

ORIGINAL

In the
Supreme Court of Ohio

BRIAN P. SPITZNAGEL, et al., : Case No. 09-0015
: :
Plaintiffs-Appellants, : :
: : On Appeal from the
: : Franklin County
v. : : Court of Appeals,
: : Tenth Appellate District
STATE BOARD OF EDUCATION, et al., : :
: : Court of Appeals Case
Defendants-Appellees. : : No. 07AP-757

**APPELLEE STATE BOARD OF EDUCATION'S
MEMORANDUM OPPOSING RECONSIDERATION**

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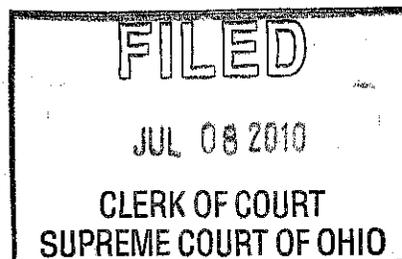
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Appellants' (collectively "Spitznagel") motion for reconsideration should be denied for three reasons.

A. The negative factors of fiscal impact and race are immaterial given the lack of an affirmative case for the transfer.

First, Spitznagel's focus on the extent of the harm resulting from the transfer overlooks the fact that no positive case for the transfer has been made. Logically, the Court simply does not reach the factors counseling *against* a transfer (such as fiscal and racial impact), unless a case *for* transfer is made.

Spitznagel had the burden of making that case. This was established in *Bartchy v. State Bd. of Educ.*, 120 Ohio St. 3d 205, 2008-Ohio-2846, where the Court made clear that those seeking a territory transfer bear the burden of proving its affirmative merit. *Id.* at ¶¶ 2, 33, 87 (plurality), and 98 (Lanzinger, J., concurring). That makes sense when one considers that proposed changes to school district boundaries are "particularly stressful for families of school age children and [] hinder[] the ability of school officials in the affected districts to plan for the future." R.C. 3311.061.

Spitznagel's affirmative case relied on three points—academics, safety, and social isolation—which were all rejected and later abandoned. *First*, as to academics, the hearing officer found that there was "no reliable, probative, or substantial evidence . . . that [Bedford] is incapable of offering a quality education." Appellants' Apx. ("Apx.") 94. Instead, the hearing officer found that Bedford is "a school system with many success stories and an impressive array of dedicated, professional, and skilled faculty and staff." Apx. 94-95. Spitznagel did not challenge those findings in his appeal to the Common Pleas Court or in his subsequent appeals. *Second*, as to safety, the hearing officer found "no reliable, probative, or substantial evidence . . . that [Bedford] is unsafe..." Apx. 94. Spitznagel also failed to challenge those findings in the

Common Pleas Court or his subsequent appeals. And *third*, as to social isolation, the hearing officer found that “[s]ubstantial credible evidence that Walton Hills residents are welcome to immerse themselves and their families in” Bedford and that any “isolation... is ... a product of their collective freewill.” Apx. 92. Although Spitznagel challenged that finding in the Common Pleas Court, the court rejected his arguments, and he did not press them in the Court of Appeals. Apx. 12.

In short, there has been no *affirmative* case made for the transfer at issue here. Spitznagel’s arguments about the supposed *lack of harm* from the transfer—the only basis of his plea for reconsideration—are therefore irrelevant.

B. Spitznagel’s focus on personal property tax issues overlooks the sizeable and undisputed loss of real property tax revenue that would follow the transfer.

Spitznagel’s fiscal arguments focus on alleged errors in gauging the scope of the personal property tax losses and the sufficiency of the mitigation proposals. Those arguments are meritless because they overlook the drastic loss in *real property tax revenue*—\$4 million a year—that Bedford would suffer if the transfer were approved. Those losses would occur *even if one accepts Spitznagel’s personal property tax analysis*. In other words, even if the Court recognized the \$600,000 in cost savings Spitznagel propounds, the transfer would still result in a loss of \$3.4 million every year—a loss of almost 10% of Bedford’s annual budget. State Board’s Apx. 12.

The State Board had the technical expertise to determine—and was reasonable in concluding—that a loss of such magnitude would unduly harm Bedford. The Board establishes statewide financial practices, supervises school expenditures, trains district personnel on fiscal practices, and helps them develop budgets and fiscal projections. R.C. 3301.07(B), (C), & (I); 3301.072; 3301.073. It reviews every district’s finances each year and helps determine how to

address any problems discovered through that analysis. R.C. 5705.391 and Ohio Adm. Code 3301-92-04; R.C. 3316.03(A), (A)(3)(a), & (B)(3)(a); 3316.031(B)(1) & (E). The Board therefore was well within reason to determine that the loss of real property taxes alone was enough to preclude this transfer. And because of the Board's institutional expertise, this Court "accord[s] due deference to the board's interpretation of the technical" question of whether Spitznagel adequately negated fiscal detriment. *Pons v. Ohio State Medical Bd.* (1993), 66 Ohio St. 3d 619, 621.

C. Racial isolation had no impact on the decisions below.

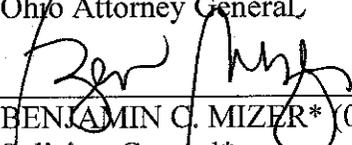
Finally, Spitznagel's contention that this case turned on racial isolation ignores the explicit statements of every decision maker below. The hearing officer expressly viewed racial isolation as a non-issue, characterizing it as "de minimis" and "ephemeral." Apx. 86, 87. The Common Pleas Court had the same take, stating that "even if this Court would find error, that error ... would not suggest that the board's decision should be reversed." Decision on the Merits of Revised Code 119.12 Administrative Appeal Affirming the Decision of the State Board of Education, p. 9. And the Court of Appeals' reconsideration decision noted that racial isolation "was by no means the primary factor that drove the board's decision. Loss of revenue was clearly the factor that weighed most heavily into the board's determination." *Spitznagel v. State Bd. of Educ.* (10th Dist.), 2008-Ohio-6080, ¶ 9. Spitznagel errs in claiming that any error on this point was anything but harmless.

CONCLUSION

For all of these reasons, the Court should deny reconsideration.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Appellee State Board of Education's Memorandum Opposing Reconsideration was served by U.S. mail this 8th day of July, 2010, upon the following counsel:

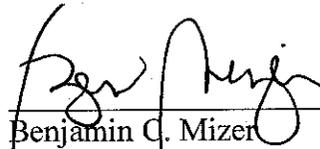
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