[What's at stake in the lawsuit over changing who controls Ohio's public education](#)

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Who controls creating Ohio's statewide curriculum, education standards and long-term planning for its 1.7 million public school children could be decided, at least temporarily, by a Franklin County Court judge Monday.

The state was preparing to transfer those powers from the State Board of Education to the governor's office later this week, but a lawsuit filed by seven board members could postpone that overhaul of Ohio's public education system for years.

Supporters of these changes say taking control over education away from the 19-member board would improve academic outcomes for children, make the department more nimble by centralizing power and end the ideological fighting over culture war issues that has bogged down board meetings.

The plaintiffs say Ohioans voted to remove the governor from education policy when they created the board in 1953, and lawmakers can't override that. Parents would also lose their right to directly elect the people who write education policy.

Monday's hearing won't determine who is right. Instead, Judge Jennifer Hunt will hear arguments for and against putting the law on hold while the case moves through the courts. A process that could take years.

Here's what both sides say is at stake:

Board vs. governor

For decades, Ohioans have elected 11 members to the state board, and the governor has appointed the other eight. Together, they have picked a state superintendent who led the Ohio Department of Education.

The board and its superintendent created our state strategic plan (currently called Each Child, Our Future), recommended textbooks and set curriculum standards. Basically, they've had a significant role in the direction of public education.

But all that was set to change in October.

State lawmakers created a new Department of Education and Workforce with a new organizational chart that put a director appointed by the governor at the top. The state board was left with a handful of powers, like revoking teacher licenses and territory transfers.

"The bottom line is we have thousands of kids who are behind and not being remediated. They are not getting caught up," Sen. Andrew Brenner, R-Delaware, said.

He believes consolidating power down to one person at the top will help. That's why he pushed for these changes. And he thinks the legislature had the right to do so.

"This isn't just something that just happened out of nowhere," Brenner said. "The current state school board is going on two-plus years and still hasn't put in a state superintendent. That is their one constitutional function. They have proven they can't even do the one task they are supposed to do. Returning it to them isn't going to improve anything."

Democrats, and even board members, have said certain things need improving, but the solution isn't taking responsibilities away.

"To wholesale carve out most of the power from that group and hand it over to the governor's office feels heavy-handed," Senate Minority Leader Nickie Antonio, D-Lakewood, said when the bill was introduced in January.

Can lawmakers change the rules?

Article IV, Section 4 of Ohio's constitution states there "shall be a state board of education" and a superintendent of public instruction.

When it comes to the board's responsibilities, the section states that "the respective powers and duties of the board and of the superintendent shall be prescribed by law."

And that's where the two sides in this lawsuit have different interpretations.

Board members Christina Collins, Teresa Fedor, Katie Hofmann, Tom Jackson, Meryl Johnson, Antoinette Miranda and Michelle Newman have said "turning the board into an empty shell" violated Article IV.

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

But the Republicans who wrote the law said they were well within their rights because "by law" means state lawmakers get to decide the board's duties.

"Ultimately, this bill is going to pass," Senate President Matt Huffman, R-Lima, said. "Gov. (Mike) DeWine supports it. Most of the legislature supports it. And it's just delaying how this process is going to work."

He told reporters the law will survive this court challenge, adding that board members "don't have a right for things not to change because they don't like the way it's changed."

Did education overhaul belong in the budget?

Board members made another argument besides constitutionality.

They successfully convinced Franklin County Judge Karen Held Phipps that adding this overhaul into the state's budget may have violated something called the single-subject rule. That's why she issued a temporary restraining order in September that blocked the law for 14 days.

The basic idea of single subject is that laws should be about one topic. For example, a law about K-12 education shouldn't include changes to nursing home regulations.

The changes to ODE started out as a standalone bill, Senate Bill 1. Republicans passed it through the Senate in March, but the House has yet to take a vote. Instead, all 2,000 pages were added to the state budget in June.

Huffman told reporters that SB 1 can still become law, and he would likely push for lawmakers do so if Judge Hunt blocks the law on a single-subject challenge.

"And we will file another lawsuit," Fedor said. "It needs to be challenged constitutionally."

Ultimately, this case or another one like it will likely be decided by Ohio's Supreme Court.

"As we say in Allen County and parts west, there's the judge, and then there's the three judges you can go talk to if you don't like what this judge did," Huffman said. "And if you don't like what they did, there are seven more after that. So, that's who is ultimately going to decide the issue."

This story will be updated.