

IN THE SUPREME COURT OF OHIO  
No. 2009-0186

STATE OF OHIO, EX REL.,  
BUTLER TOWNSHIP BOARD OF  
TRUSTEES

Relator-Appellant,

v.

MONTGOMERY COUNTY BOARD  
OF COUNTY COMMISSIONERS, et al.

Respondents- Appellees.

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:  
: On Appeal from the  
: Montgomery County Court  
: of Appeals, Second Appellate District  
:  
: Court of Appeals  
: Case No. CA-022664  
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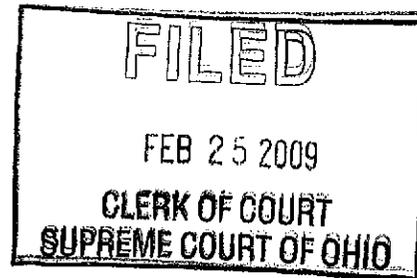
MEMORANDUM OF AMICUS CURIAE OHIO MUNICIPAL LEAGUE  
IN OPPOSITION TO JURISDICTION

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## **INTRODUCTION**

The Ohio Municipal League (the "League"), as amicus curiae on behalf of the City of Union, Ohio ("City"), urges this Court to deny jurisdiction over the appeal filed by Butler Township, Ohio ("Butler Township").

## **STATEMENT OF AMICUS INTEREST**

The League is a non-profit Ohio corporation composed of a membership of more than 750 Ohio cities and villages. The League and its members have an interest in ensuring the integrity of annexation procedures in Ohio.

## **STATEMENT OF THE CASE AND FACTS**

The League hereby adopts, in its entirety, and incorporates by reference, the statement of the case and the statement of facts contained within the opinion of the Second District Court of Appeals in the case of State, ex rel Butler Township Bd. Of Trustees v. Montgomery County Board of County Commissioners, Montgomery County Court of Appeals Case No. 22664, 2008-Ohio-6542 (appended hereto as "Exhibit A").

## **THIS CASE DOES NOT INVOLVE A MATTER OF PUBLIC OR GREAT GENERAL INTEREST.**

Butler Township has requested this Court to accept jurisdiction over a case which has honored the wishes of a property owner, Waterwheel Farms, Inc., to become a part of the City of Union. This Court should deny the request.

This case is not a matter of public or great general interest. Waterwheel Farms, Inc., has (for a second time) sought to annex its 78.489 acres of property, located in Butler Township, to

the City of Union. Butler Township's objection to this attempted annexation is based on the claim that the annexation does not comply with the seventh condition of annexation set forth in R.C. §709.023(E).

R.C. §709.023(E)(7) requires a board of county commissioners to review an annexation petition to determine “[i]f a street or highway will be divided or segmented by the boundary line between the township and the municipal corporation as to create a road maintenance problem, the municipal corporation to which annexation is proposed has agreed as a condition of the annexation to assume the maintenance of that street or highway or to otherwise correct the problem.”

Butler Township claims that the unannexed portion of Jackson Road would cause road maintenance problems, as Butler Township and the City of Union did not enter into an agreement regarding the maintenance of the unannexed portion of the roadway. The City of Union, however, prior to the action of the Montgomery County Board of Commissioners, adopted a resolution agreeing to assume maintenance of the unannexed portions of Jackson Road. By adopting this maintenance resolution, the seventh condition of R.C. §709.023(E) was satisfied. Consequently, a decision by this Court accepting jurisdiction over Butler Township's appeal to this court with respect to its mandamus action would be based on unique facts. An action by the city taken after the filing of the annexation petition mooted the township's objection to the annexation.

As this is an expedited annexation, “substantial compliance” is all that is required for the procedural requirements of R.C. §709.023(E). R.C. §709.015. This case does not present an opportunity to analyze whether or not a township is a proper party to a mandamus action, under §709.023(G), because facts unique to this case render the township's objection moot.

**CONCLUSION**

Based upon the foregoing, the League respectfully requests this court to deny jurisdiction over the appeal filed by Butler Township.

Respectfully submitted,



JOHN E. GOTHERMAN (#0000504)

General Counsel

Ohio Municipal League

**CERTIFICATE OF SERVICE**

A copy of the within *Memorandum of Amicus Curiae the Ohio Municipal League in Opposition to Jurisdiction*, has been mailed regular U.S. mail on the 25 day of February, 2009 to:

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