

Ohio's High Court Upholds the Constitutionality of H.B. 70's Controversial School Takeover Law

By Leighann K. Fink

On May 13, 2020, in a 5-2 split decision, the Supreme Court of Ohio upheld the constitutionality of H.B. 70, and the 131st General Assembly's process in enacting it, in *Youngstown City School Dist. Bd. of Edn. v. State of Ohio*, Slip Opinion No. 2020-Ohio-2903. H.B. 70, among other things, "modified the structure of academic-distress commissions under existing law." *Id.* at ¶ 5. These modifications included the requirement that "a commission must appoint a chief executive officer who has 'complete operational, managerial, and instructional control' over the district," for any district that received an overall "F" on its state report card for three consecutive years. *Id.* Further, a residency requirement was added "for at least one of the members of an academic-distress commission," and it was clarified that "a chief executive officer for a school district appointed by an academic-distress commission would serve at the pleasure of the commission." *Id.* at ¶ 6. The final bill also provided for "the creation of community learning centers," which was H.B. 70's "original focus." *Id.* at ¶ 5. H.B. 70, as amended, passed both the House and Senate, and Governor John Kasich signed the bill into law, which became effective October 15, 2015. *Id.* at ¶ 6-7.

The Youngstown City School District Board of Education, along with AFSCME Ohio Council 8, AFL-CIO; Ohio Education Association; Youngstown Education Association; and Jane Haggerty (known collectively as the "Youngstown School Board") challenged the constitutionality of H.B. 70 by filing motions for declaratory judgment and permanent injunction in the Franklin County Court of Common Pleas. *Id.* at ¶ 8. Specifically, the Youngstown School Board argued that H.B. 70 violated Article VI, Section 3 of the Ohio Constitution providing that a "city school district has the power 'by referendum vote to determine for itself the number of members and the organization of the district board of education,'" and Article II, Section 15(C) of the Ohio Constitution requiring "that every bill 'be considered by each house on three different days,'" known as the "three-consideration rule." *Id.* at ¶ 8, 13. Ultimately, the trial court denied the Youngstown School Board's motions and the Tenth District Court of Appeals affirmed the trial court's ruling, stating that the bills, as introduced and adopted, "shared a common purpose of providing measures to improve underperforming schools," and H.B. 70 "did not give the chief executive officer authority to perform all of the school board's functions." *Id.* at ¶ 11.

The Supreme Court of Ohio accepted the Youngstown School Board's discretionary appeal and, in so doing, considered whether the General Assembly followed the Ohio Constitution's three-consideration rule in its enactment of H.B. 70, and whether the appointment of an unelected chief executive officer, "vested with complete operational, managerial, and instructional control of a school district," usurped the powers of the board of education. *Id.* at ¶ 12. Chief Justice Maureen O'Connor, in the lead opinion, wrote that the General Assembly, in enacting H.B. 70, abided by the Ohio Constitution. Justice O'Connor analyzed the Court's precedent in previous decisions, regarding whether H.B. 70 was "vitaly altered," by the Senate's proposed amendments. *Id.* at ¶ 14-22. The Court concluded that H.B. 70, as introduced and enacted, "continued to relate to the creation of new methods for attempting to improve underperforming schools[.]" *Id.* at ¶ 22. Thus, the Court held that "the amendments did not vitaly alter H.B. 70, despite the addition of significant substantive language to the bill." *Id.* The Court also determined that Article VI, Section 3 of the Ohio Constitution "merely entitles electors to choose the number of members and the organization of the district board of education," but does not limit the General Assembly's ability to "lawfully influence the authority of

school board in any matter of ways, large and small.” *Id.* at ¶ 29. Accordingly, the Court held that, because the Ohio Constitution “does not require that any specific power or authority be vested in the school board,” H.B. 70 is not unconstitutional in this regard. *Id.* at ¶ 30.

The dissenting opinions, authored by Justices Michael P. Donnelly and Melody J. Stewart, highly criticized the conclusion of the majority to uphold the constitutionality of H.B. 70. Justice Donnelly stated, “[i]n an egregious display of constitutional grade inflation, the majority gives passing marks to an act that was not considered three times by either house.” *Id.* at ¶ 57. Further, Justice Stewart wrote, “[t]his decision is a complete abdication of this court’s responsibility as the guardian of the Constitution. *Id.* at ¶ 106.

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