

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

CHRISTINA COLLINS, *et al.*,

Plaintiffs,

VS.

MIKE DEWINE., *et al.*,

Defendants.

) CASE NO. 23CV-6611

) JUDGE KAREN HELD PHIPPS

) **ORDER GRANTING PLAINTIFFS'**

) **MOTION FOR TEMPORARY**

) **RESTRAINING ORDER**

This matter came before the Court on September 21, 2023 pursuant to Plaintiffs’—Christina Collins, Teresa Fedor, Kathleen Hofmann, Tom Jackson, Meryl Johnson, Antoinette Miranda, and Michelle Newman (collectively, “Plaintiffs”)—Motion for Temporary and Preliminary Injunctive Relief pursuant to Ohio Rule of Civil Procedure 65 and Ohio Revised Code Sections 2727, *et seq.* (the “Motion”). Having considered the parties’ submissions and legal arguments, the allegations in Plaintiffs’ Verified Complaint for Declaratory Judgment and Temporary, Preliminary, and Permanent Injunctive Relief (the “Complaint”), and the arguments presented to the Court during the hearing, this Court concludes that a temporary restraining order is warranted, and **GRANTS** Plaintiffs’ Motion in part.

On September 19, 2023, Plaintiffs filed a Complaint for Declaratory Judgment and Temporary, Preliminary, and Permanent Injunctive Relief. Plaintiffs seek to prevent certain provisions of H.B. 33 from going into effect. Specifically, Plaintiffs seek to prevent enforcement of R.C. 3301.13, R.C. 3301.111, R.C. 3301.12, and R.C. 3301.07 from going into effect on October 3, 2023. The cited provisions were part of H.B. 33, the biennial budget bill, passed by both the House and Senate on June 30, 2023 and signed by Defendant Governor Mike DeWine on July 4, 2023. The provisions contained therein and relevant to Plaintiffs' Complaint are set to become effective on October 3, 2023.

To establish entitlement to a temporary restraining order, a party must demonstrate: 1) a strong or substantial likelihood or probability of success on the merits; 2) imminent threat of irreparable harm to the plaintiff if the injunction is not granted; 3) the absence of harm to others if the injunction is granted; and 4) that the public interest would be served by the issuance of an injunction. *Corbett v. Ohio Building Authority*, 86 Ohio App.3d 44, 49 (10th Dist.1993). A party seeking injunctive relief must establish these elements by clear and convincing proof. *Hydrofarm, Inc. v. Orendorff*, 180 Ohio App.3d 339, 2008-Ohio-6819, ¶18 (10th Dist.).

Plaintiffs have raised three arguments in support of their Motion for a Temporary Restraining Order. The Court finds it necessary to address only the first of the three arguments.

Plaintiffs' first argument is that inclusion of the provisions creating the Department of Education and Workforce as part of H.B. 33 violates the single-subject rule contained in Article II, Section 15(D) of the Ohio Constitution which provides, in relevant part: "No bill shall contain more than one subject, which shall be clearly expressed in its title."

"This provision exists to prevent the General Assembly from engaging in 'logrolling.'" *Arbino v. Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶77 citing *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 464 N.E.2d 153 (1984). "This practice occurs when legislators combine a disharmonious group of proposals in a single bill so that they may consolidate votes and pass provisions that may not have been acceptable to a majority on their own merits." *Id.* "The one-subject provision attacks logrolling by disallowing unnatural combinations of provisions in acts, i.e., those dealing with more than one subject, on the theory that the best explanation for the unnatural combination is a tactical one -- logrolling." *Dix*, 11 Ohio St.3d at 143.

The Court recognizes that it is to "accord appropriate deference to the General Assembly's law-making function" and liberally construe the term "subject" for purposes of the rule. *State ex rel. Ohio Civ. Serv. Emples. Ass'n v. State*, 146 Ohio St.3d 315, 2016-Ohio-478, ¶16 citing *Dix*.

“The one subject rule does not prohibit a plurality of topics, only a disunity of subjects.” *Ohio Civ. Serv. Emples. Ass’n*, 146 Ohio St.3d at 318 citing *State ex rel. Hinkle v. Franklin Cty. Bd. Of Elections*, 62 Ohio St.3d 1, 580 N.E.2d 767 (1991). “The mere fact that a bill embraces more than one topic is not fatal as long as a common purpose or relationship exists between topics.” *Ohio Civ. Serv. Emples. Ass’n*, 146 Ohio St.3d at 318 citing *Hoover v. Franklin Cty. Bd. of Commrs.*, 19 Ohio St.3d 1, 482 N.E.2d 575 (1985).

However, review of an enactment of the General Assembly is more difficult when it is the biennial budget at issue. Indeed, “[a]pplication of the one-subject rule is complicated when the challenged provision is part of an appropriations bill, which of necessity contains many different provisions.” *State ex rel. Ohio Civil Serv. Employees Assn, Local 11 v. State Empl. Rels. Bd.*, 104 Ohio St. 3d 122, 2004-Ohio-6363, ¶30. This is because “[t]he danger of riders is particularly evident when a bill as important and likely of passage as an appropriations bill is at issue.” *Simmons-Harris v. Goff*, 86 Ohio St. 3d 1, 16, 1999-Ohio-77.

“[W]henever a bill contains more than one subject, this court is permitted to ascertain which subject is primary and which subject is an unrelated add-on.” *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 500, 1999-Ohio-123. Here, as in *Ohio Civ. Serv. Emples. Ass’n*, the Court finds that the primary subject of H.B. 33 is balancing state expenditures against state revenues to ensure continued operation of state programs. The provisions cited by Plaintiffs, R.C. 3301.13, R.C. 3301.111, R.C. 3301.12, and R.C. 3301.07, appear to relate to a different subject.

“[T]he appropriate remedy when a legislative act violates the one-subject rule is generally to sever the offending portions of the act’ to cure the defect and save the portions’ of the act that do relate to a single subject.” *Ohio Civ. Serv. Emples. Ass’n*, 146 Ohio St.3d at 318 citing *Hinkle*, 62 Ohio St.3d at 149.

Here, the Court finds as follows:

1. There is a substantial likelihood that Plaintiffs will prevail on the merits of their claims that inclusion of R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07 as part of H.B. 33 violates the Ohio Constitution's single-subject rule;
2. Plaintiffs have sufficiently alleged that they will suffer irreparable harm if this Court does not enter a temporary restraining order that enjoins the enforcement and implementation of R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07;
3. No third parties will be unjustifiably harmed if Defendants, the State of Ohio and Governor Mike DeWine are enjoined from implementing and effectuating R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07; and
4. Enjoining the implementation of R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07 while the merits of Plaintiffs' challenge are considered serves the public's interest in ensuring that the General Assembly passes, and the Governor enforces, only constitutional legislation.

Based upon the foregoing, Plaintiffs' Motion is **GRANTED IN PART**. It is **ORDERED** that Defendants, as well as their officers, agents, servants, employees, attorneys, and any other persons who are in active concert or participation with any of them, are enjoined from enforcing, implementing, complying with, or acting pursuant to R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07 in any way or manner, including by, without limitation: (1) creating the Department of Education and Workforce, as contemplated by Ohio Revised Code Section 3301.13(A); (2) appointing an individual to act as the director of the department of education and workforce, as contemplated by Ohio Revised Code Section 3301.13(A); and (3) transferring all of the Board's powers and duties regarding primary, secondary, special, and career-technical education to the director of the department of workforce and education, as contemplated by Ohio Revised Code Section 3301.13(C); and it is further **ORDERED** that Plaintiffs are not required to

post a bond pursuant to Ohio Rule of Civil Procedure 65(C) or, alternatively, that bond is set at zero dollars (\$0.00), because Defendants are unlikely to incur costs arising out of this temporary and preliminary injunction, and because the injunction is in the public interest.

By separate entry, this matter will be referred to Magistrate Jennifer Hunt for a hearing on Plaintiffs' request for a preliminary injunction. The hearing will take place on October 2, 2023 at 9:30 a.m. in a courtroom to be determined.

IT IS SO ORDERED.

Electronically signed by:
JUDGE KAREN HELD PHIPPS

Franklin County Court of Common Pleas

Date: 09-21-2023
Case Title: CHRISTINA COLLINS ET AL -VS- STATE OF OHIO ET AL
Case Number: 23CV006611
Type: T R O (TEMPORARY RESTRAINING ORDER) ON

It Is So Ordered.

A handwritten signature in black ink, appearing to read 'K. Held Phipps', is written over a circular, textured stamp. The signature is fluid and cursive.

/s/ Judge Karen Held Phipps

Court Disposition

Case Number: 23CV006611

Case Style: CHRISTINA COLLINS ET AL -VS- STATE OF OHIO ET
AL

Motion Tie Off Information:

1. Motion CMS Document Id: 23CV0066112023-09-2099910000
Document Title: 09-20-2023-MOTION FOR TEMPORARY
RESTRAINING ORDER - PLAINTIFF: CHRISTINA COLLINS
Disposition: MOTION GRANTED IN PART