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**EXPLANATION OF WHY THIS CASE IS
A CASE OF PUBLIC OR GREAT GENERAL INTEREST
AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

The court of appeals in this case decided a constitutional question without allowing the party affected to participate. The Appellee-complainant, Rumpke Sanitary Landfill, Inc. (“RSL”) is a private corporation that owns and operates solid waste facilities (sanitary landfills) in Ohio, including its largest located in Colerain Township. RSL challenged the constitutionality of R.C. 519.211 and 303.211, statutes affecting the “public utility” status of various solid waste facilities and the zoning authority of townships and counties over solid waste facilities within their jurisdictions under the one-subject rule.¹ RSL’s complaint for declaratory judgment and permanent injunction was filed before the laws became effective and sought to enjoin the ‘State of Ohio’ from the law taking effect. RSL named the state as the sole defendant and opposed and excluded Appellant Colerain Township from participating in any defense of the law.

The Hamilton County Court of Appeals erroneously determined that Ohio Revised Code Sections 303.211 and 519.211 defining whether a privately owned solid waste facility is a “public utility” violated the one-subject rule of Section 15(D), Article II, of the Ohio Constitution. That error on this constitutional issue is of public and great general interest to every township and county in which a solid waste facility is or may be located as well as any local government that owns, operates or funds any solid waste facility with capital appropriations, loans, grants or government bonds. Even the trial court below expressly noted in its decision, “[d]ue to the importance of this issue to the parties and the public, this Court urges the parties to seek Appellate Review of this decision.” (Trial Court Decision, Oct. 3, 2008, p. 6,

¹ Section 15(D), Article II, of the Ohio Constitution provides:

No bill shall contain more than one subject, which shall be clearly expressed in its title. No law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed.

emphasis original). However, this important issue is perhaps less significant than the issue of allowing government entities whose power is being determined to participate as interested and necessary parties in the litigation.

In addition to the constitutionality of the two statutes, this case raises at least three more critical statewide issues: (1) can the constitutionality of a statute challenged solely upon the grounds that it violates the one-subject rule be filed by any person *before the statute challenged has become effective*; (2) by filing a case challenging the constitutionality of a law *before* it becomes effective, can a plaintiff selectively exclude *every person* as interested or necessary party from the action except the “State of Ohio,” even over the state’s objection; and (3) can a court permanently enjoin a law that has been passed by the General Assembly, signed by the governor and filed in the office of secretary of state from taking effect when its effective date is established by the Ohio Constitution?² It is all of these factors that make this a case of public or great general interest and raise substantial constitutional questions that can only be determined by this Court.

If allowed to stand, the decision of the court of appeals will open the floodgates of litigation and constitutional challenges to acts of the General Assembly and the laws it adopts before they become effective and before the claimed interests of any challenger could possibly have been affected. It would also, as a practical matter, permit a person challenging the constitutionality of a law to exclude every other person who has or may claim an interest affected by the law as a party to the proceeding, requiring the Attorney General to either defend virtually every constitutional challenge that may be brought exclusively against the “State of Ohio” or alternatively, to allow constitutional claims to proceed undefended.

² Section 1c, Article II of the Ohio Constitution expressly provides the law shall go into effect ninety days after it is filed with the secretary of state unless a referendum petition is timely filed against all or any section of the law or the General Assembly provides a later effective date.

The decision below eliminates the essential right of political subdivisions and others to participate in constitutional challenges to statutes that clearly affect their statutory powers, rights and interests. In this particular case, RSL claimed the constitutional challenge also affected its rights in other pending litigation – a lawsuit it filed against Colerain Township, Hamilton County, Ohio, the Colerain Township Board of Trustees and its individual members (collectively “Colerain” or “Colerain Township”) challenging Colerain’s denial of RSL’s request to re-zone 350 acres in the township for an expansion of its landfill.³ RSL unlawfully orchestrated the exclusion of Colerain Township from this litigation to its detriment in both cases.

RSL claimed that by filing its action for declaratory judgment and injunction *prior to the effective date of legislation*, the township could have no interest in this case because the law was not yet effective – even though the claims of both RSL and Colerain in their separate zoning litigation could both be affected by the statutory amendment. RSL argued that it had interest sufficient to strike a law that had been passed by the General Assembly before it could become effective, but incredibly Colerain Township did not have an equal interest to defend the law and its adoption by the General Assembly because it had not yet become effective. This is an unsustainable word game. No such distinction can be made.

The effect of the court of appeals’ decision here is far reaching. Allowing a premature exclusive constitutional claim against the “State of Ohio” before a law becomes effective also violates the legislative process and separation of powers established by the Ohio Constitution. Section 1c, Article II of the Ohio Constitution provides that bills passed by the General Assembly go into effect “ninety days after it shall have been filed by the governor in the office of the secretary of state” unless the General Assembly provides for a later effective date or

³ *Rumpke Sanitary Landfill, Inc., et al. v. Colerain Township, Ohio, et al.*, Hamilton County Court of Common Pleas Case No. A0703073, on appeal in Case No. CA C090223, more fully described in the Statement of the Case and Facts.

referendum is filed. There is no means by which a court may stop a bill from becoming effective and no person has an interest affected by the law before its effective date. The Ohio Constitution reserves to the people the right to file a petition for referendum within the ninety (90) days before any law becomes effective. Sections 1, 1b and 1c, Article II of the Ohio Constitution. Any stay or injunction against the effective date of a law interferes with the constitutional right of referendum of the people and voters of the state of Ohio. A court does not and should not have the authority to interpret a law unless and until it has become effective, irrespective of the constitutional theory upon which the law is challenged. While a court may declare a law it finds unconstitutional *void ab initio*, it may not enjoin that same law from becoming effective. Such an action would certainly violate not only the integrity of the legislative process, but also the separation of powers.

RSL also claimed, and the court of appeals held, that because RSL's constitutional claim was limited to the claim that the statute violated the one-subject rule, its challenge was directed solely against the *legislative process of the General Assembly*, not the substance of the select provisions of the bill it challenged so Colerain had no interest. Again, this is an artificial distinction and clearly not the case. A person should not be able to challenge a process the end result of which has not become effective.

If a constitutional challenge under the one-subject rule is only a challenge to the General Assembly's legislative process and not the substantive law, then any person could bring a challenge to any bill passed by the legislature to void an entire bill whether or not they are affected by any of its provisions. There would be no need for the challenger to show the person has some legal right or interest that is harmed by the substance of the new law. It is merely a procedural constitutional challenge. Any taxpayer, resident, elector, property owner, or even a person without any connection to the state or particular bill could bring an action against the

“State of Ohio” for the constitutional violation of its own legislative process. Such a rule could lead to rampant litigation of even the most inconsequential constitutional claims and expand the one-subject rule well beyond the language of the Constitution and jurisprudence of this Court.

RSL is a private corporation that challenged only a portion of a capital appropriations bill because it claimed it had particular interest that was affected only by the substance of those particular provisions of the bill— R.C. 519.211 and 303.211. RSL did not challenge the entirety of Am.Sub.H.B.562 or the overall legislative process adopting the bill. RSL’s stated interest was only the *substantive law* of the select provisions of the bill it sought to strike. It was only those substantive provisions RSL claimed affected *only its rights* in RSL’s lawsuit against Colerain.

The substantive provisions of the bill RSL selectively challenged clarified that townships and counties have local zoning authority over private solid waste facilities within their jurisdictions. RSL did not name *any* county or township as a party to this action. Particularly excluded (and opposed as parties by RSL) were counties and townships in which RSL had solid waste facilities, like Colerain Township. The state of Ohio does not have zoning authority. The exercise of governmental police power to zone property is vested solely in townships, counties and municipalities. Local governments have an interest in the public utility status of solid waste facilities and a declaration of the validity of R.C. 303.211 and R.C. 519.211. In addition, counties and townships in which solid waste facilities are located will clearly be affected by a judicial declaration that directly affects the police powers and governmental funding for solid waste. The townships and counties are interested and necessary parties to constitutional challenges to their powers and should not be excluded.

The declaratory judgment statute requires the attorney general to be *served* with any complaint that challenges the constitutionality of a law. The attorney general is not a party. R.C. 2721.12(A). In this case, the attorney general chose to make an appearance. In many cases

the attorney general does not, given the vast number of constitutional cases that are served upon him or her. It is clearly in the interest of the public to have the various public entities throughout the state have the opportunity to participate in and defend the laws that affect them, including townships and counties on challenges to their local police powers and governmental authorities.

As a practical matter, there may be little distinction between enjoining a statute from becoming effective and declaring that same statute *void ab initio*. As a legal matter, there is a vast distinction, as demonstrated by the facts in this case. Challenging and enjoining a law before it becomes effective violates the legislative process established in the Ohio Constitution for making a bill become law, infringes upon the referendum powers the Constitution expressly reserved to the people and voters of Ohio, and violates the constitutional separation of the powers of the legislative and judicial branches of government. It is the select statute(s) within a bill that are being challenged in a declaratory judgment action that establishes the interested parties who must be joined, not the theory upon which it is challenged or the timing of the challenge. No person should be permitted to exclude interested parties from participating in litigation that affect their rights and authorities even when the Attorney General has appeared in the action. A private corporation should not be permitted to exclude the political subdivision regulating it from defending its powers from constitutional challenge.

This is a case of both public and great general interest and it involves a substantial constitutional question. Appellants, Colerain Township respectfully request this Honorable Court to accept jurisdiction to decide these important questions and reverse the decision of the Court of Appeals of Hamilton County, Ohio below.

STATEMENT OF THE CASE AND FACTS

The significance of the constitutional questions and importance of the issues in this case is best understood within the context of the facts that gave rise to RSL's filing of this action.

Colerain Township, Hamilton County, Ohio is one of Ohio's largest townships with more than 60,000 residents. It has been the host community for RSL's privately owned and operated solid waste facility (sanitary landfill) for more than 60 years.⁴ That solid waste facility has been subject to and regulated by local zoning since zoning was initially adopted more than forty years ago – first by Hamilton County and then by Colerain Township. Each time RSL has expanded its solid waste facility, it has sought a local zoning change. When a zoning change has been denied, RSL has filed one or more lawsuits against the local zoning authority challenging its actions.

RSL filed a lawsuit against Colerain Township in 2007 after Colerain denied RSL's request to rezone an additional 350 acres in Colerain Township for sanitary landfill. RSL first asserted that the township zoning resolution was unconstitutional then amended its complaint to also claim that RSL is a "public utility" that is not subject to the township zoning under former R.C. 519.211.⁵ That statute provided that public utilities are not subject to township zoning but did not define what is and what is not a "public utility." Landfills, including solid waste facilities, are not statutory public utilities and are not regulated as "utilities" by the PUCO or other governmental authorities.

While that litigation was pending, the Ohio General Assembly passed Am.Sub.H.B.562, the biennial capital appropriations bill. The bill was both signed and filed by the governor with the secretary of state on June 24, 2008 and was to become effective on September 23, 2008. Included within the bill was an amendment to R.C. 519.211 clarifying that privately owned solid

⁴ The RSL landfill in Colerain Township is currently approximately 509 acres. It has a remaining life of approximately 15 years resulting from a 168 acre re-zoning that was permitted by a consent decree in a *Rumpke Sanitary Landfill, Inc., et al. v. Colerain Township, Ohio, et al.*, Hamilton County Court of Common Pleas Case No. A007121, a case filed by RSL against Colerain Township in 1999 to allow re-zoning for the 168 acre 'southern' expansion of the landfill in the township.

⁵ *Rumpke Sanitary Landfill, Inc., et al. v. Colerain Township, et al.*, Hamilton County Common Pleas Case No. A0703073 on appeal in Hamilton County Court of Appeals Case No. C090223.

waste disposal facilities operating under a permit issued by the Ohio Environmental Protection Agency are not “public utilities” and are not exempt from local zoning regulation. (Public solid waste facilities were not excluded as public utilities).⁶ The bill also appropriated funds for grants, loans, and bonds to local governments for funding local capital programs including solid waste disposal facilities, along with the means by which local governments contract with utilities for appropriated funds.

Just twenty-one (21) days before that amendment was to become effective under the self-executing provisions of the Ohio Constitution, RSL filed a complaint for declaratory judgment and permanent injunction, and a motion for a temporary restraining order and a preliminary injunction against the State of Ohio. RSL sought to have R.C. 519.211 and R.C. 303.211 declared unconstitutional under the one-subject rule and enjoin the State of Ohio *from allowing the law to ever become effective*. RSL asserted its claims and theories in its pending litigation against Colerain Township would be harmed if the amended law was permitted to go into effect and sought to enjoin it. RSL had no other legal right or interest affected by the statute because its solid waste facilities had always been subject to county and township zoning, as had other sanitary landfills throughout the state.

⁶Am.Sub.H.B.562 included R.C. 519.211 which is titled and provides, in part:

519.211 Township zoning not to affect public utilities, railroads, liquor sales, or oil and gas production; exception for telecommunications towers

(A) Except as otherwise provided in division (B) or (C) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business. As used in this division, "public utility" does not include a person that owns or operates a solid waste facility or a solid waste transfer facility, other than a publicly owned solid waste facility or a publicly owned solid waste transfer facility, that has been issued a permit under Chapter 3734. of the Revised Code or a construction and demolition debris facility that has been issued a permit under Chapter 3714. of the Revised Code. ***

Nine days after the case was filed, Colerain sought to intervene as an interested and necessary party to the action. Immediately thereafter, the State of Ohio moved to dismiss RSL's lawsuit on the grounds that Colerain Township was clearly an interested party. The state asserted that joinder of Colerain Township in the declaratory judgment action was jurisdictional and the case could not and should not proceed without the township. RSL successfully excluded Colerain Township as a party in this case over the objection of both the township and the state. On October 3, 2008, ten days after the Am.Sub.H.B.562 became effective, the common pleas court issued an order prohibiting Colerain from participating in the lawsuit, permanently enjoining the State of Ohio from making R.C. 519.211 and R.C. 303.211 effective and declaring both statutes unconstitutional under the one-subject rule. The court of appeals affirmed that decision.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I. A township is an interested and necessary party to a constitutional challenge brought by a property owner within the township's jurisdiction to a law passed by the General Assembly that directly affects the township's police powers over that owner's property and pending litigation.

Declaratory judgment actions are statutory proceedings provided for in R.C. Chapter 2721. R.C. 2721.12(A) requires that all persons who have or **claim an interest** that would be affected by the declaration "**shall be made parties to the action or proceeding,**" including townships.⁷ When any statute is alleged to be unconstitutional, the attorney general

⁷ R.C. 2721.12 entitled "Declaratory relief; parties" provides, in part:

(A) Subject to division (B) of this section, when declaratory relief is sought under this chapter in an action or proceeding, all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding. Except as provided in division (B) of this section, a declaration shall not prejudice the rights of persons who are not made parties to the action or proceeding. In any action or proceeding that involves the validity of a municipal ordinance or franchise, the municipal corporation shall be made a party and shall be heard, and, if any statute or the ordinance or franchise is alleged to be unconstitutional, the attorney general also shall be served with a copy of the

must be served with a copy of the complaint. R.C. 2721.12(A). This Court has repeatedly held that in declaratory judgment proceedings the absence of a necessary party constitutes a jurisdictional defect, a court is without any power to hear the case, and it must be dismissed. *City of Cincinnati v. Whitman* (1975), 44 Ohio St.2d 58, syllabus para. 1, *Malloy v. City of Westlake* (1977), 52 Ohio St.2d 103, 104-105, *Gannon v. Perk* (1976), 46 Ohio St.2d 301.

This Court has also consistently held that when declaratory judgment involves the validity or construction of a statute that affects the powers and duties of the government and its public officers, those officers are necessary parties to the declaratory judgment proceedings and failure to join them constitutes a jurisdictional defect that precludes the court from rendering declaratory judgment. *City of Cincinnati v. Whitman, supra*, *Portage Cty. Board of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, ¶29. The court of appeals attempted to distinguish this well-established jurisprudence erroneously finding that (Decision, p. 5-6, ¶9):

Rumpke was not challenging Colerain's zoning authority. Rather, Rumpke challenged the General Assembly's authority to enact revisions that arguably violated the Ohio Constitution's one-subject rule. Colerain had no legal interest in the General Assembly's authority to enact laws.

The court below further erred when it found Colerain had merely a "practical interest" in R.C. 519.211, not the "legal interest" to participate in a declaratory judgment action (like RSL). The court below cited and relied upon *Driscoll v. Austintown Associates* (1975), 42 Ohio St.2d 263, 273 to make that distinction. *Driscoll* did not involve a constitutional challenge and does not support the lower court's decision. In *Driscoll*, this Court found, in a declaratory judgment case challenging the enforcement of township zoning, that neighboring property owners had only a practical interest in the litigation. However, the township whose zoning authority was

complaint in the action or proceeding and shall be heard. In any action or proceeding that involves the validity of a township resolution, the township shall be made a party and shall be heard.

Division (B) is not relevant in this action.

challenged was a necessary party in both a predecessor case that challenged the constitutionality of the zoning and the later case challenging zoning enforcement. Neither RSL nor the court cited any case in which the “State of Ohio” was the sole defendant in a single subject constitutional challenge to a statute. In virtually every case, the government authority that was empowered by and/or exercising authority under the statute challenged was made a party, as the Attorney General and Colerain Township argued to both courts below.

The inclusion of empowered and enforcing authorities is essential for several reasons. Injunction actions are governed by Civ. R. 65 and R.C. Chapter 2727 (to the extent it is not in conflict with Civ. R. 65). Neither declaratory judgments nor injunctions are binding upon persons who are not made parties to the action or proceeding. R.C. 2721.12(A), Civ. R. 65(D). A declaration or injunction against the amorphous “State of Ohio” is ineffective. The “State of Ohio” acts through its elected and appointed officials and staff. As previously stated, it has no zoning power or enforcement authority. There is nothing to restrain. In addition, local governments are in the best position to understand the parameters and effect of a statute on their powers and procedures and to defend its constitutionality, including its relationship and basis for inclusion in a particular bill.

The court of appeals also erred by refusing to permit Colerain Township to join the case as a necessary party under Civ. R. 24. But for its litigation against Colerain, RSL had no legal right or interest affected by the statute. Its landfill in Colerain Township was already subject to local zoning which the amendment to R.C. 519.211 did not affect. To the extent that RSL had a right bring this action as one party in pending litigation whose rights were affected by the bill, then Colerain’s rights as the other party in that same litigation were also and equally affected.

A township clearly has an “interest” that would be affected when the declaration of the constitutionality of a statute involves township zoning authority and the “public utility” status of

solid waste facilities within its jurisdiction. It is also an interested and necessary party in an action brought by the owner of property within its jurisdiction that may affect the police powers of the township on that property. The township's interest cannot be adequately represented by the Attorney General. Failure to join the township was a jurisdictional defect and abuse of discretion and judgment could not be issued.

Proposition of Law No. II: The constitutional effective date of a law can only be enjoined from becoming effective by the filing of a referendum petition. A law cannot be prevented from going into effect by injunction or be challenged prior to its effective date by use of a declaratory judgment action.

RSL prematurely brought the action before this Court for the purpose of excluding Colerain Township as a party to this action. There is no cause of action for injunction against a law becoming effective once signed by the governor and filed with the secretary of state, and any injunction against the "State of Ohio" is meaningless.

The Constitution establishes when a bill becomes law and a law becomes effective. That process cannot be enjoined by a court. Every bill passed by the General Assembly is presented to the governor for signature. Section 15(E), Article II, Ohio Constitution. If the governor signs the act, "it becomes law and he shall file it with the secretary of state." Section 16, Article II, Ohio Constitution. A bill *becomes law* immediately upon the signature of the governor and thereafter the process is ministerial. *State ex rel. Governor v. Taft* (1994), 71 Ohio St.3d 1.

A law *becomes effective* ninety days after it has been filed by the governor in the office of the secretary of state unless a referendum petition is filed (or the General Assembly prescribes a later effective date). Section 1c and 1g, Article II, Ohio Constitution and R.C. 3519.16. These constitutional provisions are self-executing. Once signed by the governor, the only means by which the effectiveness of a law can be stayed or enjoined is by the filing of a referendum

petition. *See Thornton v. Salak*, 112 Ohio St.3d 254, 2006-Ohio-6407. The courts below had no jurisdiction to enjoin the constitutional effective date of a law nor was there any official or action of the “State of Ohio” to enjoin. If an injunction could have been granted, it must have been issued against the enforcer acting under the law being challenged after it becomes effective. In this case against Colerain Township, who was excluded from this action.

A cause of action for declaratory judgment to determine the constitutionality of a law is not ripe until that law becomes effective. A complainant can show no legal right or interest that is affected and no harm until the law complained of becomes effective. Furthermore, the Constitution reserves to “the people” the superior right to challenge any law by referendum before it becomes effective. Those constitutional rights are inviolate for ninety days and no challenge to all or any portion of a bill can be filed until that referendum period has expired.

Proposition of Law No. III: The definition of what solid waste facility is and is not a “public utility” contained in a biennial capital appropriations bill is not a manifestly gross and fraudulent violation of the “one-subject” rule when the bill includes state appropriations through bonds and local government loans and grants for solid waste facilities that are funded by the appropriations bill in question.

Section 15(D), Article II of the Ohio Constitution provides “[n]o bill shall contain more than one subject, which shall be clearly expressed in its title.” A court’s “role in the enforcement of the one-subject provision is limited. To avoid interfering with the legislative process, [courts] must afford the General Assembly ‘great latitude in enacting comprehensive legislation by not construing the one-subject provision so as to unnecessarily restrict the scope and operation of laws, or to multiply their number excessively, or to prevent legislation from embracing in one act all matters properly connected with one general subject.’ ” *State ex rel. Ohio Civ. Serv. Emps. Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, ¶27 (“SERB”). “Every presumption in favor of the enactment’s validity should be

indulged.” *Hoover v. Franklin Cty. Bd. of Commrs.* (1985), 19 Ohio St.3d 1, 6. Only “[a] manifestly gross and fraudulent violation of the one-subject provision contained in Section 15(D), Article II of the Ohio Constitution will cause an enactment to be invalidated.” *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, syllabus para. 1, ¶45, 54.

A bill may embrace more than one topic, as long as there is a common thread linking the various subjects of the bill. It is the disunity of subject matter, rather than the aggregation of topics, that causes a bill to violate the one-subject rule. *Nowak* at ¶59; *State ex rel. Dix v. Celeste* (1984), 11 Ohio St.3d 141, 146. This Court has recognized that appropriations bills are different from other acts of the General Assembly and of necessity encompass many items. *Simmons-Harris v. Goff* (1999), 86 Ohio St.3d 1, 16. The “[a]pplication of the one-subject rule is complicated when the challenged provision is part of an appropriations bill.” *SERB* at ¶30. One of the very purposes of the one-subject rule was to prevent the use of public funds to “give financial aid to private canal, bridge, turnpike and railroad companies” and subsidize them. *Nowak* at ¶31. The court must look to the particular language of the bill within its four corners and give every presumption in favor of the law’s validity. *Hoover* at 6.

Am.Sub.H.B.562 is the biennial state capital appropriations bill. The bill includes laws directly related to both appropriations provided to political subdivisions and the means by which political subdivisions, including townships and counties, may appropriate funds for local improvements, public utilities and environmental remediation. Am.Sub.H.B.562 at 769-770, 872. It clarifies public utility status of both privately and publicly owned solid waste facilities and provides appropriations local governments may use for solid waste disposal facilities. The bill appropriates \$120 million to the State Capital Improvements Fund, which provides low interest loans and grants to local governments for local capital projects, including projects involving solid waste disposal facilities. A funding source for the State Capital Improvements

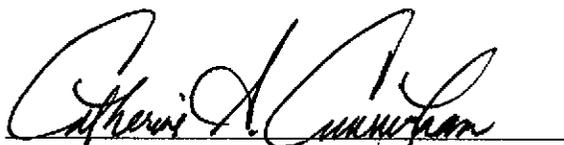
Fund is bond proceeds. R.C. 519.211 and 303.211 distinguish publicly and privately owned solid waste facilities and make it clear that a private solid waste facility is not a public utility or exempt from local regulation or zoning. Public funds cannot be used for the benefit of a private corporation. The state has an interest in determining who is and who is not a public utility and in assuring that public funds are being used for local public infrastructure, not private facilities.

Although the provisions of the bill embrace more than a singular topic, they have a common purpose: to provide for the issuance of government bonds and the appropriation of state funds for local public improvements and to ensure that public monies are not being utilized for private facilities, which remain subject to regulation by local government. It clarifies the existing law relating to political subdivision's regulation of solid waste facilities and provides for funding to political subdivisions that can be used for solid waste facilities. The challenged provisions of Am.Sub.H.B.562 are directly related to both appropriations provided by the state and bond revenues to political subdivisions and the means into which they enter contracts and appropriate those funds to local governments and the solid waste facilities eligible for those funds. The legislature's inclusion of the amendments in Am.Sub.H.B.562 was practical, rational, and for a legitimate reason. In no event did the inclusion of the amendments constitute a "manifestly gross and fraudulent violation" of the single-subject rule. The court below erred when it failed to give great latitude and deference to legislature and concluded there was "no discernible practical, rational or legitimate reasons" for excluding private solid waste facilities a public utilities in the appropriations bill.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The Appellants request that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,



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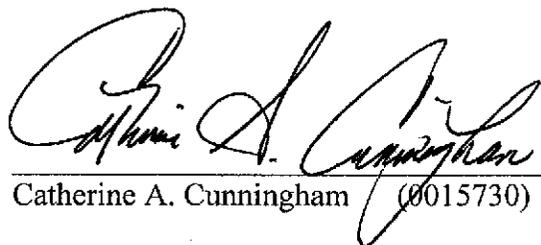
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon the following parties via regular U. S. mail, postage pre-paid, on this 2nd of November, 2009:

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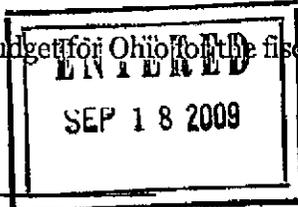
Catherine A. Cunningham (0015730)

SUNDERMANN, Judge.

{¶1} The state of Ohio and Colerain Township appeal the trial court's judgment that denied Colerain's motion to intervene and that struck as unconstitutional revisions to R.C. 303.211 and 519.211. We conclude that Colerain was not an interested party under R.C. 2721.12, so the trial court had jurisdiction and did not abuse its discretion when it denied Colerain's motion to intervene. We further conclude that the trial court properly determined that the revisions to R.C. 303.211 and 519.211 violated the one-subject rule.¹ We therefore affirm the judgment of the trial court.

1. Background

{¶2} In a case that is not a subject of this appeal ("the public-utility case"),² Rumpke Sanitary Landfill ("Rumpke") challenged whether Colerain had zoning authority over Rumpke's existing landfill and proposed expansion in Colerain. Critical to that case was the determination about whether Rumpke is a public utility under R.C. 519.211.³ On June 10, 2008, while the public-utility case was pending before the trial court, the Ohio General Assembly passed Am.Sub.S.B. No. 562. Governor Ted Strickland signed the bill with the exception of some line-item vetos that are not pertinent in this case. The bill was to become effective on September 28, 2008. The bill's stated purpose was "to make capital and other appropriations and to provide authorization and conditions for the operation of state programs." To that end, the bill established a biennial budget for Ohio for the fiscal years 2009 and 2010.



¹ Section 15(D), Article II, Ohio Constitution.

² Hamilton C.P. No. A-0703073

³ The trial court in case no. A-0703073 has since granted summary judgment in favor of Rumpke, and that judgment has been appealed.

{¶3} In addition to setting Ohio's biennial budget, the bill amended hundreds of sections of the Revised Code and enacted and repealed dozens of other sections. Among the revisions were the two that are the subjects of this appeal. R.C. 303.211(A) was revised as follows (revision italicized): "Except as otherwise provided in division (B) or (C) of this section, sections 303.01 to 303.25 of the Revised Code do not confer any power on any board of county commissioners or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad for the operation of its business. *As used in this division, "public utility" does not include a person that owns or operates a solid waste facility or a solid waste transfer facility, other than a publicly owned solid waste facility or a publicly owned solid waste transfer facility, that has been issued a permit under Chapter 3734, of the Revised Code or a construction and demolition debris facility that has been issued a permit under Chapter 3714, of the Revised Code.*" Similarly, R.C. 519.211(A) was amended in this manner (revision italicized): "Except as otherwise provided in division (B) or (C) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, for the operation of its business. *As used in this division, "public utility" does not include a person that owns or operates a solid waste facility or a solid waste transfer facility, other than a publicly owned solid waste facility or a publicly owned solid waste transfer facility, that has been issued a permit under Chapter 3734, of the Revised Code*

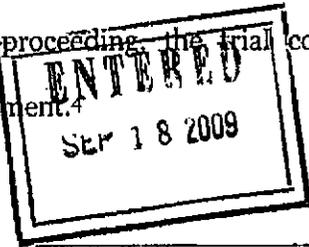


or a construction and demolition debris facility that has been issued a permit under Chapter 3714, of the Revised Code.”

{¶4} On September 2, 2008, Rumpke filed a lawsuit against Ohio, seeking a declaration that the revisions to R.C. 303.211 and 519.211 were unconstitutional because they violated the one-subject rule. Rumpke sought to enjoin the state from putting the revisions into effect. Colerain sought to intervene in the action, arguing that it was an interested party under R.C. 2721.12 or that, in the alternative, it should be permitted to intervene under Civ.R. 24 because the determination about whether the revisions were constitutional would affect its case with Rumpke. Ohio supported Colerain’s motion and filed a motion to dismiss pursuant to Civ.R 12(B)(7) and 19, arguing that, absent Colerain’s joinder, the trial court did not have jurisdiction over the case. After a hearing, the trial court denied Colerain’s motion to intervene and held that the revisions to R.C. 303.211 and 519.211 violated the one-subject rule. This appeal followed.

Colerain’s Motion to Intervene

{¶5} We first consider Colerain’s attempt to intervene in the action. Under R.C 2721.12(A), “when declaratory relief is sought under [R.C. Chapter 2721] in an action or proceeding, all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding. Except as provided in division (B) of this section, a declaration shall not prejudice the rights of persons who are not made parties to the action or proceeding.” We must determine whether Colerain was a necessary party under R.C. 2721.12. If so, absent Colerain’s joinder as a party to the proceeding, the trial court did not have jurisdiction to render a declaratory judgment.⁴



⁴ *Cincinnati v. Whitman* (1975), 44 Ohio St.2d 58, 337 N.E.2d 773, paragraph one of the syllabus.

{¶6} When discussing an earlier version of R.C. 2721.12 in *Driscoll v. Austintown Associates*, the Ohio Supreme Court made a distinction between parties with a practical interest in the outcome of a declaratory-judgment action and those with a legal interest in the outcome.⁵ In that case, township trustees and adjoining landowners sought to enjoin the construction of apartment buildings on land owned by Austintown Associates. The court concluded in part that the adjoining landowners, while possessing practical interests in the outcome of the zoning dispute, did not have legal interests in the outcome such that they were necessary parties under R.C. 2721.12.⁶

{¶7} That distinction is important in this case. Colerain certainly has a practical interest in the determination whether the revision to R.C. 519.221 is unconstitutional. A statute stating that Rumpke is not a public utility for zoning purposes would support Colerain's zoning authority over Rumpke's existing property and its planned expansion. But that practical interest does not have a bearing on whether Colerain was a necessary party in this declaratory-judgment action.

{¶8} Colerain argues that in other cases in which the constitutionality of a statute was challenged, townships were made a party. But those cases do not answer the question posed here. A township's presence in other similar cases does not necessarily mean that the township was an interested party in this case. It is possible that the townships in those cases were joined permissively under Civ.R. 24(B).

{¶9} To resolve the issue, we must consider the subject of Rumpke's declaratory-judgment action. Rumpke was not challenging Colerain's zoning authority. Rather, Rumpke challenged the General Assembly's authority to enact revisions that

⁵ *Driscoll v. Austintown Associates* (1975), 42 Ohio St.2d 263, 273, 328 N.E.2d 395.



arguably violated the Ohio Constitution's one-subject rule. Colerain had no legal interest in the General Assembly's authority to enact laws.

{¶10} Colerain's reliance on the Seventh Appellate District's decision in *Barnesville Edn. Assn. OEA/NEA v. Barnesville Exempted Village School Dist.*⁷ is misplaced in this case. There, the court held that the Ohio Auditor was a necessary party to a declaratory-judgment action that was seeking to have some powers of the auditor declared unconstitutional.⁸ In this case, Rumpke did not seek to declare the township's powers unconstitutional. Rather, it challenged the constitutionality of the General Assembly's actions. This court's decision in *Klein v. Leis*⁹ is similarly distinguishable. There we held that county, municipal, and township defendants were necessary parties to proceedings challenging the state's concealed-carry law.¹⁰ At issue in that case was the constitutionality of the actions that the local governments would have to take under the challenged statute, not the constitutionality of the General Assembly's actions when it passed the legislation.¹¹ We conclude that the trial court in this case properly determined that Colerain was not a necessary party under R.C. 2721.12.

{¶11} Colerain argues that even if it was not a necessary party under R.C. 2721.12, the trial court should have granted its motion to intervene under Civ.R. 24. Civ.R. 24(A) provides that a party shall be permitted to intervene as a matter of right (1) when a statute * * * confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless

⁷ 7th Dist. No. 06 BE 32, 2007-Ohio-1109.

⁸ Id. at ¶69.

⁹ 146 Ohio App.3d 526, 2002-Ohio-1634, 767 N.E.2d 286, overruled on other grounds, 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633.

¹⁰ Id. at ¶50.



the applicant's interest is adequately represented by existing parties." We review the trial court's decision to deny intervention under Civ.R. 24 for an abuse of discretion.¹²

{¶12} As we have discussed with respect to R.C. 2721.12, Colerain did not demonstrate that it had a legally protectable interest in the court's determination about whether the General Assembly had enacted the revisions in violation of the one-subject rule. And even if Colerain had demonstrated such an interest, it was not able to show that Ohio could not adequately represent its interests in the proceedings. In this case, Colerain and Ohio had perfectly aligned interests—to have the statutory revisions declared constitutional. The trial court did not abuse its discretion in denying Colerain's motion to intervene. Nor did it err in denying Ohio's motion to dismiss for failure to join a necessary party. Colerain's two assignments of error and Ohio's first assignment of error are overruled.

One-Subject Rule

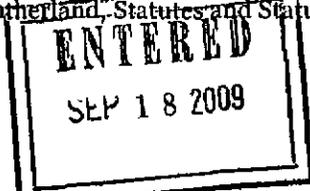
{¶13} Having concluded that the trial court did not err in refusing to permit Colerain's intervention, we turn to the substantive issue—whether the revisions to R.C. 303.211 and 519.211 violated the one-subject rule, which states that “[n]o bill shall contain more than one subject, which shall be clearly expressed in its title.”¹³

{¶14} The purpose of the one-subject rule is “to prevent logrolling—* * * the practice of several minorities combining their several proposals as different provisions of a single bill and thus consolidating their votes so that a majority is obtained for the omnibus bill where perhaps no single proposal of each minority could have obtained majority approval separately.”¹⁴

¹² *Pfeiffer v. State Auto. Mut. Ins. Co.*, 1st Dist. No. C-050683, 2006-Ohio-5074. See, also, *Young v. Equitec Real Estate Investors Fund* (1995), 100 Ohio App.3d 136, 652 N.E.2d 234.

¹³ Section 15(D), Article II, Ohio Constitution.

¹⁴ *State ex rel. Dix v. Geleste* (1984), 11 Ohio St.3d 141, 142, 464 N.E.2d 153, quoting 1A *Sutherland, Statutes and Statutory Construction* (4 Ed.1972), Section 17.01.



{¶15} Courts are hesitant to interfere with the legislative process. To that end, the Ohio Supreme Court has recognized that “[t]he one-subject rule * * * is merely directory in nature; while it is within the discretion of the courts to rely upon the judgment of the General Assembly as to a bill’s compliance with the Constitution, a manifestly gross and fraudulent violation of this rule will cause an enactment to be invalidated.”¹⁵ Thus, “[t]o conclude that a bill violates the one-subject rule, a court must determine that the bill includes a disunity of subject matter such that there is ‘no discernible practical, rational or legitimate reason for combining the provisions in one Act.’ ”¹⁶ Despite the admonition regarding the deference afforded to legislative enactments, the Ohio Supreme Court has clarified that “we no longer view the one-subject rule as toothless. * * * The one-subject rule is part of our Constitution and therefore must be enforced.”¹⁷

{¶16} We are guided by the supreme court’s treatment of provisions included in other appropriation bills. The court acknowledged that the analysis of the one-subject rule with respect to appropriations bills can be complicated because appropriations bills “encompass many items, all bound by the thread of appropriations.”¹⁸ In *Simmons-Harris*, the Ohio School Voucher Program was challenged under the one-subject rule. The program took just ten pages of an appropriations bill that was in its entirety over 1000 pages. The supreme court concluded that the program was little more than a rider to the appropriations bill.¹⁹ In its decision, the court stated that “there was a blatant

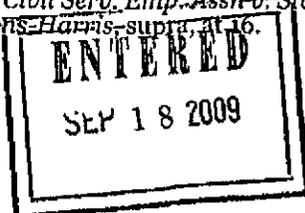
¹⁵ *Id.* at syllabus.

¹⁶ *State ex rel. Ohio Civil Serv. Emp. Assn. v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, citing *Beagle v. Walden*, 78 Ohio St.3d 59, 62, 1997-Ohio-234, 676 N.E.2d 506.

¹⁷ *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 15, 1999-Ohio-77, 711 N.E.2d 203. See, also, *State ex rel. Ohio Civil Serv. Emp. Assn. v. State Emp. Relations Bd.*, *supra*.

¹⁸ *Simmons-Harris*, *supra*, at 16.

¹⁹ *Id.*



disunity between the School Voucher Program and most other items contained in [the bill].”²⁰

{¶17} Similarly, in *State ex rel. Ohio Civil Serv. Emp. Assn.*, the Ohio Supreme Court considered the General Assembly’s revision of R.C. 3318.31 to exclude certain employees from the collective-bargaining process. The revision was accomplished with one line in what the court said could “be loosely described as an appropriations bill.”²¹ The court pointed out that there again was disunity between the budget-related items and the revision.²² Further, the court pointed out, the record lacked “any explanation whatever as to the manner in which the amendment to R.C. 3318.31 will clarify or alter the appropriation of state funds.”²³

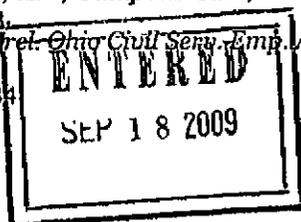
{¶18} Such is the case with the revisions made to R.C. 303.211 and 519.211. As in *State ex rel. Ohio Civil Serv. Emp. Assn.*, the majority of Ohio’s argument is directed to demonstrating that provisions in appropriations bills can survive challenges under the one-subject rule. But other than a tenuous argument that a \$120 million appropriation for low-interest loans and grants to local governments for projects involving, among other things, solid-waste-disposal facilities would be affected by the revisions to R.C. 302.211 and 519.211, there is no evidence of the effect of the revisions on the state’s biennial budget. In fact, a fiscal analysis done by the Ohio Legislative Service Commission concluded that “[t]he fiscal impact of [the revisions was] uncertain, but would likely mean that such facilities not zoned currently may be in the future.” We conclude that there was “no discernible practical, rational or legitimate reason” for including the revisions to R.C. 303.211 and 519.211 in the appropriations bill. The trial

²⁰ Id. See, also, *Gallipolis Care, L.L.C. v. Ohio Dept. of Health*, 10 Dist. No. 03AP-1020, 2004-Ohio-5533.

²¹ *State ex rel. Ohio Civil Serv. Emp. Assn. v. State Emp. Relations Bd.*, supra, at ¶32.

²² Id.

²³ Id. at ¶34



court properly concluded that the revisions violate the one-subject rule. Ohio's second assignment of error is overruled. And we, therefore, affirm the judgment of the trial court.

Judgment affirmed.

HENDON, P.J., and CUNNINGHAM, J., concur.

Please Note:

The court has recorded its own entry this date.



**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

RUMPKE SANITARY LANDFILL, INC.,	:	APPEAL NOS. C-081097 C-081119
Plaintiff-Appellee,	:	TRIAL NO. A-0808270
vs.	:	<i>JUDGMENT ENTRY.</i>
STATE OF OHIO,	:	
Defendant-Appellant,	:	
and	:	
COLERAIN TOWNSHIP,	:	
Intervenor-Appellant.	:	

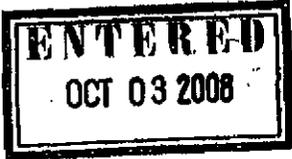


This cause was heard upon the appeal, the record, the briefs, and arguments.
The judgment of the trial court is affirmed for the reasons set forth in the Decision filed this date.
Further, the court holds that there were reasonable grounds for this appeal, allows no penalty and orders that costs are taxed under App. R. 24.
The Court further orders that 1) a copy of this Judgment with a copy of the Decision attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

To The Clerk:
Enter upon the Journal of the Court on September 18, 2009 per Order of the Court.

By: _____
Presiding Judge





HAMILTON COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION
HAMILTON COUNTY, OHIO



RUMPKE SANITARY LANDFILL, INC.	:	CASE No: A-0808270
Plaintiff	:	(Judge Nadel)
vs.	:	
STATE OF OHIO	:	<u>ORDER GRANTING</u>
Defendant	:	<u>PERMANENT INJUNCTION</u>

This matter came before the Court for a Consolidated Hearing on Plaintiff's Application for Preliminary Injunction with Trial on the Merits on Thursday, September 18, 2008. The Court having considered the legal memoranda submitted by the parties, the arguments of counsel and being fully advised in the premises, finds that Plaintiff Rumpke Sanitary landfill, Inc. ("Rumpke" or "Plaintiff") should be granted an Order permanently enjoining the revisions to R.C. Sections 303.211 and 519.211 from taking effect. Accordingly, the Court issues the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff Rumpke Sanitary Landfill, Inc. ("Rumpke" or "Plaintiff") and its subsidiaries and affiliates own and operate a sanitary landfill in Colerain Township, Ohio.
2. Rumpke also owns or controls approximately 350 acres located between Hughes Road, Interstate 1-275, and Buell Road, in Colerain Township, Hamilton County, Ohio (the "Property"), Rumpke is planning to use this Property for an expansion of the current landfill.
3. Plaintiff is currently engaged in litigation against Colerain Township, Ohio, Colerain Township Board of Trustees, Bernard Fiedeldey, Trustee, Keith N. Corman, Trustee, and Jeff Ritter, Trustee (in their official capacities as Trustees, not individually) (collectively



referred to as “Colerain Township”) in the case styled *Rumpke Sanitary Landfill, Inc. v. Colerain Township, Ohio*, Hamilton County Common Pleas Case No. A0703073 (the “Public Utility Case”).

4. The Public Utility Case, pending since April 2007, focuses on whether Rumpke is a public utility under R.C. 519.211, and whether the operation of Rumpke’s existing landfill and its proposed expansion on the Property are subject to Colerain Township’s zoning authority. Rumpke has spent tens of thousands of dollars pursuing this claim, and 21 depositions have occurred in the Public Utility Case thus far. The case is scheduled for a trial to the Court on March 16, 2009.

5. On June 10, 2008, the 127th General Assembly passed Amended Substitute House Bill 562 (the “Capital Appropriations Bill”).¹

6. On June 24, 2008, Governor Ted Strickland approved the Capital Appropriations Bill, with the exception of certain line-item vetoed provisions not relevant to this case.

7. The Capital Appropriations Bill established a \$1,312,362,848 Biennial Budget for the State of Ohio for Fiscal Years 2009 and 2010.

8. The stated purpose of the Capital Appropriations Bill was “to make capital and other appropriations and to provide authorization and conditions for the operation of state programs.” (Capital Appropriations Bill, at 4).

9. In addition to funding the State’s operations for the 2009-2010 Biennium, the 919-page Capital Appropriations Bill amended over 300 sections of the Revised Code and 6 previously passed bills. It also enacted 58 entirely new sections of the Revised Code, repealed 27 sections, and renumbered 10 others.

¹ The Capital Appropriations Bill was attached to the Verified Complaint.

10. Non-budgetary provisions in the Capital Appropriations Bill, included, but were not limited to, provisions addressing a) the membership of various State boards and commissions, b) the provision of notice of federal firearms prohibition to persons subject to protection orders or charged with a misdemeanor offense of violence, c) the administration of polygraph examinations for alleged victims of sex offenses, d) wind farm regulation, e) Voter military identification, f) the definition of "motorcycle" and the riding of motorcycles, g) the designation of a memorial highway, and h) the prohibition on strikes by specified county security personnel.

11. The Capital Appropriations Bill also added the following sentence to Revised Code Sections 303.211 and 519.211:

As used in this division, "public utility" does not include a person that owns or operates a solid waste facility or a solid waste transfer facility, other than a publicly owned solid waste facility or a publicly owned solid waste transfer facility, that has been issued a permit under Chapter 3734. of the Revised Code or a construction and demolition debris facility that has been issued a permit under Chapter 3714. of the Revised Code.

(Capital Appropriations Bill, at 77, 107).

12. Under Chapter 3734 of the Revised Code, Rumpke has been issued a permit for the operation of a solid waste facility in Colérain Township.

13. The Legislative Services Commission prepared a Fiscal Analysis discussing the fiscal provisions of the Capital Appropriations Bill. (Fiscal Analysis attached hereto as Exhibit 3).

14. The Revisions to R.C. Sections 303.211 and 519.211 were not addressed in the Fiscal Analysis.

15. The Legislative Services Commission also prepared a Fiscal Note discussing the fiscal impact of the non-fiscal provisions of the Capital Appropriations Bill. (Fiscal Note attached hereto as Exhibit 4).

16. Regarding the revisions to Revised Code Sections 303.211 and 519.211, the Fiscal Note concluded, "The fiscal impact of this provision is uncertain, but would likely mean that such facilities not zoned currently may be in the future." (Fiscal Note, at 20).²

17. The revisions to Revised Code Sections 303.211 and 519.211 are not budgetary provisions.

18. The revisions to Revised Code Sections 303.211 and 519.211 do not make capital or other appropriations nor do they provide authorization or conditions for the operation of state programs.

19. The revisions to Revised Code Sections 303.211 and 519.211 comprise merely two sentences in a 919-page bill, which are totally unrelated to the subject of the Capital Appropriations Bill- the state budget- and are legislative riders attached to the Capital Appropriations Bill.

CONCLUSIONS OF LAW

1. The Single-Subject Rule found in Section 15(D), Article II of the Ohio Constitution states: "No bill shall contain more than one subject, which shall be clearly expressed in its title." Section 15(D), Article II of Ohio Constitution

² The Fiscal Note misstates the current state of the law. Under Ohio Supreme Court precedent, a privately owned solid waste facility can be a public utility and exempt from township and county zoning regulations depending on the specific facts and circumstances of the solid waste facility at issue. *See, A&B Refuse Disposers, Inc. v. Bd. of Ravenna Twp. Trustees* (1992), 64 Ohio St.3d 385.

2. In order to be part of an appropriations bill, a Revised Code amendment must “clarify or alter the appropriation of state funds.” *State ex rel. Ohio Civ. Serv. Emp’ers. Assn., AFMSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, ¶34.

3. A mere tenuous connection to the state budget is not sufficient to withstand the Single-Subject Rule. Such an argument is “meaningless.” *Id.* at ¶33.

4. The Capital Appropriations Bill’s primary purpose was to enact a \$1.3 billion budget for capital improvements. However, the revisions to Sections 303.211 and 519.211 have no connection to capital appropriations or expenditures.

5. Altering the definition of “public utility” does nothing to “clarify or alter the appropriation of state funds;” thus, it has no relation to the Capital Appropriations Bill. *Id.* at ¶34.

6. Under the Ohio Constitution, the inclusion of the revisions to Sections 303.211 and 519.211 violates the Single-Subject Rule found in Section 15(D), Article II.

7. Because appropriations are the primary purpose of the Capital Appropriations Bill, the non-budgetary revisions to Sections 303.211 and 519.211 can be severed from the Bill without affecting the remainder of the Capital Appropriations Bill. *Akron Metro. Hous. Auth. Bd. of Trs. v. State of Ohio*, 2008-Ohio-2836, 26 (Ohio Ct. App., Franklin County June 12, 2008).

Based on the foregoing, the Court finds that the primary purpose of the Capital Appropriations Bill was budgetary; specifically “to make capital and other appropriations and to provide authorization and conditions for the operation of state programs.” (Capital Appropriations Bill, at 4). The Court further finds that the revisions to Revised Code Sections 303.211 and 519.211, which alter the definition of “public utility,” are totally unrelated to the

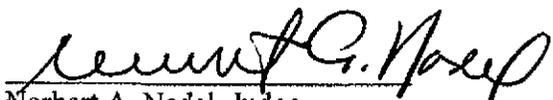
subject of the Capital Appropriations Bill. The revisions to Sections 303.211 and 519.211 do not make capital or other appropriations nor do they provide authorization or conditions for the operation of state programs.

THEREFORE, IT IS HEREBY ORDERED that the inclusion of the revisions to R.C. Sections 303.211 and 519.211 within the Capital Appropriations Bill is unconstitutional, violating the Single-Subject Rule contained in Section 15(D), Article II of the Ohio Constitution.

IT IS FURTHER ORDERED that the amendments to Revised Code Sections 303.211 and 519.211 contained in the Capital Appropriations Bill are permanently enjoined from taking effect.

IT IS FURTHER ORDERED that all other pending motions are hereby denied.

****IT IS FURTHER ORDERED** that this constitutes a final order on Rumpke Sanitary Landfill, Inc.'s claims for declaratory and injunctive relief.


Norbert A. Nadel, Judge

Date: 10/3/08

****Due to the importance of this issue to the parties and the public, this Court urges the parties to seek Appellate Review of this decision.**

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