.

292. While Defendants have argued that the State is harmed because it has already made preparations to enact the Education Takeover Rider, Ohio courts have found that where, as here, a party can show by clear and convincing evidence that it is likely to succeed on the merits of its claim that a law is unconstitutional, any potential instability—and harm to third parties, including government entities—does not weigh against granting an injunction. *See Fischer Dev. Co. v. Union Twp.*, No. CA99-10-100, 2000 WL 525815, at *6 (12th Dist. Clermont, May 1, 2000) (adopting opinion of trial court) ("Thus, the plaintiffs, who argue that the amendments are unconstitutional must, to obtain their injunction, show by clear and convincing evidence that they are likely to win, otherwise the Court would be faced with too much of a risk of creating future instability in the township's zoning. The Court has already found that the plaintiffs have a substantial likelihood of succeeding in their argument that some of the amendments may be unconstitutional; therefore, it

is likely that the Court, in issuing the injunction, will not be creating the nightmare situation the defendants conjure, because it is likely that the plaintiffs will prevail. Accordingly, the Court finds that the injunction will not harm third parties and, in balance, is in the public interest.")

293. In addition, if this Court enters the requested injunctive relief—and enjoins the entire Education Takeover Rider, as set forth below—while the parties litigate the merits of this dispute, Ohio's education system will remain as it has for seventy years, which will not harm any third parties.

D. The public interest will be served by enjoining the Education Takeover Rider from going into effect.

294. The public interest will be served by enjoining the Education Takeover Rider because, as explained above, it is likely unconstitutional.

295. Ohio courts have found that "the public interest is best served by a full and fair hearing on the merits of the constitutionality of [the challenged] legislation." *See, e.g.*, *Women's Med. Pro. Corp. v. Voinovich*, 911 F. Supp. 1051, 1092 (S.D. Ohio 1995) (granting injunctive relief where "Plaintiff has demonstrated a substantial likelihood of success of showing that numerous provisions in House Bill 135 are unconstitutional.").

296. Here, the public undoubtedly has an interest in ensuring that legislation—especially legislation that substantially changes Ohio's public education system and removes substantive responsibilities from elected positions—is constitutional. That interest will be served by granting the requested injunctive relief while the parties litigate the constitutionally of the Education Takeover Rider.

297. In addition, the requested injunctive relief—specified in detail below—will preserve the status quo ante litem to ensure that the public is not harmed. *See infra* at ¶ 327.

II. To Prevent Irreparable Harm, Plaintiffs Are Entitled to a Preliminary Injunction Preventing the Entire Education Takeover Rider From Going Into Effect.

298. "Equity requires that an injunction should be narrowly tailored to prohibit only the complained of activities." *Eastwood Mall, Inc. v. Slanco*, 68 Ohio St. 3d 221, 224, 626 N.E.2d 59 (1994).

299. Plaintiffs request that the Court enjoin the entire Education Takeover Rider (i.e., H.B. 33 at 4200-5563 (as enrolled)). Plaintiffs have clearly shown that this injunction is necessary and narrowly tailored to avoid the irreparable harm described above that will result from the likely constitutional violations.

300. The Rider consists of the following provisions:

- Section 130.100, which substantively amends R.C. 3301.07, R.C. 3301.12, R.C. 3301.13, and R.C. 3301.111 to transfer authority from the State Board and Superintendent to DEW as described in the Findings of Fact; and makes conforming changes to other sections of the Revised Code in light of the changes those four provisions (pp. 4200 – 5524);

- Section 130.101, which repeals the pre-H.B. 33 versions of provisions amended in Section 130.100 (pp. 5524–27);

- Section 130.102, which repeals the pre-H.B. 33 versions of R.C. 3301.13, 3302.101, and 3302.102 (p. 5527);

- Section 130.103, which makes conforming changes to various sections of the Revised Code to update their references to the State Board, Superintendent, or ODE in light of the changes to R.C. 3301.07, R.C. 3301.12, R.C. 3301.13, and R.C. 3301.111 (pp. 5527–60);

- Section 130.104, which repeals the pre-H.B. 33 versions of the provisions amended in Section 130.103 (p. 5560);

- Section 130.105, which sets an effective date of December 29, 2023 for Sections 130.103 and 130.104 (p. 5560);

- Section 130.106, which renames ODE as DEW; provides that all powers and duties of the State Board and the Superintendent terminate on the effective date except as described in the amended R.C. 3301.111; transfers all pending business from the State Board or the

Superintendent to DEW; and prescribes various renamings, file transfers, and similar administrative matters associated with the Rider (pp. 5560–62) and

- Section 130.107, which identifies the relevant versions of Revised Code sections that were in effect prior to H.B. 33 (pp. 5562–63).

301. In other words, as a whole, these provisions rename ODE to DEW; create a director of DEW; change the powers and duties of the State Board, the Superintendent, ODE/DEW, and the new DEW director; and amend each reference to the State Board, the Superintendent, and ODE anywhere in the Revised Code to reflect those changes. Otherwise, they make no substantive changes to Ohio law.

302. In order for an injunction to fully protect Plaintiffs from harm and stop Defendants from implementing the likely unconstitutional changes in the Education Takeover Rider until Plaintiffs' claims are resolved on the merits, all of these provisions must be enjoined.

303. First, the substantive provisions at the heart of the likely unconstitutional changes must be enjoined to prevent irreparable harm to Plaintiffs. This includes the portions of Sections 130.100 that amend R.C. 3301.07, R.C. 3301.12, R.C. 3301.13, and R.C. 3301.111; the portions of Sections 130.101 and 130.102 that repeal the pre-existing versions of those statutes; and Section 130.106, which terminates the pre-existing powers of the State Board and the Superintendent and transfers their ongoing business to DEW.

304. But the injunction cannot feasibly be limited to those provisions. If only those provisions are enjoined, then the Revised Code will include scores of references to the DEW, many of which implement the transfer of power from the State Board and Superintendent to DEW and its director. In effect, the Revised Code would suddenly have dozens of broken cross-references, leaving questions as to the effectiveness and enforceability of various provisions—and arguably allowing Defendants an excuse to make changes that would violate the injunction against the first

group of provisions. Thus, this second group of provisions must be enjoined as well: the remainder of Sections 130.100, 130.101, and 130.102, as well as 130.103 and 130.104.

305. This leaves only Sections 130.05 (which provides an effective date for Sections 130.03 and 130.04) and 130.07 (which merely identifies the prior versions of the amended sections). Although no direct harm arises out of these provisions, they have no operative effect in the absence of the rest of the Rider. Leaving them in place could only cause confusion, without serving any legislative purpose. Accordingly, this third group of provisions should be enjoined as well.

306. Furthermore, because the Rider functions as an integrated whole and was added to H.B. 33 as an integrated whole, it is appropriate to enjoin it as an integrated whole. The grafting of the Rider to H.B. 33 is what likely violated the single-subject and three-reading rules—not the enactment of one specific provision within the Rider. There is no basis for concluding that any individual provision within the Rider is likely to survive Plaintiffs' claims on the merits. There is therefore no basis for leaving any individual provision in place pending that resolution.

307. At the Preliminary Injunction Hearing, Ms. Voltolini testified that Defendants have done "nothing" to plan for future injunctive relief.[179]

308. Defendants' statements and conduct since the Preliminary Injunction Hearing confirm that a complete injunction of the Rider is not just the only way to avoid harm to Plaintiffs, but the only way to ensure that the Ohio education system functions appropriately during the pendency of this lawsuit.

309. Defendants claimed that the Temporary Restraining Order unleashed "chaos" and "confusion" because Section 130.106, which renamed ODE to DEW and terminated the pre-

[179] 2023-10-02_15.24.36.150 at 46:30-46:50.

existing powers of the State Board and Superintendent, remained in place even though the sections reassigning those powers to DEW were enjoined. Defs.' Mot. to Dismiss & Opp. to Pls.' Mot. for Prelim. Inj. at 14. Defendants used this supposed confusion as purported justification to flout both the letter and the spirit of the Temporary Restraining Order, ignoring its prohibition against "enforcing, implementing, complying with, or acting pursuant to R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07 in any way or manner." TRO Order at 4. And even that appears to have been insufficient to prevent the "chaos" that Defendants' gambit was supposedly intended to avoid; according to the Reply in Support of Plaintiffs' Emergency Motion to Clarify Temporary Restraining Order and subsequent press reports, DEW personnel cancelled various State Board meetings and may have delayed payments to school districts. *See, e.g.*, Reply in Supp. of Pls.' Emergency Mot. To Clarify TRO at 7.[180]

310. Any chaos and confusion stemmed solely from the fact that, at Defendants' urging, the original Temporary Restraining Order did not enjoin the full Rider. If the Rider is enjoined in full, all powers and duties of the State Board, the Superintendent, and ODE remain the same as they were prior to the filing of this lawsuit. But if the injunction were to omit Section 130.106 or the non-substantive conforming changes to other sections of the Revised Code, Defendants would apparently argue that some powers and duties could be exercised only by DEW and not by the

[180] *See, e.g.,* Megan Henry, *Despite Ohio State Board of Education President Canceling Meeting, 11 Members Met Anyway,* Ohio Capital Journal (Oct. 11, 2023, 4:50 AM), https://ohiocapitaljournal.com/2023/10/11/despite-ohio-state-board-of-education-president-canceling-meeting-11-members-met-anyway/ ("LaRue notified board members on Friday he decided to indefinitely postpone the regular monthly meeting scheduled for Tuesday and Wednesday. 'Based on the advice of legal counsel and due to pending litigation, I have decided it is in the best interest of the State Board of Education to postpone the October Board meeting,' LaRue said in an email Friday to State Board of Education members obtained by the Capital Journal.").

These post-hearing allegations have not been the subject of evidentiary testing and are relied on only for the purpose of illustrating the harm that could arise from an incomplete injunction. Even if none of those allegations have actually come to pass, the proper injunction would remain the same.

State Board notwithstanding the injunction. To avoid this situation, a complete injunction of the Rider is clearly necessary; no more narrowly tailored injunction will suffice.

311. Defendants make two arguments against a complete injunction or any injunction at all: that Plaintiffs' requested injunction is "egregiously overbroad and dangerously imprecise," and that "it is just too late to unwind the transition." Defs.' Mot. to Dismiss & Opp. to Pls.' Mot. for Prelim. Inj. at 14 (capitalization altered). Neither of these arguments has merit.

312. First, Defendants' argument that Plaintiffs' requested injunction is overbroad is premised on a blatant misrepresentation of the content of H.B. 33. Defendants claimed, first in the TRO Hearing and then in their opposition brief, that enjoining the entire Rider would involve "enjoin[ing] statutes that are completely unrelated to [Plaintiffs'] claims," *id*. at 3, such that statutes governing things like "the statutory scheme for reporting criminal records to the Ohio Bureau of Criminal Investigation and Identification for Ohio's background check system" or "Ohio['s] scheme for setting out who is required to file ethics disclosure forms" would be enjoined.[181]

313. This was false. Defendants cited four sections of the Revised Code: Sections 109.57, 10.572, 109.65, and 109.71. Defs.' Mot. to Dismiss & Opp. to Pls.' Mot. for Prelim. Inj. at 3. To each of these sections, the Rider made only one type of change: it deleted the phrase "superintendent of public instruction," added the phrase "department of education and workforce," and/or changed "department of education" to "department of education and workforce." *See* H.B. 33 at 4215-46. Otherwise, the Rider made no changes to these statutes whatsoever.

314. In other words, the only change the Rider made to these pre-existing statutory sections was to conform statutes to change the entity with which other agencies dealt: DEW, rather than ODE or the Superintendent.

[181] 2023-10-02_11.31.19.507 at 00:19:21 to 00:20:10.

315. Enjoining these provisions of the Rider would not enjoin the underlying, pre-existing statutes of the Revised Code. It would only enjoin *the changes to* those statutes. The statutory framework for the Bureau of Criminal Identification and Investigation and the other agencies at issue would function exactly as they did prior to the enactment of H.B. 33; their powers and duties would remain exactly the same, and they would deal with the Superintendent or ODE in the same way. Defendants' claim that the requested injunction would "enjoin statutes that are completely unrelated to [Plaintiffs'] claims," Defs.' Mot. to Dismiss & Opp. to Pls.' Mot. for Prelim. Inj. at 3, is thus wholly without merit.

316. Defendants also claimed that the requested injunction was overbroad because it would enjoin three "brand new education-specific obligations for DEW," concerning reimbursements for school lunches, the science of reading, and purchasing feminine hygiene products." Defs.' Mot. to Dismiss & Opp. to Pls.' Mot. for Prelim. Inj. at 9 (citing R.C. 3301.91, 3313.6028, 265.377). This too is wrong. None of the three provisions to which they refer is contained in the Education Takeover Rider, and Plaintiffs did not ask for any of them to be enjoined. *Compare* H.B. 33 at 974, 1034–36, 5887 (enacting these three provisions) *with* Verified Am. Compl. at 3 n.1 (requesting that the Court enjoin pages 4200 through 5563).

317. At best, Defendants might argue that the injunction causes problems for these three provisions because each refers to the "department of education *and workforce*," H.B. 33 at 974, 1034-36, 5887 (emphasis added), and thus could not be implemented precisely as written if the department of education remained in place. This is, at best, an argument for a *broader* injunction, enjoining solely the words "and workforce" in the new R.C. 3301.91, 3313.6028, and 265.377. That would be entirely within the Court's power and would best effectuate legislative intent, as Defendants provide no reason to believe the legislature would have declined to enact these statutes

if they were to be implemented by the "Department of Education" rather than the "Department of Education and Workforce." But it is also unnecessary, as the injunction of the renaming of "department of education" to "department of education and workforce" effectively turns the reference to "department of education and workforce" in these statutes into a scrivener's error, allowing Defendants to simply implement them through ODE.

318. Second, Defendants argue that "it is just too late to unwind the transition." Defs.' Mot. to Dismiss & Opp. to Pls.' Mot. for Prelim. Inj. at 14. This argument misunderstands how the status quo is determined for purposes of injunctive relief, and would reward Defendants for their misconduct in flouting the Temporary Restraining Order. For both reasons, Defendants' argument does not justify narrowing or forgoing an injunction.

319. First, the purpose of a preliminary injunction is to "preserve[] the status quo ante litem so that the pending trial is not a hollow proceeding. The status quo ante litem is the last, uncontested status that preceded the litigation." *Columbus v. State*, 2023-Ohio-2858, __N.E.3d__, ¶ 17 (quoting *State ex rel. Kilgore v. Cincinnati*, 1st Dist. No. C-110007, 2012-Ohio-4406, ¶ 21).

320. The status quo ante litem here is the situation as of September 19, 2023, the date that Plaintiffs filed their complaint and moved for a temporary restraining order and preliminary injunction. At that time, the Education Takeover Rider had not gone into effect. Defendants may have been *preparing* to implement the Rider, but they had not yet effectuated any transition: the State Board and Superintendent retained all of the powers and duties that they had prior to the enactment of H.B. 33, as did ODE.

321. Preserving the status quo ante litem here was thus straightforward when Plaintiffs sought injunctive relief and when the Court granted the Temporary Restraining Order: the State Board, Superintendent, and ODE all retained the same powers and duties that they had under prior

law. It is entirely unremarkable for an injunction to preserve a status quo like this, even if defendants had been preparing to make a future change. Halting *future* action and preventing a party from putting *unrealized plans* into effect is not the same as undoing physical construction that was already underway before litigation was filed, as discussed above. *See Ormond*, 2001 WL 1243959, at *6.

322. Plaintiffs have thus, since the original Complaint was filed, sought to stop a *future* change from happening, not unwind a past change. This is entirely appropriate.

323. Second, accepting Defendants' argument would reward them for playing fast and loose with the Temporary Restraining Order. It is true that, beginning hours after the preliminary injunction hearing on October 2, Defendants purported to convert ODE into DEW and appear to be implementing provisions of the Rider that transfer powers from the State Board to DEW. But that is not the status quo ante litem—that is a post-litigation change that Defendants made in violation of the Temporary Restraining Order (or, in the most charitable reading, exploiting a loophole that they obtained in the Temporary Restraining Order by misrepresenting the content of the Rider).

324. Plaintiffs timely sought to preserve the status quo ante litem, and they did so at a time when it was entirely feasible to preserve it. The fact that Defendants made that more difficult *after* Plaintiffs requested an injunction and the Court granted a temporary restraining order does not change the appropriate injunction; it merely requires the Defendants to unwind the *post-filing* changes that they made.

325. To be sure, it is possible that Defendants' mischief has created some genuine complications for what would have otherwise been a run-of-the-mill injunction. If so, however, it

is incumbent on Defendants to explain precisely what deviations from the status quo ante litem are now necessary, to justify those deviations, and to minimize them to the greatest extent possible.

326. Defendants have argued that they have no obligation to "work with [Plaintiffs] as to what it is they believe should be enjoined."[182] This misunderstands the situation. Plaintiffs have established a clear entitlement to an injunction of the Education Takeover Rider in its entirety. To the extent that Defendants believe that there are technicalities that make portions of that injunction impossible or inadvisable, it is their burden, not Plaintiffs, to identify them.

327. Accordingly, Plaintiffs are entitled to—and Defendants must abide by—the following injunctive order for the pendency of this litigation:

a. Defendants are enjoined from enforcing, implementing, complying with, or acting pursuant to Sections 130.100 through 130.107 of H.B. 33 in any way or manner.

b. Defendants may not interfere in any way with the State Board's or Superintendent's performance of the powers and duties that they possessed prior to the enactment of H.B. 33.

c. To the extent that Defendants have taken any actions since October 3, 2023 that enforce, implement, comply with, or act pursuant to Sections 130.100 through 130.107 in any way or manner, or interfere in any way with the State Board's or Superintendent's performance of the powers and duties that they possessed prior to the enactment of H.B. 33, they must immediately cease and reverse such actions.

d. To the extent that Defendants believe that this injunction interferes in any way with the State Board's, Superintendent's, or ODE's ability to carry out any power or duty prescribed by any provision of the Revised Code predating H.B. 33, or any provision added to the Revised Code in pages 1–4199 or 5564–6198 of H.B. 33, they must promptly provide Plaintiffs with proposed amendments to the injunction and the reasons therefor, and meet and confer regarding such proposed amendments. If the parties agree on an amendment, they shall jointly move the Court to amend or clarify the injunction; if not, Defendants must promptly move the Court to amend or clarify the injunction.

e. To the extent that Defendants believe that this injunction interferes with the ability of the State of Ohio (or any board, department, agency, or institution of the State) to make any payments to employees, school districts, or other third parties, they must provide Plaintiffs with proposed amendments to the injunction and the reasons

[182] 2023-10-02_11.31.19.507 at 00:36:17 to 00:36:19.

therefor within 24 hours of this injunction, and meet and confer regarding such proposed amendments. Within 24 hours of that notification, if Defendants believe amendment or clarification is necessary, they shall move for such relief, noting Plaintiffs' position on their request.

III. The Court Waives and/or Sets Bond at $0.00.

328. Although Ohio Rule of Civil Procedure 65(C) provides that "[n]o temporary restraining order or preliminary injunction is operative until the party obtaining it gives a bond . . . in an amount fixed by the court or judge allowing it," courts have "discretion to determine an appropriate amount of, or even [to] waive, bond." *W.W. Williams Co v. Google, Inc.*, No. 2:23-cv-713, 2013 WL 3812079, *11 (S.D. Ohio July 23, 2013); *see also Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co., Gen. Commodities Div.*, 673 N.E.2d 182, 186 (10th Dist. 1996) (bond not required under Rule 65(C) for trial court to enter preliminary injunction).

329. Ohio Courts hearing constitutional challenges to statutes commonly waive bond. *See, e.g.*, *Women's Med. Pro. Corp. v. Taft*, 114 F. Supp. 2d 664, 705-06 (S.D. Ohio 2000) (preliminarily enjoining enforcement of statute and requiring no bond); *see also Lamar Advantage GP Co., LLC v. City of Cincinnati*, 114 N.E.3d 805, 831 (C.P. 2018) (the "Court [] exercise[d] its discretion and [did] not require the posting of an injunctive bond" or, alternatively, set such bond at zero dollars" because, among other reasons, "the injunction [sought] to protect fundamental constitutional rights.").

330. Because this case involves a constitutional challenge to state legislation, and for the reasons set forth in the Court's Order Granting Plaintiffs' Motion for Temporary Restraining Order, the Court hereby does not require Plaintiffs to post a bond.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 16, 2023 a copy of the foregoing was filed with the Court, and served on the following individuals and entities via email:

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