COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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AND

ANTOINETTE MIRANDA
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AND

CASE NO. _____

JUDGE _____

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND TEMPORARY, PRELIMINARY, AND PERMANENT INJUNCTIVE RELIEF

MICHELLE NEWMAN
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65 E. State Street, Suite 1100
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Plaintiffs,

v.

THE STATE OF OHIO
c/o Attorney General David Yost
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

AND

MIKE DEWINE, in his official capacity as Governor of the State of Ohio
Office of the Governor
77 South High Street, 30th Floor
Columbus, Ohio 43215

Defendants.

Plaintiffs Christina Collins, Teresa Fedor, Kathleen Hofmann, Tom Jackson, Meryl Johnson, Antoinette Miranda, and Michelle Newman, members of the Ohio State Board of Education (the "Board") (collectively, "Plaintiffs"), for their claims for declaratory judgment and temporary, preliminary, and permanent injunctive relief against Defendants State of Ohio and Ohio Governor Mike DeWine (collectively, "Defendants"), allege as follows:

INTRODUCTION

1. The General Assembly has enacted a law that violates both the procedural protections and substantive mandates of the Ohio Constitution. If permitted to take effect, it will strip the constitutionally mandated independent Ohio State Board of Education, the Ohio Department of Education, and the State Superintendent of Education of nearly all of their powers, instead vesting those powers in political appointees of the Executive Branch. As standalone

legislation, this 2000-page bill languished in the Ohio House of Representatives. But even though it could not survive fair legislative deliberation, it passed thanks to a last-minute rider to the biennial budget bill. If unchecked by this Court, the system Ohio's citizens mandated for governing education in Ohio will be rendered virtually powerless.

2. Nearly 70 years ago, the citizens of Ohio ratified a constitutional amendment that placed oversight and governance of Ohio's education system in the hands of the newly created State Board of Education. And for more than half a century, the Board has operated as an independent body that is responsive and accountable to the Ohioans whose interests the Board's members represent.

3. In early 2023, however, the Ohio General Assembly considered a bill, Senate Bill 1 ("S.B. 1"), that would eviscerate Ohio's public-education system as it exists today.

4. A critical portion of S.B. 1 was Ohio Revised Code Section 3301.13, which sought to: (1) create the Department of Education and Workforce (the "DEW"); (2) mandate that the DEW be headed by a director (the "Director"), who shall be appointed by the Governor with the advice and consent of the Ohio Senate; (3) mandate that the Director appoint two deputy directors; and (4) transfer nearly all of the Board's duties and responsibilities to the Director.

5. S.B. 1 failed to garner enough support to become law, and by March 2023 it was languishing in a committee of the Ohio House.

6. But in June 2023, the Ohio Senate shoehorned the substance of S.B. 1 into the Senate version of House Bill 33 ("H.B. 33")—Ohio's must-pass biennial budget bill. The version of H.B. 33 that the Ohio House had previously considered and voted to approve did *not* include such language, including Ohio Revised Code Section 3301.13.

7. The S.B. 1 rider that was inserted into H.B. 33 (the "Education Takeover Rider") spans more than 1,300 pages, includes Ohio Revised Code Section 3301.13, and was barely considered by the General Assembly.[1] Instead, it was added to the bill during a last-minute conference committee that convened to reconcile the two bodies' versions of H.B. 33, just days before the end of the fiscal year—the deadline for passing the must-pass budget bill.

8. On June 30, 2023, the last day of the fiscal year, H.B. 33, which included the Education Takeover Rider, passed the General Assembly.

9. Governor DeWine signed H.B. 33 into law on July 4, 2023. The Education Takeover Rider's overhaul of the Ohio education system, via Ohio Revised Code Section 3301.13 and other related sections, goes into effect on October 3, 2023.

10. There is no common purpose or relationship between the subject matter of the Education Takeover Rider—which strips the Board and the Ohio Superintendent of their core powers and reassigns them to a director who will be appointed by Governor DeWine—and the subject matter of H.B. 33—which addresses funding and other fiscal concerns for the State of Ohio.

11. Instead, when S.B. 1 could not pass as standalone legislation, the Education Takeover Rider was attached to H.B. 33 at the eleventh hour to ensure that the rider became law nonetheless.

12. This practice—known as logrolling—is prohibited by Article II, Section 15(D) of the Ohio Constitution, which renders the Education Takeover Rider void and unconstitutional.

[1] The term "Education Takeover 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 (as enrolled, June 30, 2023), https://tinyurl.com/yc6st8c6.

13. The Education Takeover Rider is also void and unconstitutional because it violates the three-reading rule, as found in Article II, Section 15(C) of the Ohio Constitution.

14. Finally, by turning the Board into an empty shell, effectively removing all substantive powers and duties from the Board, the Legislation violates Article VI, Section 4 of the Ohio Constitution.

15. The General Assembly is not permitted to abolish the constitutionally created Board via legislative workaround. And what the Ohio Constitution forbids the General Assembly from accomplishing directly, it also forbids the General Assembly from achieving indirectly.

16. Due to the Education Takeover Rider's glaring infirmities, this Court should: (1) grant Plaintiffs temporary, preliminary, and permanent injunctive relief to prevent the Education Takeover Rider from going into effect; (2) sever the Education Takeover Rider from H.B. 33; and (3) strike it as void.

PARTIES

17. Plaintiff Christina Collins is a member of the Board representing District 7, which consists of parts of Franklin and Holmes Counties, as well as Union, Delaware, Morrow, and Knox Counties. She was elected in November 2020 and began serving a four-year term in January 2021. Dr. Collins has standing to bring this action because, among other reasons, the Education Takeover Rider will strip her of nearly all of her official duties and responsibilities as a member of the Board and reassign them to the Director of Education and Workforce, who will be appointed by Governor DeWine. Dr. Collins separately has standing to bring this action because she is a parent of children who attend Ohio public schools in Medina, Ohio. Dr. Collins resides in Ohio and is eligible to vote in Ohio.

18. Plaintiff Teresa Fedor is a member of the Board representing District 2, which is made up of part of Hancock County, as well as Lucas, Wood, Ottawa, Erie, Huron, and Lorain

Counties. She was elected in November 2022 and began serving a four-year term in January 2023. Ms. Fedor has standing to bring this action because, among other reasons, the Education Takeover Rider will strip her of nearly all of her official duties and responsibilities as a member of the Board and reassign them to the Director of Education and Workforce, who will be appointed by Governor DeWine.

19. Plaintiff Kathleen Hofmann is a member of the Board representing District 4, which is made up of Warren and Hamilton Counties. She was elected in November 2022 and began serving a four-year term in January 2023. Ms. Hofmann has standing to bring this action because, among other reasons, the Education Takeover Rider will strip her of nearly all of her official duties and responsibilities as a member of the Board and reassign them to the Director of Education and Workforce, who will be appointed by Governor DeWine.

20. Plaintiff Tom Jackson is a member of the Board representing District 10, which consists of parties of Cuyahoga and Geauga Counties, as well as Summit County. He was elected in November 2022 and began serving a four-year term in January 2023. Mr. Jackson has standing to bring this action because, among other reasons, the Education Takeover Rider will strip him of nearly all of his official duties and responsibilities as a member of the Board and reassign them to the Director of Education and Workforce, who will be appointed by Governor DeWine.

21. Plaintiff Meryl Johnson is a member of the Board representing District 11, which consists of part of Cuyahoga County, as well as Medina, Ashland, and Wayne Counties. She was initially elected in November 2016 and has been serving on the Board since January 2017. She was reelected in November 2020 and began serving a second four-year term in January 2021. Ms. Johnson has standing to bring this action because, among other reasons, the Education Takeover Rider will strip her of nearly all of her official duties and responsibilities as a member of

the Board and reassign them to the Director of Education and Workforce, who will be appointed by Governor DeWine.

22. Plaintiff Antoinette Miranda is a member of the Board representing District 6, which consists of part of Franklin County, as well as Fairfield, Perry, Muskingum, Hocking, and Pickaway Counties. She was initially elected in November 2016 and has been serving on the Board since January 2017. She was reelected in November 2020 and began serving a second four-year term in January 2021. Dr. Miranda has standing to bring this action because, among other reasons, the Education Takeover Rider will strip her of nearly all of her official duties and responsibilities as a member of the Board and reassign them to the Director of Education and Workforce, who will be appointed by Governor DeWine.

23. Plaintiff Michelle Newman is a member of the Board representing District 8, which consists of part of Holmes and Stark Counties, as well as Licking, Coshocton, Tuscarawas, Carroll, Columbiana, Mahoning, Harrison, Jefferson, Guernsey, Belmont, Noble, Morgan, Athens, Meigs, Washington, and Monroe Counties. She was elected in November 2020 and began serving a four-year term in January 2021. Ms. Newman has standing to bring this action because, among other reasons, the Education Takeover Rider will strip her of nearly all of her official duties and responsibilities and reassign them to the Director of Education and Workforce, who will be appointed by Governor DeWine. Ms. Newman separately has standing to bring this action because she is a parent of one child who attends an Ohio public school in Licking County. Ms. Newman resides in Ohio and is eligible to vote in Ohio.

24. Defendant State of Ohio is the sovereign entity on whose behalf the Education Takeover Rider was enacted.

25. 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 into law and, as Ohio's chief executive, is charged with its implementation.

JURISDICTION AND VENUE

26. This Court has personal jurisdiction over Governor DeWine because he is the Governor of the State of Ohio and performs his official duties in the State of Ohio.

27. This Court has subject-matter jurisdiction over this action, including under Article IV of the Ohio Constitution, Ohio Revised Code Section 2721, *et seq.*, and Ohio Revised Code Section 2727, *et seq.*

28. Venue is proper in this Court under Ohio Rule of Civil Procedure 3(C).

FACTUAL ALLEGATIONS

The Constitutional amendment creating the Board placed public-education governance in the hands of an independent body that is accountable to the people of Ohio.

29. The Ohio Constitution prescribes who governs the state's public-education system.

30. In the first half of the twentieth century, that power was entrusted to the Governor. The Constitutional Convention of 1912 adopted, and the people of Ohio ratified, a provision to establish a superintendent of public instruction who would be appointed by the Governor to serve a four-year term. The powers and duties of that position were provided by statute.

31. The political nature of this position prevented many otherwise-qualified Ohio educators from seeking such an appointment. It also made long-range, sustained educational planning difficult.

32. Hence, an effort was undertaken to separate the governance of education from the explicitly political world and the turnover it brought. Advocates of reform sought to shift control of the state's educational policy from the executive office of the Governor to a more independent

body that would be less susceptible to political currents and that would be specialized in education and responsive to the voices of the citizens of Ohio.

33. A constitutional amendment to establish a state board of education was initially proposed as early as 1939, but it failed to garner sufficient support.

34. A similar constitutional amendment was proposed in 1953. Like its predecessor, the amendment would establish a state board of education, which would in turn appoint a superintendent of public instruction.

35. The text of the amendment provided:

> 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.[2]

36. Contemporaneous writings show that the amendment was viewed as a fundamental shift in education governance in Ohio. One article shares 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] on a non-partisan basis."[3] Yet another article characterizes the amendment as a "vote against concentration of too much administrative power in the hands of any one official."[4] Others suggested that the amendment would bring Ohio's system of education governance in line with that of other states. One article, for example, recounts proponents' admonition that "traditions of education in America have provided for direct control (of schools) by the citizenry through

[2] Ohio Constitution, Article VI, Section 4.
[3] Berta Terrell, *Back Schools' Amendment, President of State P.-T. A. Urges on Convention Eve*, Cleveland Plain Dealer, Oct. 5, 1953, at 21.
[4] Editorial, *Constitutional Amendments*, Columbus Evening Dispatch, Nov. 5, 1953, at 31.

independent boards of lay citizens."[5] And several newspapers likewise noted that more than 40 other states "have state boards to oversee public education."[6]

37. It was clear that the referendum was viewed as a question of who should control state educational governance in Ohio—the Governor, or the State Board of Education.

38. On November 3, 1953, the citizens of Ohio resoundingly answered that question: the Board. With more than 56% of the vote, and by a margin of more than 13%, the amendment passed and Article VI, Section 4 of the Ohio Constitution (the "Board Amendment") became law.

39. As one scholar concluded at the time of the amendment's passage, "[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."[7]

For nearly seventy years, the Board has governed virtually all aspects of the Ohio education system and provided parents a voice in their children's public-school education.

The people of Ohio—and the state legislature—understood that the 1953 amendment called for a fundamental shift in education governance in line with nationwide trends.

40. Following the enactment of Article VI, Section 4, the General Assembly restructured the statutory scheme governing education in Ohio to manifest the changes inherent in the passage of the Board Amendment.

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[5] Eugene Jeffers, *Lakewood Opens Fight for State School Board*, Cleveland Plain Dealer, Sept. 12, 1953, at 11.
[6] *E.g.*, *id.*
[7] 1 Marius Peter Garofalo, The Origin and Establishment of a State Board of Education in Ohio 432 (1958) (Ph.D. dissertation, The Ohio State University), https://tinyurl.com/pdtruxf3.

41. In the first instance, the General Assembly created the "Ohio School Survey Commission."[8] The Commission, composed of members of the General Assembly, was tasked with preparing a "comprehensive study of the school foundation program and all laws pertaining or relating to public school education in Ohio and . . . mak[ing] recommendations to meet such needs as the study shows to exist."[9]

42. The Commission issued its report to the General Assembly and the Governor in May 1955.

43. The report discussed the passage of the 1953 Board Amendment and noted that, in adopting the amendment, "Ohio followed the lead of 44 other states that have created state boards of education."[10] Those school boards "helped establish a culture of citizen leadership of public schools" and "served as the citizen's voice in education."[11]

44. The Commission 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."[12] While the Commission understood the importance of retaining some local control for schools, it emphasized the "need for strong state leadership in solving educational problems."[13] The passage of the Board Amendment confirmed that such leadership would come from the Board and the superintendent it appointed.

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[8] *See Index—Digest of the 1953 Ohio General Assembly*, 14 Ohio State L.J. 505, 566 (1953), https://tinyurl.com/4a4zfhas.
[9] *Id.*
[10] Ohio Sch. Surv. Comm'n, Report of the Ohio School Survey Commission, at 61 (1953).
[11] Kris Amundson, Nat'l Ass'n of State Bds. of Educ., State Boards Reflect the History of Public Education in America 5 (2018), https://tinyurl.com/3z547pse.
[12] Report of the Ohio School Survey Commission, *supra* note 10, at 190.
[13] *Id.* at 66.

45. The Commission further recommended that the 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."[14]

46. In addition, the Commission surveyed the public on its view of the recently passed constitutional amendment and the role of the new Board. "More than 70 percent of the opinion reports approved giving to the state board of education the following responsibilities:

1. Formulate general educational policies for the state.
2. Give general supervision over public elementary and secondary education in the state.
3. Prescribe minimum standards for public education.
4. Formulate procedures for the distribution of state funds.
5. Establish standards for the certification of teachers.
6. Exercise some supervision over school building planning."[15]

47. These views aligned with the practices of other states that Ohioans were following when they enacted the amendment. Around the country, residents and legislators had assigned broad powers to their state boards of education.

48. 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."[16] 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."[17]

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[14] *Id.*
[15] *Id.*
[16] Garofalo, *supra* note 7, at 18.
[17] *Id.* at 26.

49. Likewise, 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," [p]rescription of minimum standards in specified areas," and "[d]etermination of educational polices," among other duties.[18]

The General Assembly codified the Board's specific powers and duties in a statute that has remained in place for nearly seventy years.

50. Legislators that served at the time (and shortly after) the Board Amendment was passed understood its intent and meaning. Following the 1953 ratification of the Board Amendment and publication of the Commission Report shortly thereafter, in 1956, the legislature passed a law codifying the Board's specific powers and duties.[19]

51. This legislation included most all of the responsibilities set forth in the Commission Report and transferred the entire state-education apparatus to the Board. Thus, the "powers and duties of the new board were consistent with those of other state boards."[20]

52. The legislature's actions reflect the understanding that state boards of education, including the Board in Ohio, held inherent power. The broad powers and duties granted to the Board, codified at Ohio Revised Code Section 3301.07, include, but are not limited to:

- exercising "policy forming, planning, and evaluative functions for the public schools of the state except as otherwise provided by law";[21]
- exercising "leadership in the improvement of public education in" Ohio;[22]
- 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

[18] *Id.* at 20.
[19] *See* 1956 Am.H.B. No. 212; *Index Digest of the 1955 Ohio General Assembly*, 16 Ohio State L.J. 529, 555–56 (1955), https://tinyurl.com/58pd6t4j.
[20] Ohio State Bd. of Educ., Milestones, a History of the State Board of Education of Ohio, 1956-1989 5 (1989), https://tinyurl.com/3fpdtaef.
[21] R.C. § 3301.07(A).
[22] *Id.* § 3301.07(B)(1).

personnel, and finance and organization of school districts, educational service centers, and territory";[23]

- 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";[24]

- administering and supervising "the allocation and distribution of all state and federal funds for public school education under the provisions of law, and may prescribe such systems of accounting as are necessary and proper to this function";[25] 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."[26]

53. In addition, the statute gave the Board responsibility for education rulemaking and regulation in the state;[27] submitting annually to the Governor and General Assembly a report on the status, needs, and major problems of the public schools of the state;[28] and preparing budgets for the Board, its agencies, and the state's public schools.[29]

54. Since the statute's enactment in 1956, the legislature has made various modest modifications to the Board's powers and duties.

55. Still, for almost 70 years, the Ohio legislature has respected the inherent powers conferred to the Board through Ohioans' approval of the 1953 constitutional amendment. It has left in place the core and irreducible powers that state boards were understood to have at the time Ohioans voted to enshrine such a board in the Ohio Constitution.

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[23] *Id.*
[24] *Id.* § 3301.07(B)(2).
[25] *Id.* § 3301.07(C).
[26] *Id.* § 3301.07(D)(2).
[27] *Id.* § 3301.07(N).
[28] *Id.* § 3301.07(F).
[29] *Id.* § 3301.07(G).

56. For almost 70 years, the Board has been the primary body responsible for education governance in Ohio.

The Board as it exists today is responsive to the citizens of Ohio with an interest in public education in the state—making good on the promise of the constitutional amendment that created it.

57. Currently, the Board is made up of 19 members—11 elected members and 8 members appointed by Governor DeWine. The 11 elected members of the Board do not run for office with any political-party affiliation.

58. The 11 elected members of the Board represent constituents from 11 Board Districts, ensuring that the Board is composed of individuals with distinct points of views, backgrounds, and experiences—reflective of and thus representing all of Ohio:[30]

[30] Ohio Sec'y of State, District Maps: Current State Board of Education Districts (2023), https://tinyurl.com/ym4n3r85.

59. The 11 elected members of the Board are elected to four-year terms in even-numbered years by voters in Ohio's 11 Board Districts, which contain anywhere from 35 to 80 individual school districts. Each elected member of the Board represents approximately 1 million constituents in their Board District.

60. Each Board District has unique characteristics and concomitant challenges in the education context. Some Board Districts are populated mainly by citizens in large urban areas, whereas others are heavily rural, or else encompass a mix of urban, suburban, and rural school districts.

61. Consistent with the principles of representation and accountability underlying the Board's composition and purpose, the Board takes concrete steps to make its activities and operations transparent and accessible to the public.

62. For example, the Board generally meets on the second Monday and Tuesday of each month. These meetings, required by law, are generally open to the public, and the Board's schedules, agendas, and meeting minutes are published and publicly accessible, as are video recordings of its meetings.

63. The Board solicits public testimony and public comments when it engages in rulemaking.

64. As elected members of the Board, Plaintiffs bear a unique responsibility to make themselves accessible to their constituents.

65. To that end, they 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. At these meetings, Plaintiffs deliver presentations on Board activities and

matters of interest, hear from school administrators about issues affecting the schools, and otherwise make themselves available as a resource for officials, educators, and parents.

66. Plaintiffs also attend community forums where local educational matters are discussed. Some even visit individual schools.

67. Plaintiffs otherwise ensure that their constituents can reach them, including by publishing their contact information on the Board's website and maintaining publicly accessible Facebook and Twitter accounts.

68. And Plaintiffs' constituents do reach out to them. Educators seek assistance resolving licensing issues or understanding the contours of new policies. Parents and families of public-school students regularly seek assistance with a range of issues: 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, among myriad others.

69. Plaintiffs' regular engagement with administrators, educators, parents, and students is crucial to the Board's work. Indeed, Plaintiffs rely on their constituents' concerns, experiences, and perspectives to guide their policymaking, rulemaking, and other responsibilities as Board members.

70. For example, when the Board was considering a resolution on the third-grade retention requirement,[31] Plaintiffs heard from teachers and education advocates armed with years' worth of data explaining how and why the practice was ineffective and advocating for its change.

[31] The requirement concerns the retention of students who do not meet a certain threshold score in English on Ohio's State Test, and thus would not be promoted to the fourth grade. *See* Ohio Dep't of Educ., Third Grade Reading Guarantee Guidance Manual 12 (2022), https://tinyurl.com/yu3wthmf.

Led by the perspectives of teachers and other stakeholders on the ground, the Board advocated against the measure.

71. Similarly, in devising social-emotional learning standards, Plaintiffs insisted on the inclusion of principles regarding trauma-informed teaching in the curriculum—principles that Plaintiffs knew to be an essential component of social-emotional learning based on their on-the-ground engagement with the families of public-school students, school officials, and community members in their Districts. All told, more than 1,000 stakeholders provided input on the standards.

72. And when, for example, teachers contacted Plaintiffs with concerns about their students' test scores, Plaintiffs brought the issue to the Board and considered whether and how broader policymaking or other action on the Board's part was appropriate.

73. In short, Plaintiffs are a conduit between the on-the-ground experiences of their constituents and statewide education policymaking. They ensure that school administrators' and educators' concerns are reflected in education policy and that parents of children who attend public schools have a voice in their children's education.

74. As a result, education governance in the State of Ohio is reflective of and accountable to the diverse needs and local perspectives of the people of Ohio.

Beginning in 2021, members of the Ohio General Assembly sought—unsuccessfully—to strip the Board and the Superintendent of Public Instruction of their core duties, powers, and responsibilities.

75. In May 2021, an Ohio Senator introduced a *one-sentence* bill intended to express the legislature's intent to "reform the functions and responsibilities of the State Board of Education, the Superintendent of Public Instruction, and the Department of Education."[32]

[32] *See* 2021 S.B. No. 178 (as introduced in Ohio S., May 11, 2021).

76. The bill was referred to the Senate Primary and Secondary Education Committee, but, for more than a year thereafter, it was the subject of no further action.

77. The bill lay dormant until shortly after the November 9, 2022, election.

78. On the heels of the Board election results,[33] the Senate fast-tracked the bill to revoke the Board's authority. The Primary and Secondary Education Committee held five hearings on the bill between November 15 and December 7, 2022.[34]

79. By the time the bill was reported by the Senate Committee, the text of the bill had exploded from a single sentence to more than 2,000 pages of legislation, proposing to replace the existing Department of Education with a newly created Department of Education and Workforce Development, which would be headed by a director selected by the Governor.[35]

80. The bill would also transfer the vast majority of the powers held by the Board to the newly created Department of Education and Workforce.[36]

81. The bill passed the Senate on December 7, 2022, and was sent to the House for consideration.[37]

82. The bill was introduced in the House on December 12, 2022, where it stalled in committee.[38]

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[33] *See, e.g.*, Susan Tebben, DeWine Appointee, Fellow State Board of Ed Incumbent Unseated in General Election, Ohio Cap. J. (Nov. 10, 2022), https://tinyurl.com/rufazrmf; Laura Hancock, Anti-Culture War Candidates Win Three Seats on Ohio State Board of Education, with Big Boost from Teachers' Unions, Cleveland.com (Nov. 9, 2022), https://tinyurl.com/373ym5ba.
[34] *See* The Ohio Legislature, *Senate Bill 178 Committee Activity*, https://tinyurl.com/2av6x3nk (accessed Sept. 19, 2023).
[35] *See* 2021 S.B. No. 178 (as reported by S. Primary and Secondary Educ. Comm., Dec. 7, 2021).
[36] *Id.*
[37] *See* The Ohio Legislature, *Senate Bill 178 Status,* https://tinyurl.com/2p57j279 (accessed Sept. 19, 2023).
[38] *Id.*

83. In January 2023, at the start of the 135th General Assembly, a similar bill, making the same drastic changes to the oversight of Ohio's public-education system, was reintroduced in the Senate by Senator Bill Reineke.[39]

84. H.B. 12, the House's companion bill to S.B. 1, was introduced in the House on February 15, 2023, and referred to committee the following day.[40]

85. The Ohio Senate passed S.B. 1 on March 1, 2023.[41]

86. A critical portion of S.B. 1 was Ohio Revised Code Section 3301.13, which sought to: (1) create "[t]he department of education and workforce;"[42] (2) mandate that the DEW "be headed by the director of education and workforce, who shall be appointed by the governor with the advice and consent of the senate;"[43] (3) mandate that the Director appoint two deputy directors;[44] and (4) transfer "[a]ll powers and duties regarding primary, secondary, special, and career-technical education granted to the state board, the state superintendent, or the former department of education, as prescribed by law in effect prior to the effective date of this section, except those prescribed for the state board of education as described in section 3301.111 of the Revised Code" to the Director.[45]

87. S.B. 1's proponents acknowledged the revolutionary nature of the legislation, hailing S.B. 1 as a "*historic overhaul and realignment* of the responsibilities and duties of the Department of Education and State Board of Education."[46]

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[39] 2023 Sub.S.B. No. 1 (as introduced in Ohio S., Jan. 1, 2023).
[40] *See* 2023 H.B. No. 12 (as introduced in Ohio H.R., Feb. 15, 2023); The Ohio Legislature, *House Bill 12 Status,* https://tinyurl.com/mwyt5yrp (accessed Sept. 19, 2023).
[41] *See* The Ohio Legislature *Senate Bill 1 Status*, https://tinyurl.com/ye2x6vz2 (accessed Sept. 19, 2023); 2023 Sub.S.B. No. 1 (as passed by Ohio S., Mar. 1, 2023).
[42] 2023 Sub.S.B. No. 1, at 405 (Section 3301.13(A)).
[43] *Id.*
[44] *Id.* (Section 3301.13(B)).
[45] *Id.* (Section 3301.13(C)).
[46] Sen. Andrew O. Brenner, Ohio S., *Ohio Senate Passes Historic Education Oversight Bill*, (Mar. 1, 2023) (emphasis added), https://tinyurl.com/ycyfeurp.

88. Importantly, the drastic changes that S.B. 1 proposed did *not* carry a substantial budgetary footprint.

89. As the Ohio Legislative Service Commission explained in its Fiscal Note & Local Impact Statement, S.B. 1's "effects on 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 of most of the powers and duties of the State Board of Education and the Superintendent of Public Instruction into DEW *do not alter the scope or operations of current programs*."[47]

90. The Commission went on to explain what those limited expenditures are: 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."[48] It also "creates two deputy director positions to head the new divisions of Primary and Secondary Education and Career-Technical Education within DEW. Total annual payroll costs for each deputy director position may range from $151,000 to $189,000."[49]

91. Hence, out of a total state budget of approximately $191 *billion*,[50] the estimated annual budget implications associated with S.B.1 derive solely from three officials' salaries, totaling approximately $600,000.

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[47] Andrew C. Ephlin, Ohio Legis. Serv. Comm'n, Fiscal Note & Local Impact Statement: S.B. 1, 135th General Assembly 1 (2023) (emphases added), https://tinyurl.com/4uv4mtj9.
[48] *Id.*
[49] *Id.*
[50] *See* 2023 Am.Sub.H.B. No. 33; *see also* Morgan Trau & Ian Cross, *Ohio House, Senate Reach Agreement on $191 Billion Budget, Compromising on Education Initiatives*, Ohio Cap. J. (July 1, 2023), https://tinyurl.com/5daztmsb.

92. Meanwhile, the House's S.B. 1 counterpart, H.B. 12, languished in committee. Though the House held hearings on H.B. 12, the bill was never voted out of committee or considered by the full House.[51]

93. After passing the Senate, on March 7, 2023, S.B. 1 was introduced into the Ohio House.[52]

94. On March 14, 2023, S.B. 1 was referred to the Ohio House Committee on Economic Workforce Development.[53]

95. While it was the subject of several committee hearings, S.B. 1 met the same fate as H.B. 12. It, too, languished in committee and was never passed by the Ohio House:[54]

Bill	Date	Short Title	Action	Chamber / Committee
SB 1	3-14-2023	Revise Education Law and Department duties; rename the Department	Refer to Committee	House Economic and Workforce Development
SB 1	3-7-2023	Revise Education Law and Department duties; rename the Department	Introduced	House
SB 1	3-1-2023	Revise Education Law and Department duties; rename the Department	Passed	Senate
SB 1	3-1-2023	Revise Education Law and Department duties; rename the Department	Reported	Senate Education
SB 1	1-17-2023	Revise Education Law and Department duties; rename the Department	Refer to Committee	Senate Education
SB 1	1-11-2023	Revise Education Law and Department duties; rename the Department	Introduced	Senate

In 2023, the General Assembly appended the education-overhaul legislation to its must-pass biennial budget bill—accomplishing by logrolling what it could not accomplish otherwise.

H.B. 33, the State of Ohio's biennial budget bill for fiscal years 2024-2025, passed the House without the Education Takeover Rider.

96. As S.B. 1 failed to find enough support to be enacted into law, the General Assembly was in the process of moving its biennial budget bill for fiscal years 2024-2025 through both chambers.

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[51] *See* The Ohio Legislature, *House Bill 12 Status,* https://tinyurl.com/mwyt5yrp (accessed Sept. 19, 2023).
[52] Ohio H.R. J. 161 (Mar. 7, 2023), https://tinyurl.com/yxhtpnaf.
[53] Ohio H.R. J. 173 (Mar. 14, 2023), https://tinyurl.com/3fhd4dd4.
[54] The Ohio Legislature, *Senate Bill 1 Status*, https://tinyurl.com/ye2x6vz2 (accessed Sept. 19, 2023).

97. The purpose of the state's biennial appropriations bill is to "provide[] funding for most state agencies, the legislature, and the judiciary."[55] It is the mechanism through which the General Assembly "allocate[s] the state's financial resources among the thousands of competing spending priorities."[56]

98. Indeed, in the absence of specific appropriations made by the General Assembly, state money cannot be spent.[57] The General Assembly must adopt each new biennial budget before its spending authority under the existing budget expires.[58] Therefore, biennial state budget bills are widely viewed as "must-pass" legislation.

99. H.B. 33, the state's biennial budget bill for fiscal years 2024-2025, was introduced in the House on February 15, 2023.[59]

100. At no point in the months of H.B. 33's progression through the House did it include the language of S.B. 1, including Ohio Revised Code Section 3301.13, or any other provisions upending the state's education governance—not when the bill was introduced;[60] not when it was reported by the House Finance Committee;[61] not while it was debated in the *eleven* hearings that the House held on the bill;[62] and not when the House voted to approve the bill.[63]

101. On April 26, 2023, the Ohio House passed H.B. 33.

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[55] Ohio Leg. Serv. Comm'n, A Guidebook for Ohio Legislators, Ch.8: The Ohio Budget Process 82 (2023), https://tinyurl.com/54e6ecz7.
[56] *Id.*
[57] Article II, Section 22 of the Ohio Constitution provides: "No money shall be drawn from the state treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."
[58] *See id.*
[59] Ohio H.R. J. 96–101 (Feb. 15, 2023), https://tinyurl.com/yck64ub9.
[60] *See* 2023 H.B. No. 33 (as introduced in Ohio H.R., Feb. 15, 2023).
[61] *See* 2023 Sub.H.B. No. 33 (as reported by Ohio H. Fin. Subcomm. Transp., Apr 26, 2023).
[62] *See* The Ohio Legislature, *House Bill 33 Committee Activity*, https://tinyurl.com/yz2mrwae (accessed Sept. 19, 2023).
[63] *See* 2023 Sub.H.B. No. 33 (as passed by Ohio H.R., Apr. 26, 2023).

102. The version of H.B. 33 that the Ohio House approved on April 26, 2023, did *not* include the Education Takeover Rider and Ohio Revised Code Section 3301.13.[64]

The Education Takeover Rider was shoehorned into the State of Ohio's must-pass biennial budget bill at the eleventh hour.

103. On April 27, 2023, H.B. 33 was introduced into the Ohio Senate.[65]

104. The Senate thereafter shoehorned the Education Takeover Rider—which, as described above, had stalled as standalone legislation mere months before—into the state's must-pass biennial budget bill, virtually ensuring that the rider would become law.

105. The Senate passed its version of H.B. 33, containing the Education Takeover Rider, and Ohio Revised Code Section 3301.13, on June 15, 2023.[66]

106. On June 21, 2023, the Ohio House refused to concur in the Ohio Senate's amendments to H.B. 33, including the Education Takeover Rider and Ohio Revised Code Section 3301.13.[67]

107. The Ohio Senate nevertheless insisted on its amendments to H.B. 33,[68] and the General Assembly created a committee of conference to reconcile the House and Senate versions of the bill in the dwindling days of the fiscal year.[69]

108. The Conference Committee on H.B. 33 held its first meeting on June 22, 2023, at 9:00 AM. No amendment to the bill was considered during this meeting. Neither individual who

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[64] *Id.*
[65] *See* Ohio S. J. 290–98 (Apr. 27, 2023), https://tinyurl.com/def994y2.
[66] 2023 Sub.H.B. No. 33 (as passed by Ohio S., June 15, 2023); Ohio S. J. 384–96 (June 15, 2023), https://tinyurl.com/46cjhzye.
[67] Ohio H.R. J. 497–98 (June 21, 2023), https://tinyurl.com/5cuj2ram.
[68] Ohio S. J. 412 (June 21, 2023), https://tinyurl.com/5ep8kkjh.
[69] *Id.*

testified in front of the committee mentioned or discussed the Education Takeover Rider, and the meeting adjourned at 9:20 AM.[70]

109. The Conference Committee on H.B. 33 met again on June 28, 2023. During this meeting, the Conference Committee considered numerous amendments, including the Education Takeover Rider through which the Senate had shoehorned S.B. 1 (including Ohio Revised Code Section 3301.13) into H.B. 33.[71]

110. The Conference Committee Worksheet called this amendment the "Transfer of state K-12 education governance."[72]

111. The Conference Committee adopted the Senate's language on this issue, and it was incorporated into the version of H.B. 33 reported by committee.[73]

112. On June 30, 2023—the last day of the fiscal year—H.B. 33, as passed by the Ohio General Assembly, was read *only one time*.[74]

113. Later that day, H.B. 33, with the inclusion of the Education Takeover Rider, passed the General Assembly.[75]

114. Importantly, H.B. 33, as passed, was never read three times, as required by the Ohio Constitution.

115. Governor DeWine signed H.B. 33, with the Education Takeover Rider, into law on July 4, 2023.

116. While parts of H.B. 33 were immediately effective, the Education Takeover Rider will not go into effect until October 3, 2023.

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[70] Ohio H.R., Conf. Comm. on H.B. 33, Committee Minutes (June 22, 2023), https://tinyurl.com/3zskcv3s.
[71] Ohio H.R., Conference Committee on H.B. 33 Committee Meeting—June 28, 2023 (accessed Sept. 19, 2023), https://tinyurl.com/bdheddcp.
[72] Ohio H.R., Conf. Comm. on H.B. 33, Conference Committee Worksheet 7 (2023), https://tinyurl.com/yb9msx3s.
[73] 2023 Am.Sub.H.B. No. 33 (as reported by Comm. of Conf., June 30, 2023).
[74] *See* Ohio H.R. J. 548 (June 30, 2023), https://tinyurl.com/ycyzfj2p.
[75] *See* 2023 Am.Sub.H.B. No. 33 (as enrolled, June 30, 2023).

The Education Takeover Rider strips the Board of virtually all of its authority to oversee the Ohio education system and strips Plaintiffs of most of the duties and responsibilities they were elected to carry out.

117. H.B. 33 unconstitutionally divests the Board of its role supervising education in Ohio, turning the Board into a shell of an office.

118. The unconstitutional enactment of the Education Takeover Rider transfers almost all general supervisory functions to the new Department of Education and Workforce under control of the Governor.

119. The as-passed version of H.B. 33 contains Ohio Revised Code Section 3301.13, which, as noted above: (1) creates the DEW, R.C. § 3301.13(A); states that the DEW "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," *id.*; mandates that the Director appoint two deputy directors, R.C. § 3301.13(B); and transfers "[a]ll powers and duties regarding primary, secondary, special, and career-technical education granted to the state board, the state superintendent, or the former department of education, as prescribed by law in effect prior to the effective date of this section , except those prescribed for the state board of education as described in section 3301.111 of the Revised Code" to the Director, R.C. § 3301.13(C).

120. Significantly, the Education Takeover Rider did not create a new body separate and apart from the Board. Instead, it unconstitutionally hollowed out a constitutionally mandated, independent body by transferring all of its core responsibilities to an agency controlled by the Governor. The legislation removed the Board altogether from Section 3301.07, the statute that had governed its duties for 70 years, by simply striking the words "state board of education" and replacing them with "department of education and workforce" throughout.

121. For example, Ohio Revised Code Section 3301.07 states: "The state board of education shall exercise under the acts of the general assembly general supervision of the system

of public education in the state." The Education Takeover Rider struck the words "state board of education" and replaced them with "director of education and workforce."[76] The bill made identical challenges throughout the Ohio Revised Code, simply replacing the "state board of education" with the "director of education and workforce" in hundreds of provisions spelling out how the Board carries out its constitutionally assigned responsibility.

122. The bill also strips the Superintendent of Public Instruction of his or her duties and responsibilities and reassigns them to the Director of the Department of Workforce and Education.[77]

123. For example, it takes the following duties and responsibilities, which belonged to the Superintendent of Public Instruction, 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;"[78]
- "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;"[79]
- "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."[80]
- "Conduct[ing] such studies and research projects as are necessary or desirable for the improvement of public school education in Ohio. . . [which] may include

[76] *See* 2023 Am.Sub.H.B. No. 33, at 4379 (Section 3301.7).
[77] *See id.* at 4438 (Section 3301.12).
[78] *Id.* at 4438 (Section 3301.12(A)(1)).
[79] *Id.* at 4439 (Section 3301.12(A)(2)).
[80] *Id.*

analysis of data contained in the education management information system established under section 3301.0714 of the Revised Code."[81]

- "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;"[82]
- "Supervis[ing] all agencies over which the exercises administrative control, including schools for education of persons with disabilities."[83]

124. 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 Department of Education and Workforce, including:

- Adopting minimum education standards for elementary and secondary schools, and minimum operating standards for school districts;
- Issuing and revoking state charters to school districts, school buildings operated by districts, and nonpublic schools that elect to seek a charter;
- Developing state academic standards and model curricula;
- Establishing the statewide program for assessing student achievement through standardized assessments;
- Establishing the state report card system for school districts, community schools, STEM schools, and college-preparatory boarding schools;
- Administering state scholarship programs;
- Performing prescribed functions regarding the creation and operation [of] vocational school districts;
- Providing oversight to, and performing functions regarding, community schools, community school sponsors, and STEM schools; and
- Calculating and distributing all foundation funding payments.[84]

[81] *Id.* (Section 3301.12(A)(3)).
[82] *Id.* (Section 3301.12(A)(4)).
[83] *Id.* (Section 3301.12(A)(5)).
[84] Amanda Goodman & Samuel Duling, Ohio Legis. Serv. Comm'n, Bill Analysis: H.B. 33, 135th General Assembly 199–200 (2023), https://tinyurl.com/2hntajb6.

125. H.B. 33 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."[85]

126. In short, the bill strips the Board's democratically elected members of their core and constitutionally intended duties and responsibilities for the oversight and governance of Ohio's public education system.

127. If the Education Takeover Rider in H.B. 33 goes into effect, Plaintiffs will thus be unable to exercise substantive authority and conduct the duties necessary to direct Ohio's educational governance and education policy.

128. If the Education Takeover Rider in H.B. 33 goes into effect, Plaintiffs also will be unable to adequately represent the interests of their constituents, as they were elected to do.

129. As described above, Plaintiffs each represent approximately one million Ohio residents and dozens of local school districts. Plaintiffs were elected—each by hundreds of thousands of voters—to be a voice for local educational interests at the state level.

130. As described above, Plaintiffs have dedicated much of their time to hearing from and responding to constituents—local school officials, teachers, parents, and students—on issues related to education policy.

131. In service and on behalf of their constituents, Plaintiffs have been deeply involved in developing standards, writing regulations, and overseeing almost all state-level education issues.

132. Plaintiffs have conducted their work publicly, in open meetings, and have sought the input of their constituents in their decision-making.

[85] *Id.* at 200.

133. Now, with the implementation of the Education Takeover Rider, policymaking and other core education-governance activities will be conducted without the integral participation and leadership of a body that regularly engages with local constituents.

134. Decisions will no longer be reached by a group of elected officials who operate in an open, transparent manner.

135. As one Ohio legislator recently acknowledged, under the terms of the Education Takeover Rider, "[c]hanges in the law no longer require public hearings for testimony on rules."[86] Instead, "the responsibility to create, review, and authorize new and existing rules now falls to an unelected, bureaucratic agency process."[87]

136. Due to the passage of H.B. 33, Plaintiffs have been left with a fraction of the responsibility that their offices have held for almost 70 years.

137. This point is underscored by comparing the agenda for the Board's September 2023 meeting against an agenda from the same time a year ago.[88] Even now, when the Education Takeover Rider has not yet taken effect, the impact of its passage is clear. Where Board members would ordinarily meet in committees to exchange information and discuss new rules and regulations, for example, they no longer will, because the committees are on the precipice of being disbanded.

138. The supposed responsibilities that have been left to the Board are perfunctory and reside on the periphery of education governance. For example, even though the Board will retain responsibilities related to educator licensing, the substantive licensing operations belong to the

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[86] Susan Tebben, *Ohio GOP Effort Introduced to Make All State Board of Education Positions Elected and Partisan*, Ohio Cap. J. (Sept. 13, 2023), https://tinyurl.com/mpwsbmpv.
[87] *Id.*
[88] *Compare* Ohio State Bd. of Educ., State Board of Education Meeting Agenda (Sept. 2022), https://tinyurl.com/3ufe6w6d, *with* Ohio State Bd. of Educ., State Board of Education Meeting Agenda (Sept. 2023), https://tinyurl.com/2p8s38tw.

Department of Education; the Board members' roles are reduced to approving, or not approving, licensure determinations. Other remaining technical responsibilities pertain to matters that arise only a handful of times per year (e.g., managing transfer disputes)—if not even less frequently (hiring a superintendent).

139. In addition, parents like Ms. Newman and Dr. Collins have lost their voice and their right to elect representation to the Board to oversee and fight for their children's public-school education.

140. The new cabinet-level Department of Education and Workforce has no direct accountability to the Districts that Board members represent. Because it is an appointed, and not an elected, position, the Director of the Department of Education and Workforce also has no direct accountability to the Districts that Board members represent or to the voter-parents, like Dr. Collins and Ms. Newman, in those Districts. Voting for the Governor (who in turn appoints the leadership of the Department of Education and Workforce) is hardly an equivalent token of representation.

141. Also gone are requirements for the body responsible for rulemaking and policymaking to hold open meetings at which the work of education governance is conducted.

142. Parents and students have lost the advocates that were once their best chance of impacting education policy at the state level. A parent concerned about the state's education standards no longer has an elected official to whom to turn. A family that seeks to offer its feedback on state educational policies no longer has a local representative available for such discussions.

143. What's more, parents and students no longer have a representative available to obtain answers to questions or access to educational resources crucial to the children's success. To be sure, the elected Board members will remain on the Board. Yet, even as they continue to hold office, they are virtually powerless to actually solve the problems that their constituents raise.

144. Should the Education Takeover Rider go into effect, parents and students will be left with little recourse—whether at the ballot box or otherwise—to voice their support for or opposition to developments in education policy in the State of Ohio.

145. The Board was constitutionally created to avoid these ills and to ensure that oversight of education policymaking and rulemaking rests in the hands of an independent body that is accountable to the public.

146. The Board's elected members have strived to make education governance responsive to their constituents' needs, transparent, and accountable—all in service of providing Ohio's children with high-quality public education. They no longer have the opportunity to do so, at great cost to the Board members themselves, to school officials, and, perhaps most crucially, to the parents and students that the system is meant to serve.

CLAIMS FOR RELIEF

Count I: Declaratory judgment for violation of Article II, Section 15(D) of the Ohio Constitution

147. Plaintiffs incorporate the foregoing allegations as if they have been rewritten and re-alleged herein.

148. Article II, Section 15(D) of the Ohio Constitution sets forth the single-subject rule, which states: "No bill shall contain more than one subject, which shall be clearly expressed in its title."

149. The single-subject rule prevents logrolling and extraneous matters from being injected into a bill by disallowing amendments not germane to the subject under consideration.

150. S.B. 1, the text of which forms the basis of the Education Takeover Rider, was introduced into the Ohio Senate in February 2023.

151. The Ohio Legislative Service Commission noted at the time that its "effects on state operating expenditures appear to be limited."[89] It found that S.B. 1 would, at most, have a $632,000 impact annually on the State of Ohio,[90] which is *de minimis* compared to the nearly $200 billion two-year budget.

152. Although S.B. 1 was ultimately passed by the Ohio Senate, it failed to garner enough support in the Ohio House to become law.

153. There is no common purpose or relationship between the subject matter of Education Takeover Rider—which strips the Board and the Ohio Superintendent of their power and reassigns it to a director who will be appointed by Governor DeWine—and the subject matter of H.B. 33—which addresses funding and other fiscal concerns for the State of Ohio.

154. Despite the complete and total disunity of subject matter between the Education Takeover Rider and H.B. 33, the Education Takeover Rider was slipped into H.B. 33, Ohio's must-pass biennial budget bill, mere days before H.B. 33's passage, thereby violating the Ohio Constitution's one-subject rule.

155. A real and justiciable controversy exists among Plaintiffs, on one hand, and Defendants, on the other, regarding whether the Reassignment Rider unconstitutionally violates the one-subject rule.

156. Speedy relief from this Court is necessary to preserve the rights of the parties.

157. Because the Education Takeover Rider violates the single-subject rule, it should be severed from H.B. 33, and stricken as void, unenforceable, and/or unconstitutional.

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[89] Ohio Legis. Serv. Comm'n, Fiscal Note & Local Impact Statement: S.B. 1, *supra* note 47, at 1.
[90] *See id.*

Count II: Declaratory judgment for violation of Article II, Section 15(C) of the Ohio Constitution

158. Plaintiffs incorporate the foregoing allegations as if they have been rewritten and re-alleged herein.

159. Article II, Section 15(C) of the Ohio Constitution sets forth the three-reading rule, which states: "Every bill shall be considered by each house on three different days . . . and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house. No bill may be passed until the bill has been reproduced and distributed to members of the house in which it is pending and every amendment been made available upon a member's request."

160. The Education Takeover Rider was not considered by each house of Ohio's General Assembly on three different days.

161. A real and justiciable controversy exists among Plaintiffs, on one hand, and Defendants, on the other, regarding whether the Education Takeover Rider unconstitutionally violates the three-reading rule.

162. Speedy relief from this Court is necessary to preserve the rights of the parties.

163. Because the Education Takeover Rider violates the three-reading rule, it should be severed from H.B. 33, and stricken as void, unenforceable, and/or unconstitutional.

Count III: Declaratory judgment for violation of Article VI, Section 4 of the Ohio Constitution

164. Plaintiffs incorporate the foregoing allegations as if they have been rewritten and re-alleged herein.

165. The Ohio Constitution mandates the existence of a State Board of Education.

166. Article VI, Section 4 of the Ohio Constitution provides: "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."

167. The Education Takeover Rider in H.B. 33 "[t]ransfer[red] most of the powers and duties of the State Board of Education and the Superintendent of Public Instruction" to the newly created Department of Education and Workforce, whose Director of Education and Workforce will be appointed by the Governor.[91]

168. The Education Takeover Rider in H.B. 33 effectively strips the Board of its substantive powers and responsibilities.[92]

169. Hence, when the Education Takeover Rider in H.B. 33 takes effect, the Board will continue to exist on paper as a legal entity, but it will functionally cease to exist in effect as a body responsible for education governance in the State of Ohio.

170. The General Assembly cannot dismantle via legislation what the people of Ohio established via constitutional amendment.

171. The Education Takeover Rider in H.B. 33 constructively eliminates the Board, in violation of Article VI, Section 4 of the Ohio Constitution.

172. A real and justiciable controversy exists among Plaintiffs, on one hand, and Defendants, on the other, regarding whether the Education Takeover Rider unconstitutionally violates Article VI, Section 4 of the Ohio Constitution.

173. Speedy relief from this Court is necessary to preserve the rights of the parties.

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[91] Ohio Legis. Serv. Comm'n, Bill Analysis: H.B. 33, *supra* note 84, at 181.
[92] *See generally* R.C. § 3301.07.

174. Because the Education Takeover Rider violates Article VI, Section 4 of the Ohio Constitution, it should be severed from H.B. 33, and stricken as void, unenforceable, and/or unconstitutional.

Count IV: Temporary, preliminary, and permanent injunctive relief pursuant to Ohio Rule of Civil Procedure 65 and Ohio Revised Code Sections 2727, *et seq.*

175. Plaintiffs incorporate the foregoing allegations as if they have been rewritten and re-alleged herein.

176. Because the Education Takeover Rider is unconstitutional for the reasons identified above, this Court should temporarily, preliminary, and permanently enjoin Defendants from enforcing it, including by prohibiting Governor DeWine from appointing a Director and Deputy Directors of the Ohio Department of Education and Workforce.

177. The Education Takeover Rider strips Plaintiffs, as Board members, of their duties and responsibilities, and gives them to a Director and Deputy Directors of the Ohio Department of Education and Workforce, thereby irreparably harming Plaintiffs.

178. The Education Takeover Rider also strips Ms. Newman and Dr. Collins, as parents of children who attend Ohio public schools, of their voices in their children's education and their rights to vote for and elect Board members who are authorized to perform substantive duties and responsibilities related to education policy for the betterment of their children's education.

179. Thus, absent temporary, preliminary, and permanent injunctive relief preventing the Education Takeover Rider from going into effect, Plaintiffs will be irreparably harmed.

180. The threatened injury to Plaintiffs outweighs the harm that would befall Defendants if they were temporarily, preliminary, and permanently enjoined from enforcing the Education Takeover Rider.

181. Temporary, preliminary, and permanent injunctive relief is not adverse to the public's interest because the public has an interest in ensuring that all laws passed by the Ohio General Assembly are valid, enforceable, and constitutional.

182. And, for the reasons explained above, Plaintiffs are likely to succeed on their constitutional challenge to the Education Takeover Rider.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court issue the following relief:

A. With regard to Count I, Plaintiffs respectfully request that this Court declare that the Education Takeover Rider is unconstitutional and void because it violates the one-subject rule, as set forth in Article II, Section 15(D) of the Ohio Constitution, and that this Court sever the unconstitutional and void Education Takeover Rider from H.B. 33, and strike it;

B. With regard to Count II, Plaintiffs respectfully request that this Court declare that the Education Takeover Rider is unconstitutional and void because it violates the three-reading rule, as set forth in Article II, Section 15(C) of the Ohio Constitution, and that this Court sever the unconstitutional and void Education Takeover Rider from H.B. 33, and strike it;

C. With regard to Count III, Plaintiffs respectfully request that this Court declare that the Education Takeover Rider is unconstitutional and void because it statutorily and constructively eliminates the Board, which was created by a constitutional amendment, *see* Article VI, Section 4 of the Ohio Constitution, and that this Court sever the unconstitutional and void Education Takeover Rider from H.B. 33, and strike it;

D. With regard to Count IV, Plaintiffs respectfully request that this Court temporarily, preliminary, and permanently enjoin Defendants from enforcing the Education

Takeover Rider, including by appointing a director and co-directors of the newly created Department of Education and Workforce; and,

E. That this Court award Plaintiffs the fees and costs that they incurred in filing this suit, including pursuant to Ohio Rev. Code § 2335.39;

F. That this Court grant Plaintiffs any and all other relief that it deems just and proper.

Respectfully submitted,

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Dated: September 19, 2023

VERIFICATION

STATE OF OHIO)
)
COUNTY OF Lucas)

I, Teresa Fedor, having been duly sworn, state that I have read the preceding Verified Complaint for Declaratory Judgment and Temporary, Preliminary, and Permanent Injunctive Relief, and further state that the allegations set forth therein are, to the best of my knowledge and belief, true and accurate.

Teresa Fedor

SWORN TO BEFORE ME, and subscribed in my presence on this 15 day of September, 2023.

Notary Public

JOLENE KRAJICEK
Notary Public, State of Ohio
My Commission Expires
February 17, 2025

VERIFICATION

STATE OF OHIO)
)
COUNTY OF Ukarren)

I, Kathleen Hofmann, having been duly sworn, state that I have read the preceding Verified Complaint for Declaratory Judgment and Temporary, Preliminary, and Permanent Injunctive Relief, and further state that the allegations set forth therein are, to the best of my knowledge and belief, true and accurate.

NOTARY PUBLIC STATE OF OHIO

THOMAS WINELAND
Notary Public
State of Ohio
My Comm. Expires
February 10, 2026

Kathleen Hofmann

SWORN TO BEFORE ME, and subscribed in my presence on this 5th day of September, 2023.

Notary Public

VERIFICATION

STATE OF OHIO)
)
COUNTY OF Medina)

Brittney Giles
Notary Public, State of Ohio
My Commission Expires:
8/23/2026

I, Christina Collins, having been duly sworn, state that I have read the preceding Verified Complaint for Declaratory Judgment and Temporary, Preliminary, and Permanent Injunctive Relief, and further state that the allegations set forth therein are, to the best of my knowledge and belief, true and accurate.

Christina Collins

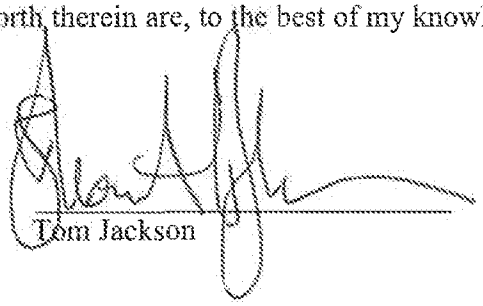
SWORN TO BEFORE ME, and subscribed in my presence on this __ day of September, 2023.

Notary Public

VERIFICATION

STATE OF OHIO)
)
COUNTY OF Cuyahoga)

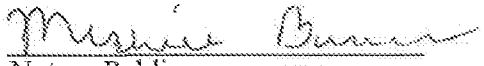
I, Tom Jackson, having been duly sworn, state that I have read the preceding Verified Complaint for Declaratory Judgment and Temporary, Preliminary, and Permanent Injunctive Relief, and further state that the allegations set forth therein are, to the best of my knowledge and belief, true and accurate.



Tom Jackson

SWORN TO BEFORE ME, and subscribed in my presence on this 15th day of September, 2023.

MICHELLE BURKE
Notary Public
State of Ohio
My Comm. Expires
May 23, 2027



Notary Public

VERIFICATION

STATE OF OHIO)
)
COUNTY OF Franklin)

I, Antoinette Miranda, having been duly sworn, state that I have read the preceding Verified Complaint for Declaratory Judgment and Temporary, Preliminary, and Permanent Injunctive Relief, and further state that the allegations set forth therein are, to the best of my knowledge and belief, true and accurate.

Antoinette Miranda
Antoinette Miranda

SWORN TO BEFORE ME, and subscribed in my presence on this 15th day of September, 2023.

Tracy L. Davis
Notary Public

Tracy L. Davis
Notary Public, State of Ohio
My Commission Expires 08-25-2028

VERIFICATION

STATE OF OHIO)
)
COUNTY OF LICKING)

I, Michelle Newman, having been duly sworn, state that I have read the preceding Verified Complaint for Declaratory Judgment and Temporary, Preliminary, and Permanent Injunctive Relief, and further state that the allegations set forth therein are, to the best of my knowledge and belief, true and accurate.

Michelle Newman

SWORN TO BEFORE ME, and subscribed in my presence on this 16th day of September, 2023.

GINNA L PETERSON
Notary Public
State of Ohio
My Comm. Expires
February 10, 2025

Notary Public

VERIFICATION

STATE OF OHIO)
)
COUNT OF Cuyahoga)

I, Meryl Johnson, having been duly sworn, state that I have read the preceding Verified Complaint for Declaratory Judgment and Temporary, Preliminary, and Permanent Injunctive Relief, and further state that the allegations set forth therein are, to the best of my knowledge and belief, true and accurate.

Meryl Johnson

SWORN TO BEFORE ME, and subscribed in my presence on this 15 day of September, 2023.

Notary Public

ADAM TYLER
Notary Public, State of Ohio
Commission No. 2016-RE-736873
My Commission Expires
May 19, 2024