

IN THE SUPREME COURT OF OHIO

STATE EX REL., THE OHIO GENERAL ASSEMBLY, et al.,

Relators,

v.

JENNIFER BRUNNER, SECRETARY OF STATE,

Respondent.

Case No. 2007-0209

Original Action in Mandamus

REPLY BRIEF OF AMICI CURIAE OHIO ALLIANCE FOR CIVIL JUSTICE, OHIO MANUFACTURERS' ASSOCIATION, OHIO CHAMBER OF COMMERCE, NATIONAL FEDERATION OF INDEPENDENT BUSINESS/OHIO, OHIO COUNCIL OF RETAIL MERCHANTS, OHIO BUSINESS ROUNDTABLE, OHIO CHEMISTRY TECHNOLOGY COUNCIL AND OHIO AUTOMOBILE DEALER'S ASSOCIATION IN SUPPORT OF RELATORS

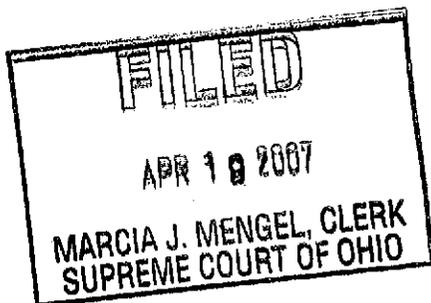
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## ARGUMENT

Respondent and her *amici curiae* variously argue that, in order to avoid an imbalance of power between the legislative and executive branches, an unsigned bill filed with the secretary of state must remain in some amorphous and unstable state until the Secretary decides that ten days has passed. Respondent and her *amici curiae* argue that there is no “legal significance” to the delivery of an unsigned bill in her office and that, to attach any such significance would “unconstitutionally reduce the amount of time the governor has to consider bills presented to him” or permit a legislature to usurp authority from a governor. (Merit Brief of Respondent at 11; Brief of *Amici Curiae* Governor Ted Strickland et al., at 10-12.)

Yet the arguments presented by Respondent and *amici curiae* do not acknowledge the significance attached to a governor’s decision to file an unsigned bill with a secretary of state. Filing an unsigned bill is more than a ministerial shuffling of paper. Filing an unsigned bill is not the beginning of some administrative purgatory that ends only when a secretary of state decides that ten days has passed. Filing an unsigned bill represents a constitutionally significant decision of the supreme executive authority of the state to have a bill become a law.

That decision is expressed, with certainty and finality, when a governor files an unsigned bill with a secretary of state. And that decision is reserved to a governor, and only a governor. That decision can only be usurped by the people of Ohio exercising their powers of referendum, not a secretary of state.

Respondent’s entire argument hinges on the fact that a governor has ten days to decide the fate of a bill pursuant to Ohio Constitution Article II, Section 16. Respondent argues that a governor must be given the entire ten days to decide the fate of any bill presented to him and urges this Court to conclude that any action--even the action of a governor-- that shortens the

time frame is an unconstitutional usurpation of the executive's authority. Yet nothing in the Ohio Constitution or elsewhere requires a governor to use every minute of the ten days allotted. Respondent and her *amici curiae* concede that a governor can bring finality to the process before expiration of the ten-day period by vetoing or signing the legislation. But Respondent provides no legal support for the contention that a governor's decision and affirmative act of filing an unsigned bill is less conclusive or significant than signing or vetoing the bill.

Respondent and her *amici* repeatedly state that Governor Taft could have signed S.B. 117 had he wanted it to become law and argue that only a governor's decision to file a signed bill has any constitutional significance in making the bill a law. (Merit Brief of Respondent at 11, 12.) But Respondent and her supporting *amici curiae* fail to proffer any logical or legal reason why a governor's decision to sign a bill should be treated any differently than his decision to allow a bill to become law without signature. This Court has previously held that a governor's decision to sign a bill cannot be reversed even by a successor governor. "A successor Governor is constitutionally obligated to present to the Secretary of State a law timely signed by his duly elected and qualified predecessor." *Maloney v. Rhodes* (1976), 45 Ohio St. 2d 319, 324, 345 N.E.2d 407.

A governor's decision as to the fate of a bill is final and constitutionally protected and there is no rational or legally supportable argument to distinguish one Article II, Section 16 power from another. Signing a bill, vetoing a bill, or filing an unsigned bill are all equally significant, constitutionally authorized actions that end gubernatorial control over a bill.

Respondent cites to no provision, case, or precedent to suggest that a secretary of state, or successor governor, has any authority to reverse a governor's decision as to the fate of a bill after a governor has filed the bill with a secretary of state. Nor does Respondent cite any precedent or

authority for a secretary of state to return a filed bill, signed or unsigned. Respondent notes that, over the past thirty years, portions of various bills have been replaced and urges this Court to conclude that such history sets a precedent that allows a secretary of state to ignore the statutory duty to keep a bill safe. (Merit Brief of Respondent at 17- 18.)

Yet, neither Respondent nor any of her *amici curiae* cite to a single instance where, as here, a secretary of state returned an entire bill, signed or unsigned. It is one thing to substitute a page or part of bill for portions of a filed bill to cure a printer's error, while keeping custody and control of the filed bill all the while. It is quite another to return an entire bill and allow the executive decision of a governor to be reversed.

The arguments proffered by Respondent and her *amici curiae* also ignore the constitutional significance of Article II, Section 1c of the Ohio Constitution and its provision that “no law passed by the General Assembly shall go into effect until 90 days after it shall have been filed by the Governor in the office of the Secretary of State.” This provision does not distinguish between a bill that is signed and a bill that is unsigned. Signed or unsigned, the constitutional trigger for determining the effectiveness of a law is the date the law is filed with the Secretary of State. See *State v. Lathrop* (1915), 93 Ohio St. 79, 87, 112 N.E. 209; *State ex rel. Riffe v. Brown* (1977), 51 Ohio St.2d 149, 365 N.E.2d 876.

Contrary to *Amici Curiae* National Association of Consumer Advocates' suggestion, *Maloney v. Rhodes*, 45 Ohio St. 2d 319, is not dispositive of the issue before the Court because it is not addressed therein. (See Merit Brief of *Amici Curiae*, National Association of Consumer Advocates in Support of Respondent, p. 10.) While not dispositive, *Maloney* strongly supports Relators' position. *Maloney* makes clear that “[t]he Governor is required to file with the

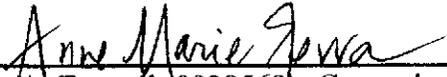
Secretary of State every bill which becomes law without his signature.” But, *Maloney* does not hold that such filing can only occur after the Governor has held the bill for ten days.

*Maloney* stands for one basic proposition: When the Secretary of State receives a law from the Governor, the Secretary must file it. “The Secretary of State has no option. The Secretary of State is obligated by the Constitution and his oath of office to file the law when it is presented to him for filing. It is a ministerial act. It is not discretionary.” *Maloney*, at 322, citing *State ex rel. Marcolin v. Smith* (1922), 105 Ohio St. 570, 138 N.E. 881.

In issuing a writ of mandamus, the *Maloney* Court made clear: “The Secretary of State has no judicial power, authority or jurisdiction to declare a law constitutionally invalid or to refuse to file it. Mandamus will lie to compel him to perform the official act of accepting and filing the law.” *Id.* at 323. Nothing in *Maloney*, *Marcolin*, or any other case suggests that the Secretary’s duties are diminished before the tenth day expires.

Respondent’s ministerial duties to file, keep and distribute the bill are irrevocably implicated by the filing of the bill alone. Respondent has no authority to decide if, or when, a bill becomes a law, and no authority to unfile or a return a law that has been acted upon by a governor and filed with her office.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed to the following person(s) by ordinary mail, postage pre-paid, on April 19, 2007.

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