Testimony regarding H.78 – Rep. Carolyn Partridge
House Education Committee
January 29, 2019

Thank you, Madame Chair and committee members, for the opportunity to testify before you regarding H.78 – an act that proposes to place a moratorium on school district mergers ordered by the State Board of Education until legal issues are adjudicated. For the record, my name is Rep. Carolyn Partridge.

As a legislator I voted for Act 46 and Act 49. As the Chair of the Windham Elementary School Board, I also understand why a moratorium or a one-year delay in the implementation of the State Board of Education's order of November 30, 2019 is necessary.

1. Common sense requires the delay

The Board of Education's Order of November 30th is subject to a court appeal, together with affirmative claims, brought by most of the parties affected by that order – as is their statutory right under our democratic system.

There will be a hearing on February 15th on the school districts' motion for a preliminary injunction. If that injunction is granted, all merger activity will cease during the pendency of the case. If the motion is denied, that denial will be immediately appealed. In the meantime, the main case will continue to go forward. The court is ultimately being asked to reverse and enjoin the State Board's order and declare it unconstitutional on several grounds.

Among other issues the Appellants challenge the validity of the Agency's "default Articles of Agreement" which purport to permit the new union district boards to transfer debt and funds before June 30, 2019. Real estate must all be conveyed no later than June 30th. The parties also challenge the validity of the powers of a new, unelected transitional board, which claims to have the power to negotiate contractual agreements, spend taxpayer dollars, borrow funds, and to exercise municipal power in all planning, transitional, and other related duties prior to July 1st. The Agency of Education will be beginning a process to co-mingle capital reserves, debts, other liabilities and assets in these districts. Boards that may, ultimately, be deemed illegal will have begun to make staffing decisions, contract decisions, even borrowing decisions.

If elections for new involuntarily merged districts are held, they will be warned by an unelected transitional board, something that Vermont has never ever seen before. It is truly unprecedented for a state agency to have INVENTED an election process that is nowhere found in statute. The process for counting and reporting votes in such an election is entirely invented by the Agency and has no basis in statute. As that process goes forward it may be the subject of further litigation. Because that process proposes to commingle and dilute the votes of individual towns it will be extremely difficult to remedy

the harm to voting rights which would be a constitutional harm.

If the appellants prevail, any attempt to return to pre-merger conditions would be like putting Humpty Dumpty back together again. And trust me, the appellants would insist on putting Humpty Dumpty back together again! A moratorium is the safest, surest way to give the court process time to resolve the merits of the appeals. It will avoid the potential problems of having to ask the court to order the undoing of spending and borrowing decisions made by unelected transitional boards. If we allow a one-year delay for implementation, the status quo will be maintained, and the court will have time to consider well-researched briefs by both sides. Schools will budget and operate just as they have done before. Districts that have chosen to merge can move forward with that process. There is no harm. It is the best course for assuring consistency and stability for our students.

This is why we **all**, pro or con, simply need the moratorium, or at least a one-year delay, until the court case is resolved.

2. Voting Processes Required by Law Are Now Being Ignored

The Vermont Statutes mandate that Articles of Agreement for new unions allow existing districts the right to vote on the transfer of debt and property. Neither Act 46 nor Act 49 ever repealed the voting requirements with respect to Articles of Agreement. The Agency of Education, in their default Articles of Agreement, which weren't sent through rulemaking, ignored existing statutes that were never amended or repealed – existing statutes that involve a fundamental right - the right to vote with respect to the transfer of debt and property. The Agency, itself, informed the Board that there wouldn't be time for forced mergers to adopt anything but the default Articles. Without the General Assembly's explicit authorization, no agency has authority to re-write laws, particularly where they relate to voting rights. That is the duty and responsibility of Vermont's elected representatives in the General Assembly. There is another issue involving small schools' grants that even the Agency is asking the General Assembly to look at. It is imperative that the General Assembly re-visit these issues.

3. Budget Chaos

Within the districts affected by the State Board's order, there is currently chaos surrounding budgeting. The Agency has been telling districts they must do merged budgets and that they may NOT do individual budgets. Financial managers have told us that they have received advice that they can't do individual town school budgets for existing districts. In most of these districts there is no transitional board and no merged board to approve a merged budget. There are only existing boards empowered to approve budgets for existing districts. Any district should have the power and the right to plan for the contingency that the appeal of the Board's order may be successful. But as a result of directives from the Agency, even though the law requires budgets to be presented by Town Meeting Day, many districts will not be in a position to present a budget at Town Meeting.

4. The Agency and the Board seemed to ignore the law that we wrote

Section 9 of Act 46 said that districts could retain their current governance structure if they were meeting the goals set forth in Section 2. Section 10 of Act 46 then went on to say that the Board should be merging districts to "the extent necessary" to meet the goals of Section 2. Numerous communities came forward with clear and convincing evidence that they were providing excellent academic outcomes with great fiscal efficiency and with growing student populations. But instead of merging districts "to the extent necessary" the Board openly acknowledged on page 6 of its final order that it merged districts to the extent "possible."

I don't mean to disparage the Board. These are among our finest citizens, working essentially as volunteers, with virtually no staff or budget. Meeting once or twice a month, they were commissioned to evaluate thousands upon thousands of pages of Section 9 proposals that were put together by dozens of communities, each investing hundreds of hours in that endeavor in good faith.

Neither the Agency nor the Board ever developed any standards for measuring achievement of the goals of Section 2 in order to evaluate those proposals made pursuant to Section 9. Some of these proposals, which various communities had invested hundreds of hours researching and writing, were only read by a couple of Board members and given very little time for consideration by the Board, when the Board rules required that each be evaluated on its merits.

I would add that the law we passed recognized greatly imbalanced debt and geographic isolation as barriers that might well prevent merger at this time. The Agency and Board almost completely ignored those barriers, where in places such as East Montpelier and Calais or Montgomery and Bakersfield, and the Town of Windham these barriers are very substantial.

In conclusion, let us all take the time to get this right. For the sake of our students, their teachers, parents, and administrators we need to set a more certain and secure path forward through this transition. Legislation, though infrequent, has been enacted during pending litigation, usually by notwithstanding 1 VSA Secs. 213 and 214. I would ask Legislative Council to research this to verify accuracy and provide examples. Our schools and our children's education are too important to impose a blueprint for governance that will be in place for generations to come without taking a relatively short period of time to clear up these problems.

Thank you again for allowing me this time to present H.78.