

IN THE SUPREME COURT OF OHIO

STATE EX REL. GERALD O.E.  
NICKOLI AND ROBIN L.B. NICKOLI,  
et al.,

Relators,

v.

ERIE METROPARKS, et al.,

Respondents.

Case No. 2009-0026

Original Action in Mandamus

**RELATORS' MEMORANDUM IN OPPOSITION TO RESPONDENTS'**  
**REQUEST FOR ORAL ARGUMENT**

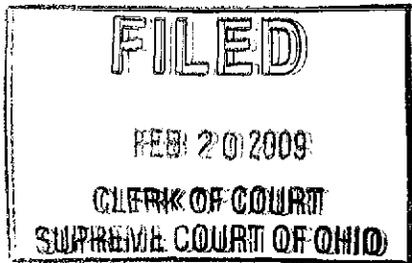
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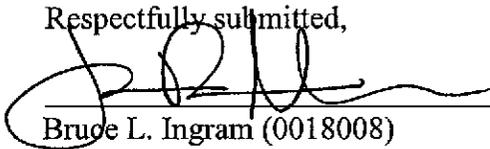
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Relators oppose Respondents' Request for Oral Argument on their Motion for Judgment on Pleadings. Oral argument does not serve the prompt resolution of Relators' request for a peremptory writ. Relators have been deprived too long of their fundamental right to just compensation for Respondents' decade-long physical invasion of their property. Respondents' Motion can be decided based upon the papers and doing so promotes the efficient administration of justice. In their contemporaneously filed Memorandum in Opposition to Respondents' Motion, Relators establish that Respondent's Motion lacks any basis in law and should be denied. Moreover, Relators' Opposition demonstrates Relators' request for a peremptory writ is warranted. Relators submit that the denial of Respondents' Motion and the granting of Relators' peremptory writ merely requires the straightforward application of claim preclusion.

Finally, Supreme Court Rule of Practice IX, Section 2(A) does not support Respondents' request for oral argument on a motion for judgment on the pleadings or response to a complaint. Instead, oral argument is only permitted on the merits – not the pleadings.

For these reasons, Relators oppose Respondents' request for oral argument and ask that the Court deny it.

Respectfully submitted,



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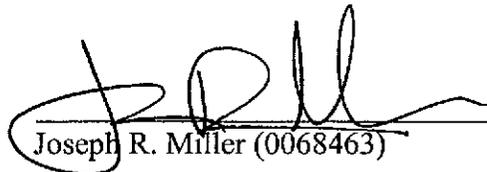
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was served this 20<sup>th</sup> day of February, 2009 via regular U.S. mail, postage prepaid, upon Thomas A. Young, Porter, Wright, Morris & Arthur LLP, 41 South High Street, Columbus, Ohio 43215 and John D. Latchney, Tomino & Latchney, LPA, 803 East Washington Street, Suite 200, Medina, Ohio 44256, counsel for Respondents Erie MetroParks and Board of Park Commissioners, Erie MetroParks.



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