IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

CHRISTINA COLLINS, *et al.*, *Plaintiffs*, vs. **MIKE DEWINE., *et al.*,** *Defendants*.	CASE NO. 23CV006611 JUDGE KAREN HELD PHIPPS MAGISTRATE JUDGE JENNIFER HUNT **PLAINTIFFS' OBJECTIONS TO MAGISTRATE'S DECISION ON PRELIMINARY INJUNCTION**

Pursuant to Rule 53 of the Ohio Rules of Civil Procedure, Plaintiffs Christina Collins, Michelle Newman, Stephanie Eichenberg (together, "Parent Plaintiffs"), and the Board of Education of the Toledo City School District (the "TPS Board") object to the Magistrate's October 20, 2023 Decision on Preliminary Injunction (the "Decision"). The arguments in support of these objections are set forth in the attached Brief in Support, which is incorporated herein by reference.

Respectfully submitted,

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BRIEF IN SUPPORT

Plaintiffs submit this brief in support of their objections to the Magistrate's Decision. The Decision sets a dangerous precedent by improperly circumscribing judicial review as a crucial check on the actions of the Legislative and Executive Branches. It artificially—and in direct contravention of both established law and the facts—heightens the burden on any party stepping forward to challenge unconstitutional legislation. Specifically, the Magistrate erroneously found that Plaintiffs lack standing by (1) substituting conducting a merits analysis of Plaintiffs' Article VI claim for a proper standing analysis; (2) wholly failing to address established injury with respect to Plaintiffs' other claims; and (3) applying an artificially heightened injury threshold in contravention of Ohio law. Under the correct standards, and considering all the record evidence, Plaintiffs have shown a likelihood of proving standing. Moreover, the Magistrate failed to even consider Plaintiffs' likelihood of success on two of their constitutional claims, and reached the wrong conclusion as to the third claim. Accordingly, for these and the additional reasons set out below, Plaintiffs respectfully request that the Court sustain their objections and grant their Motion for Preliminary Injunction.

I. LEGAL STANDARD

This Court reviews the Decision *de novo* and is not bound by the Magistrate's factual findings or application of law. *See Zidron v. Metts*, 2017-Ohio-1118, 87 N.E.3d 783, ¶ 15 (10th Dist.). Ohio Rule of Civil Procedure 53(D)(4)(d) requires this Court to "undertake an *independent review* as to the objected matters to ascertain that the magistrate [] properly determined the factual issues and appropriately applied the law" (emphasis added).

II. ARGUMENT[1]

A. Plaintiffs Have Shown That They Are Likely to Demonstrate Standing.

Plaintiffs object to the Magistrate's conclusion that they failed to meet their burden of proof on injury. The Magistrate correctly found that Plaintiffs' "claimed injuries . . . if proven, amount to direct harm in the form of loss of meaningful, transparent, publicly accessible representation with elected State Board members regarding their children's specific educational needs," Decision at 20; that those alleged injuries "are unique and different from the general public," *id.*; and that the alleged injuries "are sufficient to provide them with standing," *id.* at 26. Yet the Magistrate concluded that Plaintiffs failed to *prove*, at the preliminary-injunction stage, "that they will sustain any of their claimed injuries." *Id.* at 20, 26. The Magistrate's Decision is incorrect.

1. The Decision erroneously conflates Plaintiffs' standing with Plaintiffs' likelihood of success on its Article VI, Section 4 claim.

The test for an injury giving rise to standing is whether Plaintiffs have shown they have suffered or are likely to suffer a concrete and particularized injury. *See* Pls.' FFCL at ¶¶ 160-162. Standing "does not turn on the merits of the plaintiffs' claims but rather on 'whether plaintiffs have alleged such a personal stake in the outcome of the controversy that they are entitled to have a court hear their case.'" *Ohioans for Concealed Carry, Inc. v. Columbus*, 164 Ohio St.3d 291, 2020-Ohio-6724, ¶ 12 (quoting *ProgressOhio.org v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, ¶ 7). Thus, the "strength of the merits of a claim for declaratory relief is not relevant to a plaintiff's burden to establish standing." *Id.* ¶ 37. Indeed, in evaluating standing, courts "must assume [plaintiffs] will prevail on the merits of their claims." *NB ex rel. Peacock v. District of Columbia*, 682 F.3d 77, 82 (D.C. Cir. 2012).

[1] Plaintiffs set out the facts comprehensively in their Proposed Findings of Facts and Conclusions of Law ("FFCL"), filed in this action on October 16, 2023. They incorporate those findings of fact herein.

While the Decision acknowledges that standing and merits require separate consideration, Decision at 26, in assessing whether Plaintiffs satisfied their burden of proof on injury, the Magistrate principally relies on merits conclusions about the nature and extent of the State Board of Education's ("State Board") constitutionally conferred powers. The Magistrate concludes that Article VI, Section 4 of the Ohio Constitution does not confer on the State Board a constitutional right to hold education-governance powers, and thus that the Challenged Provisions[2] do not violate that constitutional provision. *See id.* at 20-23. In other words, the Decision turns the analysis on its head, erroneously reasoning that Plaintiffs failed to prove *standing* because they will not prevail on the *merits* of their Article VI claim.

Such an analysis is foreclosed by Ohio law. Whether the Legislature has the right to revoke the powers and duties of the State Board—not to mention whether it has done so in a procedurally constitutional manner—are separate questions from whether the Legislature's decision to do so made Plaintiffs concretely worse off. The Magistrate's analysis conflates the question "are Plaintiffs harmed by the Challenged Provisions" (i.e., do Plaintiffs have standing) with the question "does the Ohio Constitution vest the State Board with inherent education-governance powers," (i.e., do Plaintiffs prevail on their Article VI, Section 4 claim). The Magistrate erred by substituting an analysis of the second question as a purported answer to the first.[3]

2. The Decision fails to evaluate standing on a claim-by-claim basis.

The Magistrate also failed to consider standing as to Plaintiffs' two other constitutional claims, including the single-subject claim on which this Court has already found Plaintiffs likely to prevail. *See* Sept. 21, 2023 Order Granting Pls.' Mot. for TRO ("TRO Order") at 4. Because

[2] This term has the same meaning as it does in the Decision.
[3] Moreover, even if the Magistrate were right to evaluate standing based on whether Article VI, Section 4 vests the State Board with inherent powers, she was wrong to conclude that it does not, as explained *infra* at 12-13.

standing "is not dispensed in gross," it must be considered "for each claim and each form of relief." *Ohioans for Concealed Carry*, 2020-Ohio-6724, ¶ 13 (quoting *Preterm-Cleveland, Inc. v. Kasich*, 153 Ohio St.3d 157, 2018-Ohio-441, ¶ 30). The Decision rests its standing determination almost exclusively on its conclusion that Article VI, Section 4 does not confer power to the State Board and fails to evaluate injury in light of Plaintiffs' single-subject or three-readings claims. But the Ohio Constitution's single-subject and three-readings rules apply even if the legislature could constitutionally make the changes at issue in a standalone bill that was properly enacted; Article VI, Section 4 is simply irrelevant to the merits of those claims and Plaintiffs' standing to raise them. Ohio courts are clear about the injury analysis for single-subject claims: if plaintiffs "alleged injury resulting from the enactment of the legislation, they have a direct interest in the challenged legislation that is adverse to the legal interests of the state and gives rise to an actual controversy." *Akron Metro. Hous. Auth. Bd. of Trs. v. State*, 10th Dist. Franklin No. 07AP-738, 2008-Ohio-2836, ¶ 14. Thus, regardless of the State Board's constitutional powers, Plaintiffs have standing to assert their single-subject and three-readings claims. *See also* FFCL ¶ 186.

3. The Decision incorrectly holds Plaintiffs to a heightened injury threshold.

The Magistrate's findings that Plaintiffs failed to prove their alleged injuries both because the State Board has no "permanent right" to its transferred powers and because the Challenged Provisions do not wholly eliminate the State Board, Decision at 20-21, are erroneous.

To establish standing Plaintiffs need not show deprivation of a constitutional right to engage with elected State Board members, only that they "have a direct, personal stake in the outcome of the case." *Ohio Democratic Party v. LaRose*, 2020-Ohio-4664, 159 N.E.3d 852, ¶ 18 (10th Dist.) (quotation omitted). 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 Akron Metro. Hous. Auth.* at ¶

14 (plaintiffs asserting single-subject claim need not be the object of the challenged legislation to have standing as long as they were injured by its implementation); *see also, e.g.*, *Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 744 (Tex. 2005) ("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 . . . depends on whether the claimant asserts a particularized, concrete injury.").

Moreover, "even 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)). Hence, contrary to the Magistrate's conclusions, Decision at 23-26, Plaintiffs need not prove that they are completely foreclosed from engaging with their elected State Board members or the new DEW to establish standing. It is enough for Plaintiffs to show that the Challenged Provisions diminish their ability to engage with the officials responsible for education governance.[4] Thus, the Magistrate erred by concluding that *any* remaining access to the State Board or to DEW abated Plaintiffs' claimed injuries.

4. The Decision ignores record evidence establishing Plaintiffs' injuries.

To the limited extent that the Decision addresses Plaintiffs' injuries beyond their rights under Article VI, it found them unproven because Plaintiffs still have access to elected State Board members and because DEW will provide similar access as the State Board in any event. *See* Decision at 23-26. The Decision is wrong on both points.

[4] At the preliminary-injunction stage, to the extent a determination on standing bears on a court's assessment of plaintiffs' likelihood of success on the merits, the court must find by clear and convincing evidence only a "strong or substantial likelihood" of success (including on demonstrating standing)—not that plaintiffs are certain to prevail. *See, e.g.*, *Columbus v. State*, 2023-Ohio-2858, ¶ 18 (10th Dist.).

First, the Decision ignores evidence that Plaintiffs are injured by the lost ability to interact with local State Board Members who have the authority and power to effect change. The Magistrate erred by finding that because the State Board still exists and maintains *some* responsibility, Plaintiffs do not suffer a cognizable injury. Decision at 23, 26. Plaintiffs' injury lies not in lost access to State Board members in the abstract, but in the lost ability "to interact with an elected, local State Board member *with the power to [e]ffect change* on the issues that matter most to [them] and [their] children." FFCL ¶ 98 (emphasis added).

It is undisputed that the State Board will no longer have the power to set education policy, reduced from wielding policymaking and decision-making authority on issues of importance to Plaintiffs to merely "mak[ing] recommendations to the director of [DEW] regarding priorities for primary and secondary education," Decision at 23 (quoting Pls. Ex. 39, p. 4437). The record is replete with unrebutted facts showing that Plaintiffs have relied on and concretely benefited from the State Board's policymaking authority, *see, e.g.*, FFCL ¶¶ 75, 84-92, 94, 97-98, 109-119, 124, 130-130, 173-175, 177, 187, 191-192. They will not benefit from that authority under the Challenged Provisions, because the State Board will no longer have it.

Similarly, Plaintiffs showed that they benefited from the School Board's responsiveness to its members' constituencies, *see, e.g.*, *id.* ¶¶ 30-37, 88, 96-98, 132, and exchange of information through public meetings, *id.* ¶¶ 95, 125, and that they would continue to do so. But State Board members will no longer have the authority, personnel, or funds to respond to the concerns and inquiries of their constituents to the same extent. *Compare* Defs. Ex. C at 1, *with* 2023-10-02_16.22.37.188 at 00:02:21 to 00:04:06 (demonstrating that State Board and Superintendent staff is shrinking from 669 employees to 60-70), *and* Defs. Ex. G at 69, *with* Defs. Ex. E at 3 (demonstrating that State Board's annual budget will plunge from $15 million to a "negative cash

position"). And Plaintiffs will lose access to the State Board's robust public meetings and meeting minutes as a vehicle through which to effect change and obtain information on the issues critical to their children's education, *see, e.g.*, FFCL ¶¶ 95, 125.

The Decision utterly fails to grapple with the fact that while Plaintiffs can still theoretically advocate to or make inquiries of their State Board members, the Board's drastic loss of education-governance authority sharply curbs the effectiveness of Plaintiffs' engagement with the Board. Plaintiffs' diminished ability to meaningfully engage with the State Board and loss of local, representational interests is a concrete, particularized injury that Plaintiffs have shown by clear and convincing evidence that they have a likelihood of establishing.

Second, the Magistrate also errs in her conclusion that the access that DEW will supposedly provide to Plaintiffs mitigates the serious and substantial injury that Plaintiffs stand to suffer over their lack of access to State Board members with meaningful authority over education governance. *See* Decision at 24.

As an initial matter, a single, unelected, Governor-appointed Director of DEW is no replacement for locally elected State Board members who are by nature of their elected positions motivated to be responsive to the needs of their constituents. *See, e.g.,* FFCL ¶¶ 22-25, 30-33, 120, 124, 190, 259, 261-62. Further, the Decision fails to grapple with the record evidence that shows the "open access" that DEW is obligated to provide is paltry by comparison to the opportunities to engage on education-governance matters that Plaintiffs enjoyed when decision-making on such matters was in the hands of the State Board.[5] For example, while the State Board holds a two-day

[5] Plaintiffs' evidence overwhelms Defendants' testimony (which the Decision relied upon)—a vague commitment to implement state education law and policies in a "similar fashion" to the State Board, offered by Defendant's sole witness, who is not obligated by law to actually provide equivalent transparency and access. *See* Decision at 13; *see also* 2023-10-02_16.22.37.188 at 00:06:10 to 00:07:14 (clarifying that the "commitment" to which she previously testified was merely what she "envisioned" the process would look like).

public meeting every month, FFCL ¶ 27, DEW is required to convene a public meeting only "every other month," Decision at 25, reducing *by half* the number of opportunities for Plaintiffs to interact with decision-makers on issues critical to their children's and students' education. And not all public meetings are created equally: The Challenged Provisions require DEW to simply "conduct a presentation" at its public meetings to "address[] any new information" about important policy initiatives, changes in relevant state or federal law, and DEW rulemaking activity, *see* Decision at 25, a far cry from the robust and granular work that the State Board typically undertook in its public meeting, *see, e.g.*, Pls. Ex. 32. *See also, e.g.,* FFCL ¶¶ 95, 125.

Nor is DEW required to conduct "stakeholder outreach" in developing rules in a manner consistent with the State Board's approach or "hold stakeholder meetings, send questions to stakeholders, or create stakeholder advisory groups." Decision at 25. Indeed, the Challenged Provisions expressly state that any public notice regarding stakeholder outreach is "a courtesy for stakeholders." *Id.* at 24. Such changes rob Plaintiffs of the opportunity to meaningfully advocate for changes important to their children's and students' education. *See, e.g.,* FFCL ¶ 93.

Finally, the Magistrate's suggestion that Board Members are still "required to take any issues or recommendations based on input from people like these Plaintiffs to the Director of the DEW," Decision at 23, is both factually inaccurate and not a cure for Plaintiffs' injuries. The Challenged Provisions do not require the State Board to take *any* issues or recommendations of members of the public to the Director of DEW, only to "make recommendations . . . regarding priorities for primary and secondary education." *Id.* That provides no assurance to Plaintiffs that their concerns will be conveyed to, let alone addressed by, DEW. Indeed, Plaintiffs have presented unrebutted evidence that the Department of Education has been significantly less responsive to their questions and concerns than their elected Board Members. *See* FFCL ¶¶ 99-100.

The record evidence clearly and convincingly shows that any access Plaintiffs may have to DEW's rulemaking or policymaking processes or decision-makers pales in comparison to their access to and engagement with the State Board, including their elected State Board members. It certainly does not undermine Plaintiffs' showing, at the preliminary-injunction stage, that they have a substantial likelihood of proving that they have suffered a concrete and particularized injury, and the Magistrate erred in concluding otherwise.

B. The Decision Fails to Properly Assess the Likelihood of Success on the Merits of Any of the Plaintiffs' Three Constitutional Claims.

1. The Decision fails to even consider Plaintiffs' likelihood of success on the merits of their single-subject or three-readings claims.

The Decision acknowledges that in determining whether to grant a preliminary injunction, the Court must consider four factors, the first of which is "whether there is a substantial likelihood that the plaintiff will prevail on the merits of its claim," Decision at 6 (citing *Hydrofarm, Inc. v. Orendorff*, 2008-Ohio-6819, ¶ 18 (10th Dist.)), and that "[w]hen there is a strong likelihood of success on the merits, preliminary injunctive relief may be justified even though a plaintiff's case of irreparable injury may be weak," Decision at 7 (citing *Cleveland v. Cleveland Elec. Illum. Co.*, 115 Ohio App.3d 1, 114 (10th Dist. 1996)). Yet it wholly fails to address the primary element of the requisite preliminary-injunction analysis on Plaintiffs' primary claim: that Plaintiffs are likely to succeed on the merits of their single-subject claim. The Magistrate provides no discernable reason for this failure, nor could she. The Decision suggests only that Article VI, Section 4 of the Ohio Constitution does not vest the State Board "with the transferred powers" and thus the Board "has no permanent right to them." Decision at 20-21. But Plaintiffs' single-subject claim is entirely independent of their Article VI claim; therefore, any Article VI analysis is irrelevant to whether Plaintiffs are likely to succeed on the merits of their single-subject claim. Plaintiffs could have brought *only* a single-subject claim and still have been entitled to injunctive relief because the way

the Challenged Provisions were logrolled into H.B. 33 was unconstitutional, regardless of whether the Legislature could pass the Challenged Provisions as standalone legislation. In fact, this Court already found that "[t]here is a substantial likelihood that Plaintiffs will prevail on the merits of their. . . single-subject" claim, without addressing the Article VI claim. TRO Order at 4. Although the Magistrate erroneously failed to consider the merits of Plaintiffs' single-subject claim at all, as required by a proper preliminary injunction analysis, the robust record before this Court amply supports the Court's initial finding. *See* FFCL ¶¶ 193-224.

The single-subject rule provides: "No bill shall contain more than one subject, which shall be clearly expressed in its title." Ohio Constitution, Article II, Section 15(D). It was added to the Constitution as a check on legislative power, *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward,* 86 Ohio St.3d 451, 497 (1999), and "exists to prevent the General Assembly from engaging in logrolling," *Arbino v. Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 78 (citation omitted), where "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*. The test for violation of 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 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 *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 145 (1984)).

Appropriations bills, like H.B. 33, are particularly susceptible to logrolling, given their "importan[ce] and likel[ihood] of passage," *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 16 (1999), and may "warrant *more* scrutiny for non-appropriations riders than other bills." *Plain Loc. Sch.*

Dist. Bd. of Edu. v. DeWine, 486 F. Supp. 3d 1173, 1197 (S.D. Ohio 2020). 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, ¶ 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 . . . in a biennial appropriations bill," adding to it any substantive regulation or program "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.*

Here, Plaintiffs have demonstrated that the inclusion of the Challenged Provisions in H.B. 33 likely violated the single-subject rule. *First*, the Challenged Provisions' history—initially stalling as standalone legislation in the form of S.B. 1, then passing at the eleventh hour as an appendage to H.B. 33—demonstrates that it is nothing more than an improper rider that secured passage through prohibited logrolling. *See* FFCL at ¶¶ 38-65. *Second*, there is a clear "disunity of subject matter" between H.B. 33 and the Challenged Provisions "such that there is no discernible practical, rational or legitimate reason for combining the provisions in one Act." *Local 11* at ¶ 28 (quotations omitted). H.B. 33 is a biennial budget bill whose primary subject "is balancing state expenditures against state revenues to ensure continued operation of state programs," TRO Order at 3; FFCL ¶ 52; Decision at 9; whereas the Challenged Provisions have virtually nothing to do with the budget, as demonstrated by (1) the title of S.B. 1 ("[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"), FFCL ¶ 38; and (2) the Legislative Service Commission's determination that S.B. 1's "effects on state operating expenditures *appear to be limited*" because the bill merely sought to "transfer . . . most of the powers and duties of the State Board of Education and the Superintendent of Public Instruction into the DEW," *id*. ¶¶ 45-47. *Third*, "there are no discernible practical, rational or legitimate reasons for combining" the Challenged Provisions with the annual budget bill, *Dix*, 11 Ohio St.3d at 145, and Defendants pointed to none.

The Magistrate likewise fails to address, let alone appropriately consider, the substantial likelihood that Plaintiffs will succeed on the merits of their three-reading-rule claim—another independent claim that is unrelated to Plaintiffs' Article VI claim. Here, too, for the reasons explained in detail in Plaintiffs' Proposed Conclusions of Law and uncontroverted by the Decision, Plaintiffs are likely to succeed on the merits of this claim. *See* FFCL ¶¶ 225-41. Indeed, the Magistrate expressly found that the Challenged Provisions were read only once on June 30, 2023, the day H.B. 33 was passed. *See* Decision at 10.

2. The Decision erroneously finds that Plaintiffs are not likely to succeed on the merits of their Article VI, Section 4 claim.

Even if the Magistrate's interpretation of Article VI, Section 4 (the "Amendment") were enough to resolve this case (it is not), that interpretation, *see* Decision at 7-13, was wrong. The Magistrate found that the "plain language" of the Amendment gives the Legislature "complete authority to grant, or remove, the respective powers and duties of the State Board and the Superintendent, and the State Board has no constitutional right to retain all of the powers transferred under the [Challenged Provisions]." Decision at 22 (citing *Bd. of Educ. v. State Bd. of Educ.*, 116 Ohio App. 515, 518 (12th Dist. 1962)). But Plaintiffs do not claim that powers conferred by the Legislature may never be taken away, only that the Legislature may not reduce the State

Board to such a degree that it no longer has the powers understood by the ratifiers of the Amendment to be inherent in a state board of education. *See* FFCL ¶¶ 7-20.

Neither Defendants nor the Magistrate disputed Plaintiffs' extensive showing that the drafters of the Amendment understood it to guarantee an independent constitutional body with the power to function as "the primary entity responsible for education governance and oversight in the state." *Id.* ¶ 244. The Magistrate's belief that provision's "plain language" made this uncontroverted evidence irrelevant, Decision at 22, is incorrect. Contrary to the Magistrate's assertion, Plaintiffs manifestly *do* argue that the phrase "state board of education" had an "established meaning at the time of the ratification of the" 1953 amendment. *Id.*; *see* FFCL ¶¶ 7-19, 244-45. The Decision recognized that the statute must be interpreted "in accord with the ordinary public meaning of its terms *at the time of its enactment*," Decision at 21 (quoting *City of Maple Heights v. Netflix, Inc.*, 171 Ohio St.3d 53, 2022-Ohio-4174, ¶ 37 (Kennedy, C.J., concurring) (emphasis added)), but completely failed to look at those terms' meaning at the time of enactment. For this reason, "courts in other states have found similar attempts to remove core, inherent powers from constitutionally created bodies to be unconstitutional," including specifically rejecting the Magistrate's reading of comparable "prescribed by law" clauses. FFCL ¶¶ 246-248 (collecting cases), 249, 251. This Court should reach the same conclusion.

C. The Magistrate Incorrectly Assesses Irreparable Harm.

As described *supra*, the Magistrate erroneously failed to find that Plaintiffs were likely to succeed on their three constitutional claims and declined to even discuss two of those claims, including the single-subject claim on which this Court previously found a "substantial likelihood" of success, TRO Order at 4. As set forth above, applying the proper analysis, the Court *must* find that Plaintiffs are likely to succeed on one or more of their three constitutional claims. *See supra* at 9-13. Doing so then obviates the need for any further analysis of irreparable harm, which is

presumed where plaintiffs show a likelihood of success on their constitutional claims. *See Lamar Advantage GP Co., LLC v. City of Cincinnati*, 114 N.E.3d 805, 814 (Hamilton C.P. 2018) ("When a party seeks a preliminary injunction on the basis of a potential constitutional violation, 'the likelihood of success on the merits often will be the determinative factor.'" (*quoting Liberty Coins, LLC v. Goodman*, 748 F.3d 682, 689 (6th Cir. 2014))). This presumption holds "'even though a plaintiff's case of irreparable injury may be weak.'" *Id.* (quoting *Cleveland v. Cleveland Elec. Illum. Co.*, 115 Ohio App.3d 1, 14 (8th Dist. 1996)).

Even without this presumption, Plaintiffs have shown irreparable injury because they presented evidence that they are significantly injured by the Challenged Provisions in a manner that cannot be redressed by legal remedies. *See supra* at 4-9. Plaintiffs can neither pause the lives or development of their children and students until this case resolves, nor be made whole by money damages for the ill effects of education policies shaped without democratic input. *See Ohio Democratic Party*, 2020-Ohio-4664, 159 N.E.3d 852, ¶ 60 ("Irreparable harm is an injury for the redress of which . . . there could be no plain, adequate and complete remedy at law, and for which restitution in [money] would be impossible, difficult or incomplete." (quotations omitted)).

D. The Magistrate Incorrectly Assesses Harm to the Public and Third Parties.

In assessing harm to the public and third parties, the Magistrate incorrectly presumed that the Challenged Provisions were constitutional. Decision at 26-27. It is well-settled—and the Decision does not dispute—that "the public interest is best served by a full and fair hearing on the merits of the constitutionality of [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."). Plaintiffs have demonstrated a likelihood of success on each of their three constitutional claims—and, at a minimum, on the single-subject claim that the Court

already held was likely to succeed. *See supra* at 9-13. For this reason alone, contrary to the Magistrate's conclusion, the public interest is served by enjoining the Challenged Provisions.

The Magistrate also found that certain actions taken by the State to prepare to implement the Challenged Provisions weigh against granting an injunction. Decision at 27. But under Ohio law, where a party can show that it is likely to succeed on the merits of its claim that a law is unconstitutional, 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) (finding that because "plaintiffs have a substantial likelihood of succeeding in their argument that some of the amendments may be unconstitutional," the "injunction will not harm third parties and, in balance, is in the public interest"). In addition, Ohio courts have found that "the state cannot be harmed when an unconstitutional law does not go into effect." *Newburgh Hts. v. State*, 8th Dist. Cuyahoga No. 109106, 2021-Ohio-61, ¶ 76.

The Court also erred in giving weight to Defendants' argument that an injunction would cause "confusion, unrest, and chaos," Decision at 27. As the Challenged Provisions had not gone into effect, the requested preliminary injunctive relief would simply "maintain the status quo pending a final determination on the merits." *Columbus v. State*, 10th Dist. Franklin No. 22AP-676, 2023-Ohio-195, ¶ 13. Moreover, the State's "preparations" were just that—preparation, but not yet actual implementation. *Compare* Decision at 27, *with, e.g., Ormond v. City of Solon*, 8th Dist. No. 79223, 2001 WL 1243959, at *6 (Oct. 18, 2001);); *see also* Pls.' FFCL ¶¶ 318-24.

III. CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that the Court sustain their objections and grant their Motion for Preliminary Injunction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 3, 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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