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

DAYTON CITY SCHOOL DISTRICT,
BOARD OF EDUCATION,
Plaintiff,

vs.

STATE OF OHIO, ET AL.,

Defendants.

Case No. 25CVH-08-6780

Judge: YOUNG

Magistrate: Petrucci

MAGISTRATE'S DECISION
DENYING THE MOTION TO CONTINUE AS FILED BY THE DEFENDANTS ON AUGUST 25, 2025
AND
MAGISTRATE'S DECISION
GRANTING DEFENDANTS' MOTION TO EXTEND TIME TO FILE A MEMORANDUM CONTRA AS FILED ON AUGUST 26, 2025
AND
MAGISTRATE'S DECISION GRANTING
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AFTER THE HEARING OF AUGUST 28, 2025

PETRUCCI, Mag.

Pursuant to Civil Rule 53 and Loc. R. 99.02 the above-styled matter was referred to a Magistrate of this Court for a Preliminary Injunction Hearing (TRO having been granted). See *Order of Reference,* filed August 18, 2025. **This matter was recorded by electronic means in Courtroom 7C.**

The parties are Dayton City School District Board of Education, (Plaintiff) and the Defendants State of Ohio, Stephen Dackin, Director of the Ohio Department of Education (Defendants).

Prior to the commencement of the hearing, Defendants attempted to move the hearing to a later date. The Plaintiff contested the Defendants' motion. A Zoom meeting was conducted by the

undersigned on August 27, 2025 to attempt to work out a compromise. When a compromise could not be reached, the undersigned informed the parties that the motion to continue would be denied.

The Defendants had also filed a motion to address their overdue memorandum contra to the Plaintiff's motion for a preliminary injunction. The Defendants missed the deadline by one day and therefore they filed their Motion to Extend Time. That motion was also discussed during the Zoom meeting of August 27, 2025. The parties were informed that the motion would be granted and the undersigned – on the Zoom conference – ordered that the filing be made on the 27th. The Defendants complied and filed their memorandum contra on the 27th. Given the reasons advanced by the Defendants and the minor delay, the undersigned granted the extension.

The hearing commenced with the Plaintiff calling Mr. Walthour, Dr. Lawrance, Ms. Kassoumeh, Ms. Tingle and Ms. Godwin on direct exam. Mr. Johnson's testimony was presented by way of an affidavit submitted into evidence..

At the conclusion of the Plaintiff's case, the parties discussed the pending exhibits submitted by the Plaintiff – Exhibit A - F. The Plaintiff's exhibits were then admitted without objection. The Plaintiff was ordered to upload the admitted exhibits.

Defendants called State Representatives Young and Plummer. The Defendants offered Exhibit 1 that was several emails expressing concern with the RTA hub. They were offered but objected to mainly on hearsay and on proper foundation. The undersigned sustained the objection. The Defendants were instructed to upload the offered exhibit on to the record.

Having reviewed the evidence submitted during the hearing and having applied the required law, this Magistrate hereby renders the following findings of facts and conclusions of law.

FINDING OF FACTS

1. In 2022 the Plaintiff started transporting students by giving students a bus pass to use the

Greater Dayton Regional Transit Authority (RTA).

2. In spring of 2025 the Ohio General Assembly passed Amended Substitute House Bill 96. That Bill amended R.C. 3327.017 that had authorized how to use mass transit as a method of bussing students. The amendment does not go into effect until September 30, 2025.
3. It is undisputed that as currently drafted the law only applies to the Plaintiff.
4. Mr. Walthour testified on behalf of the Plaintiff.
5. Mr. Walthour testified concerning exhibit E, the document that looks at the attendance rate for Dayton secondary/high school attendance.
6. Mr. Walthour testified as to how he made the chart in Exhibit E.
7. Exhibit E only deals with this calendar school year.
8. Dr. Lawrence is the superintendent of the Plaintiff.
9. Dr. Lawrence testified that the Plaintiff educates about 13,000 students.
10. Dr. Lawrence testified that the Plaintiff does not have the capacity to provide 'yellow bus 'service to all of its students.
11. Dr. Lawrence testified that the Plaintiff has provided its security resource officers to provide additional security at Write Stop Plaza.
12. Exhibit A is the amendment in question.
13. Dr. Lawrence is aware of the amendment and how it affected only Dayton.
14. Exhibit A on page 2163 shows a prior change to the law that did not specifically address Dayton.
15. Exhibit B was then addressed by Dr. Lawrence where Dayton is in fact targeted by using its population.

16. Dr. Lawrence identified Exhibit C which was the census showing how Montgomery county falls within the statutory amount.
17. Dr. Lawrence testified that it currently cost $60 to $80 per month for the RTA vouchers.
18. Dr. Lawrence testified that should the law keep the Plaintiff from providing the vouchers, it would negatively influence attendance.
19. Dr. Lawrence testified that the loss of attendance would reduce the student's overall outcome.
20. Dr. Lawrence testified that no new RTA pass has been purchased but old ones are currently being passed out.
21. Dr. Lawrence testified to Exhibit D. It is a resolution recently passed by the Plaintiff on August 19, 2025. Dr. Lawrence testified that this resolution should help keep the students safe.
22. Dr. Lawrence testified the second larger chart on Exhibit E shows the increase in attendance when the RTA passes were available this year.
23. Dr. Lawrence testified that Plaintiff has no control over the RTA.
24. Dr. Lawrence testified that the central hub was at another location in the past and the RTA moved it under similar complaints to its current location.
25. Rep. Young testified that he was aware of the bill and he had personal knowledge of some of the discussion that led to the change in the law.
26. Rep. Young used the shooting at the 'hub' as an incident that triggered his work on the language of the law.
27. Rep. Young stated that 'something had to be done'.
28. Rep. Young testified that the City and the County do not work well together.

29. Rep. Young acknowledged that bus drivers – the lack thereof – is a problem all over Ohio.
30. Rep. Plummer admitted that the language adopted was directed at the Dayton hub issue.
31. Rep. Plummer testified that several business owners wanted the area fixed or they would relocate.
32. Rep. Plummer testified that crime has been going on for 30 years in that area.
33. Ms. Kassoumeh was called to establish that she has high school students that use the bussing programing.
34. Ms. Kassoumeh is a single mother and she would have to go part time at her job in order to take her kids to school.
35. Ms. Kassoumeh knows that her children's attendance would suffer.
36. Ms. Tingle testified that she has three children in the school system from 7th to 12th grade.
37. Ms. Tingle's plan was to use the RTA vouchers to get her children to school. Without the passes she would not be able to get her children back and forth to school.
38. Ms. Tingle testified that her children have been on time now using the RTA program and that they would not be on time if she had to provide the transportation.
39. Ms. Godwen testified that she also has children in high school.
40. Ms. Godwen testified that she was going to use the RTA to get her child to school.
41. Ms. Godwen testified that she will have to try and figure out a plan should the RTA not be allowed.
42. Ms. Godwen testified that loss of the RTA would be a great burden on her family.
43. Mr. Johnson testified by way of Exhibit F – his affidavit. His testimony was consistent with that of Ms. Godwen, Ms. Tingle and Ms. Kassoumeh.

CONCLUSIONS OF LAW

Within the Defendants Memorandum Contra, they claimed that the Plaintiff does not have the capacity to sue and that the Plaintiff does not have standing. Those issues must be addressed first.

Defendants asserted that the Plaintiff's lawsuit is outside of the Plaintiff's statutory authority. The Defendants raised the following point of law:

> "Entities created by statute are "necessarily limited to such powers as are clearly and expressly granted by the statute."" *State ex rel. Clarke v. Cook*, 103 Ohio St. 465 at 467 (1921) (Defendants' Memo Contra at 4)

The Defendants claimed that the language of R.C. 3313.17 does not vest the Plaintiff with the right to contest this issue. R.C. 3313.17 reads as follows:

> The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property.

Though the Defendants advanced cases where school boards have been found to have exceeded their authority, the Defendants did not advance a case on point.

The Defendants relied on *Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn. of Ohio*, 2016-Ohio-2806 at ¶40 wherein the Supreme Court stated:

> Our decision in *Avon Lake City School Dist. v. Limbach*, 35 Ohio St.3d 118, 518 N.E.2d 1190 (1988), provides strong support for determining that political subdivisions do not have rights under Article II, Section 28. In that case, two school districts challenged the tax commissioner's valuation of personal property of public utility companies. The Board of Tax Appeals dismissed the appeals, ruling that the school districts did not have standing to file an appeal. We were presented with the issue whether the dismissals by the Board of Tax Appeals deprived the school districts of their right to due process of law. We reviewed cases that "conclude[d] that a political subdivision may not invoke the protection provided by the Constitution against its own state and is prevented from attacking the constitutionality of state legislation on the grounds that its own rights had

> been impaired." Id. at 121-122. "[P]ersuaded that a school district is a political subdivision created by the General Assembly and that it may not assert any constitutional protections regarding due course of law or due process of law against the state, its creator," we concluded that the school districts could not "assert these protections against the state by asking [us] to declare the statute unconstitutional for these reasons." Id. at 122.

That case dealt with the question of whether or not the legislature had the constitutional authority to adjust local school funding retrospectively. Id., 2016-Ohio-2806 at ¶1. The case turned on the application of the retroactivity provision of the constitution to a public corporation created by statute. The court found that a public corporation did not enjoy the same protection as an individual or a private corporation. The court then held:

> Accordingly, we hold that the Retroactivity Clause, Article II, Section 28 of the Ohio Constitution, does not protect political subdivisions, like school districts, that are created by the state to carry out its governmental functions. Therefore, the legislature was able to authorize the department to adjust local school funding calculations and to retroactively immunize the department from liability for any legal claim of reimbursement by a school district for a reduction of school-foundation funding, without violating the Retroactivity Clause. Id. 2016-Ohio-2806 at ¶46

Clearly, the issues are different in this case.

Defendants also relied upon *Avon City School Dist. v. Limbach*, (1988) 35 Ohio St.3d 118. However, that case dealt with R.C. 5717.02. *Avon* noted that a litigant – no matter whom – has no inherent right to appeal a tax determination – only a statutory right. *Avon* is not on point.

Defendants also asserted that *Cincinnati City Sch. Dist. Bd. of Educ. v. Conners,* 132 Ohio St. 3d 468, 2012-Ohio-2447 supported their argument that the Plaintiff lacked the capacity to bring this case. Please note the following from the *syllabus* of *Cincinnati*:

> The inclusion of a deed restriction preventing the use of property for school purposes in the contract for sale of an unused school building is unenforceable as against public policy.

That is not binding precedent in favor of the Defendants' argument.

The undersigned holds that the Plaintiff has both standing and the capacity to bring this litigation. Having addressed the capacity and standing issue, the undersigned will address the Plaintiff's request for a preliminary injunction.

In general, "[t]he purpose of a preliminary injunction is to preserve the status between the parties pending a trial on the merits." *Proctor & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260 at 267. In determining whether a preliminary injunction is appropriate, four factors are relevant: (1) is there a substantial likelihood of success on the merits; (2) will the plaintiff suffer irreparable harm if the injunction is not granted; (3) will no third parties be unjustifiably harmed by the injunction; and (4) will the public interest be served by an injunction. *Martin v. Lake Mohawk Property Owner's Assn.*, 7th Dist. No. 04-CA-815, 2005-Ohio-7062, at ¶36. The party seeking the injunction must demonstrate that it is entitled to such by clear and convincing evidence. Id. Hence, "[t]he right to an injunction must be clear and the proof thereof clear and convincing, and the right established by the strength of plaintiffs' own case rather than by any weakness of that of his adversary." *White v. Long* (1967), 12 Ohio App.2d 136 at 140. From within this legal framework the undersigned draws the following conclusions.

I. Is there a substantial likelihood of success on the merits?

The following history was set out in the Plaintiff's Motion for the injunction:

> R.C. 3327.01, et seq. regulates public school district transportation. R.C. 3327.01 mandates that school districts in the State transport (both public and nonpublic) elementary school students to and from school. School districts "may," but are not required to, transport high school students to and from school. While DPS is not required to transport high school students to and from school, the practical reality is that if DPS does not provide transportation to its students, many of them will not have a safe means of transportation to and from school. As such, DPS purchases public bus passes from the Greater Dayton Regional Transit Authority ("RTA") and provides those bus passes to high school students that do not have access to school transportation. Through this system, RTA picks-up students at different RTA hubs across the City of Dayton. Students are then taken to RTA's central transfer hub in downtown Dayton, also known as "Wright Stop Plaza." Many RTA bus routes are

not configured to take students to-and-from school without first stopping at Wright Stop Plaza. Once students are at Wright Stop Plaza, students transfer to buses that take them to mass transit hubs near their respective schools. The after-school transportation process is similar but in reverse. Students are transported from their respective schools to Wright Stop Plaza. At Wright Stop Plaza, students transfer to different buses that take them home.

The Amendment prevents students from transferring buses to and from school at Wright Stop Plaza. The Amendment, as written in the House Finance Committee Report, applied to the eight largest counties in the State of Ohio, but the State legislature narrowed the Amendment's application even further to ensure that it only applies to Montgomery County. The Amendment takes effect on September 30, 2025, and it will change the language in R.C. 3327.017(C) to read (Amendment language emphasized):

> A city, local, or exempted village school district that elects to provide or arrange for transportation for any eligible student enrolled in any of grades nine through twelve in a community or chartered nonpublic school to and from school using vehicles operated by a mass transit system shall ensure that the student is assigned to a route that does not require the student to make more than one transfer. **With respect to a mass transit system with a central transfer hub located in a county that has a population between five hundred thirty thousand and five hundred forty thousand according to the most recent federal decennial census, the city, local, or exempted village school district shall ensure that any transfer does not occur at the central transfer hub for the mass transit system.**

The Amendment only applies to counties that have "a population between five hundred thirty thousand and five hundred forty thousand *according to the most recent federal decennial census[]"* (emphasis added). Montgomery County, with a recorded population of 537,309 people, is the only County in Ohio that now meets and can meet that classification in the next five years (as the next federal decennial census will not occur until 2030).[1] Moreover, the classification is entirely arbitrary and lacks any rational basis. ODEW, through R.C. 3327.021, can withhold substantial State transportation funding from **DPS** for being out of compliance with R.C. 3327.017, but any other similarly situated school district outside of Montgomery County can engage in the same exact conduct without facing any penalties. The children of Summit County, with a population of 540,428 people, are able to use the public infrastructure of a regional transit system to help attend school; the children of Montgomery County are denied access to this public infrastructure. (Plaintiff's Motion filed August 11, 2025 emphasis in original.)

Section 26, Article II of the Ohio Constitution, i.e., the Uniformity Clause, requires that "[a]ll laws, of a general nature, shall have a uniform operation throughout the state . . .." Ohio Const., Art. II, § 26. "[I]n order to determine whether legislation violates the Uniformity Clause, the

court must first consider whether the law is of a general nature and, second, whether the law operates uniformly throughout the state." *Cuyahoga Cty. Veterans Serv. Comm. v. State*, 2004-Ohio-6124, It 17 (10th Dist.). The Plaintiff has asserted that the law is a violation of that clause of the Ohio constitution.

Setting all legal nicety aside, the language of the code now before the court clearly targeted Montgomery county. The Defendants asserted that the law was not a 'law of a general nature'. Therefore, the Defendants claimed it did not violate the Uniformity Clause.

Hixon v. Burson, (1896) 54 Ohio St. 470 was advanced by the Plaintiff in support of its argument. *Hixon* was also acknowledged as authoritative in the Defendants' own filings as to the Uniformity Clause. Please note the following from Hixon:

> "That the act is local, and has no operation outside of Athens county, is beyond question. While it is in form general, it is in its operation local, and might just as well have named, Athens county, by name, as to have designated it by its population at the last federal census of not less than 35,190, and not more than 35,200. *Fields v. Commissioners of Highland County*, 36 Ohio St., 481. The constitutionality of an act, under said section 26, is determined by the nature of its subject matter, its operation and effect, and not by its form only. In form an act may be general, while in its operation and effect it is local. *Kelley v. State*, 6 Ohio St., 269; *State v. The Judges*, 21 Ohio St., 1.", Id., 54 Ohio St. (N.S.) 470, 479 (Ohio 1896)

The Plaintiff asserted that the issue is quite like the current controversy. The *Hixon* law dealt 'generally' with the turnpike, but the offensive language was clearly targeted thereby making it a violation of the Uniformity Clause. *Hixon* was cited as authoritative as recently as March 10, 1999 in *Desenco, Inc. v. Akron*, 1999-Ohio-368 (9th Dist.)

The legislature has the power to pass local and special laws unless it is limited by some other part of Ohio's constitution. The Uniformity Clause is that limitation. The rational for the language as advanced by the Defendants – protecting student safety – does not change the legal outcome.

From a review of the code section and the amended language – the undersigned holds that the Plaintiff has met its burden that it will prevail on this issue. Hence, there is a very substantial likelihood of success on the merits.

II. Will the plaintiff suffer irreparable harm if the injunction is not granted?

The Magistrate took into consideration the following case law in regard to this issue:

> "Irreparable harm exists when there is a substantial threat of a material injury which cannot be adequately compensated through monetary damages." *Restivo v. Fifth Third Bank of Northwestern Ohio, N.A.* (1996), 113 Ohio App.3d 516, 521.
>
> A party need not conclusively prove that they have suffered such a harm. "A threat of harm is a sufficient basis on which to grant injunctive relief." *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260 at 274.

The Defendants asserted that Plaintiff's request should be denied because the Plaintiff will only suffer pecuniary harm. That is the threat of the loss of its revenue should it continue to utilize the RTA vouchers after the law goes into effect.

The Plaintiff attempted to assert at the hearing and within its motion that the financial harm would in fact cripple it in its duty to educate its children. By not being able to meet that obligation, the schools standing and recent advancements would suffer. Plaintiff believed that that outcome established unquantifiable harm therefore creating the necessary irreparable harm.

It was the burden of the Plaintiff – by clear and convincing evidence – to establish this factor. The undersigned does not believe that the Plaintiff established this factor by the requisite burden. However, given that it is a balancing test and given the fact that the undersigned has determined that the language is unconstitutional, Plaintiff's failure to meet this factor is not dispositive of the issue. Hence, the Plaintiff is entitled to injunctive relief.

III. Will no third parties be unjustifiably harmed by the injunction?

The injunction maintains the status quo. The injunction allows for the use of the RTA

voucher program as has been used by the Plaintiff and its students for several years. Parents who have relied on the program may continue to rely on the program. Rep. Plummer testified that crime has been an issue for 30 years in the location of the hub. Hence, there was no evidence that a third party would be 'unjustifiably harmed'.

IV. Will the public interest be served by an injunction?

Having determined that the law violates the Uniformity Clause it would be against the public interest to allow an unconstitutional law to go into effect. Hence, the public will be served by the injunction.

MAGISTRATE'S DECISION

The Plaintiff's Motion for a Preliminary Injunction is **GRANTED**.

The TRO as filed on August 18, 2025 **SHALL** remain in effect until the conclusion of this case.

Counsel for the Plaintiff shall prepare and submit a Judgment Entry adopting this decision to the trial Judge pursuant to the local rules of this court.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV.R. 53(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV.R. 53(D)(3)(b).

Magistrate Mark C. Petrucci

The Clerk is Ordered to mail Copies to:

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Franklin County Court of Common Pleas

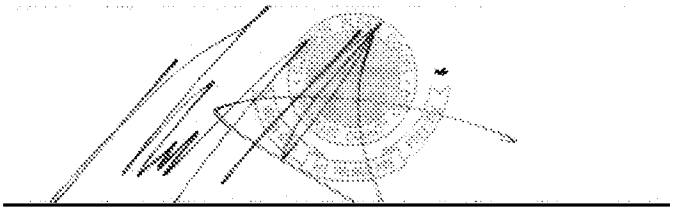
Date: 08-29-2025

Case Title: DAYTON CITY SCHOOL DISTRICT BOARD OF EDU -VS- STATE OF OHIO ET AL

Case Number: 25CV006780

Type: MAGISTRATE DECISION

So Ordered



/s/ Magistrate Mark Petrucci

Court Disposition

Case Number: 25CV006780

Case Style: DAYTON CITY SCHOOL DISTRICT BOARD OF EDU -VS- STATE OF OHIO ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 25CV0067802025-08-2699970000
   Document Title: 08-26-2025-MOTION TO EXTEND TIME - DEFENDANT: STATE OF OHIO
   Disposition: MOTION GRANTED

2. Motion CMS Document Id: 25CV0067802025-08-2599980000
   Document Title: 08-25-2025-MOTION FOR CONTINUANCE - DEFENDANT: STATE OF OHIO
   Disposition: MOTION DENIED

3. Motion CMS Document Id: 25CV0067802025-08-1199910000
   Document Title: 08-11-2025-MOTION FOR PRELIMINARY INJUNCTION - PLAINTIFF: DAYTON CITY SCHOOL DISTRICT BOARD OF EDU
   Disposition: MOTION GRANTED