

IN THE SUPREME COURT OF OHIO

STATE EX. REL., NORTHERN OHIO
CHAPTER OF ASSOCIATED BUILDERS
& CONTRACTORS, INC., *et al.*

Plaintiffs/Appellants,

v.

THE BARBERTON CITY SCHOOLS
BOARD OF EDUCATION, *et al.*

Defendants/Appellees.

Case No.: 09-1466

On Appeal from the Summit County
Court of Appeals, Ninth Appellate
District Case No. CA-24898

**APPELLANTS MOTION TO EXPEDITE DECISION ON APPELLANTS
MOTION TO STAY EXECUTION OF JUDGMENT PENDING APPEAL AND
REQUEST FOR INJUNCTION**

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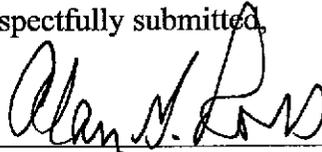
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SUPREME COURT OF OHIO

NOW COME Appellants pursuant to SCt. R. II, Section 2(A)(3)(a) and SCt. XIV(A) and respectfully request this Court to expedite its decision regarding Appellants Motion to Stay Execution of Judgment Pending Appeal and Request for Injunction to maintain the status quo between the parties pending appeal. The facts and reasoning in support of this Motion are fully set forth in the Memorandum in Support

Respectfully submitted,



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MEMORANDUM IN SUPPORT

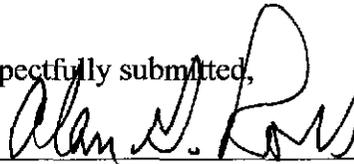
This case involves the construction of a New Middle School in the City of Barberton and the bids for this school construction Project were opened and read by the Barberton City Schools Board of Education ("Board") on August 11, 2009, following a Decision by the Ninth District Court of Appeals denying Plaintiffs/Appellants a Stay of Execution and a Request for Injunction to maintain the status quo between the parties pending the outcome of Plaintiffs Appeal.

Plaintiff/Appellants challenge the Board and the Ohio School Facilities Commission's authority and discretion to mandate that bidders for the school construction Project comply with Ohio's Prevailing Wage Law, R.C. 4115.03 to R.C. 4115.16. School construction projects are specifically excluded from the requirements of Ohio's Prevailing Wage law by operation of R.C. 4115.04(B)(3). It was the intent of the Legislature to exclude school construction projects from the requirements of prevailing wage laws in order to save taxpayers money on school construction projects, as requiring the payment of prevailing wages was found to increase the cost of school construction. R.C. 3313.46(A)(6) requires a school board to only accept the "lowest responsible" bid for the project and by requiring prevailing wages, the school board has failed to advertise for the lowest bid for the Project.

This prevailing wage requirement which Plaintiffs/Appellant claim is unlawful was included in the advertisement for bids for construction contracts for the Project which were opened by the Board on August 11, 2009. Presumably, anywhere from a few days to a week the Board will start awarding contracts that contain this unlawful requirement.

An expedited decision on Plaintiffs/Appellants Motion for Stay of Execution and Request for Injunction is needed to prevent the bids from being awarded and to preserve the status quo pending appeal and prevent irreparable harm and injury to Plaintiffs/Appellants to which they have no other adequate remedy at law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan G. Ross". The signature is written in a cursive style and is positioned above a horizontal line.

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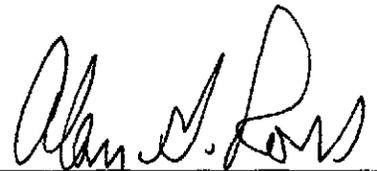
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This 12th day of August 2009.


Counsel for Appellants