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**EXPLANATION OF WHY THIS CASE IS**  
**A CASE OF PUBLIC OR GREAT GENERAL INTEREST**

The Ohio Township Association (“OTA”) and the Coalition of Large Ohio Urban Townships (“CLOUT”), *amici curiae* on behalf of Appellants Colerain Township, Ohio, Colerain Township Board of Trustees, Bernard A. Fiedeldey, Trustee, Keith N. Cornan, Trustee, and Jeff Ritter, Trustee, urge this Court to accept jurisdiction over this case in order to reverse the decision below.

Citizens who reside in townships and counties in Ohio rely on those entities to vigilantly represent their interests. The various townships and counties in Ohio are in a unique position to recognize the needs of their citizens and the issues that affect them, and to understand how those needs and issues are affected by changes in Ohio law. In this case, the law was passed by the General Assembly defining the term “utility” for the purpose of the townships’ and counties’ zoning authority, clarifying the scope of township and county zoning authority. Unfortunately, in the subsequent lawsuit challenging the constitutionality of the law, the court of appeals ignored the great interests that townships and counties have in defending those laws on which their authority is based, and excluding the very township most affected by the change in the law. The decision of the court of appeals below stands for the proposition that a township does not have the ability to participate in a case that challenges the constitutionality of adopted legislation that substantially and directly affects its interests, and the interests of its citizens. *Amici curiae* submit that not only is this the wrong result for this case, the wider implication of the decision going forward are bad for Ohio townships and counties, and for their citizens.

*Amici curiae* represent 1,308 townships in 88 Ohio counties, and over 3.8 million residents. Those residents depend on the local governmental entities represented by *amici curiae* that are charged with the responsibilities given them under statute to protect and look out for the

welfare of those citizens. *Amici curiae* in this case have a singular interest in this matter: to reverse the Hamilton County Court of Appeals' decision which denies an affected township the opportunity to participate in the merits of a claim of unconstitutionality over a statute which affects its governing power and the definition of its authority. When the very provisions of the Ohio Revised Code that grant or limit the powers of townships and counties are attacked on whatever grounds the township or county affected must have the opportunity to defend the enactment and participate in the defense of the act. In this case, Colerain Township is particularly affected in that it has passed and accepted responsibility for zoning within the township. The ruling by the Hamilton County Court of Appeals affects, however, not just Colerain Township but townships and counties in general. Allowing a single citizen in a township to file a declaratory judgment and exclude the very township that is affected by the passage of the law as it affects that property owner is simply unacceptable. Not permitting townships and counties to defend statutes passed for their benefit will open a floodgate of litigation, will obscure the real issues in the case, and will deprive townships and counties, of the opportunity to protect what they believe is legitimate authority granted to them by the state legislature. Given that approximately one-third of Ohio's residents live in unincorporated areas in townships, there can be no question that the reversal of an incorrect and harmful decision that limits the very ability of townships and counties to participate in cases that will affect their fate is an issue of public and great general importance. *Amici curiae* urge this Court to accept this case to determine the propriety of the participation by townships and counties when authority granted to them is challenged. *Amici curiae* express no opinion on the merits of the action since without standing for the right to participate, the merits cannot be fully explored.

## **STATEMENT OF AMICI CURIAE INTEREST**

OTA is a state-wide professional organization dedicated to the promotion and preservation of township government in Ohio. OTA, founded in 1928, is organized in 87 Ohio counties. OTA has over 5,200 active members, comprised of elected township trustees and township fiscal officers from Ohio's 1,308 townships. OTA has an additional 4,000 associate members who are dedicated to supporting the causes of OTA.

CLOUT is a group of large, urban townships in Ohio that has formed a committee for the purpose of providing its members with a forum for the exchange of ideas and solutions for problems and issues related specifically to the governance of large, urban townships. CLOUT works jointly with the OTA. Membership in CLOUT is limited to those townships having either a population of 15,000 or more residents in the unincorporated area, or a budget of over \$3,000,000.00.<sup>1</sup>

As set forth above, the decision of the Court of Appeals effectively held that townships and counties are not proper parties in a R.C. 2721.12 action challenging a statute that affects the fundamental powers of townships and counties (in this case, zoning authority). As representatives of Ohio townships and counties, OTA, CLOUT and CCOA have a substantial interest in the reversal of the Court of Appeals' decision on this issue.

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<sup>1</sup> CLOUT members include: in Butler County: Fairfield Twp., Liberty Twp., West Chester Twp.; in Clermont County: Miami Twp., Pierce Twp., Union Twp.; in Delaware County: Genoa Twp., Liberty Twp., Orange Twp.; Perkins Twp./Erie Co.; Violet Twp./Fairfield Co.; in Franklin County: Jefferson Twp., Madison Twp., Norwich Twp., Prairie Twp., Washington Twp.; Russell Twp./Geauga Co.; Sugarcreek Twp./Greene Co.; in Hamilton County: Anderson Twp., Colerain Twp., Columbia Twp., Delhi Twp., Green Twp., Miami Twp., Springfield Twp., Sycamore Twp., Symmes Twp.; in Lake County: Concord Twp., Madison Twp., Perry Twp.; in Lucas County: Springfield Twp., Sylvania Twp.; in Mahoning County: Austintown Twp., Boardman Twp.; Bethel Twp./Miami Co.; in Montgomery County: Butler Twp., Harrison Twp., Miami Twp., Washington Twp.; in Stark County: Jackson Twp., Lake Twp., Perry Twp., Plain Twp.; in Summit County: Bath Twp., Copley Twp., Springfield Twp.; in Trumbull County: Howland Twp., Liberty Twp., Weathersfield Twp.; in Warren County: Clearcreek Twp., Deerfield Twp., Hamilton Twp.; Perrysburg Twp./Wood Co.

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

OTA and CLOUT hereby adopt by reference and in its entirety the statement of the case and facts contained within the Memorandum in Support of Jurisdiction of Appellants Colerain Township, Ohio; Colerain Township Board of Trustees; Bernard A. Fiedeldey, Trustee; Keith N. Corman, Trustee; and Jeff Ritter, Trustee (“Appellants”).

## **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

**Proposition of Law: A township is an interested and necessary party to a constitutional challenge to a law passed by the General Assembly brought by a property owner within its jurisdiction that directly affects its police powers over the property.**

There are several issues that have been raised by the Appellants in this case. The central issue of concern to the *amici* here, however, is the harmful effect to Ohio townships and counties resulting from the erroneous decision of the court of appeals finding that a township is not an interested and necessary party in a declaratory judgment action challenging the constitutionality of law that directly affects the ability of that township to regulate property within its jurisdiction. The court of appeals erred in narrowly interpreting R.C. 2721.21 under these circumstances, finding that the township had insufficient “legal interest” in the case to support intervention under R.C. 2721.21, even where the township established that it had a real and tangible interest in the survival of the law being challenged by Appellee. If left to stand as precedent, this decision will undermine the ability of townships and counties to participate in cases dealing with the constitutionality of the very provisions of the Ohio Revised Code that give them their authority to govern.

Declaratory judgment actions are statutory proceedings under R.C. Chapter 2721. R.C. 2721.12(A) provides that “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.**” When any statute is alleged to be unconstitutional, the attorney general must be served with a copy of the complaint. When township or municipal authority is involved, the local government must be a party to the declaratory judgment proceedings. R.C. 2721.12(A). The statute expressly provides that any **“declaration shall not prejudice the rights of persons who are not made parties to the action or proceeding.”** R.C. 2721.12(A).

In affirming the decision of the trial court in this case, the court of appeals erroneously relied on this Court’s decision in *Driscoll v. Austintown Associates* (1975), 42 Ohio St.2d 263. The court of appeals misapplied the distinction in *Driscoll* between parties with a “practical interest” in the outcome of a declaratory judgment action and those with a “legal interest.” *Driscoll*, which dealt primarily with a *res judicata* question, is a wholly different case than this one.

*Driscoll* involved an action by a township and several property owners to enjoin a developer from constructing apartment buildings. The developer had previously been denied rezoning for the property by the township, and had successfully brought a prior declaratory judgment action to declare the zoning on the property unconstitutional. The decision in that case was not appealed by the township. The adjacent property owners were not parties to the prior declaratory judgment suit. In the injunction suit brought by the township, the developer asserted that the declaratory judgment action was *res judicata* as to issues raised in the later action. The township countered that the adjacent owners had been necessary parties in the prior action, and their absence in that suit rendered the decision in the prior case void. This argument was asserted as one of several reasons why the township claimed the prior decision was not *res*

*judicata*. In resolving this single issue, this Court pointed out that while the adjacent owners may have had a “practical interest” in the prior action (as people physically affected by the development), they did not have sufficient “legal interest” that their absence in the prior case justified voiding that case.

*Driscoll* is a far cry from the facts in the present case, and is inapposite. The analysis above was a minor issue of the larger issues of whether the court would allow a township to have a second opportunity to defend the constitutionality of a zoning that was previously declared unconstitutional. *Driscoll* did not analyze the interests of townships or counties as the intervening parties under R.C. 2721.12. *Driscoll* did not analyze or discuss the interests that townships and counties have in constitutional challenges to the state laws that define their power to govern. Certainly, there is nothing in *Driscoll* that supports the court of appeals’ reasoning that a governmental entity’s standing to be a party to and intervene in a constitutional challenge to a statute that substantially and immediately affects the regulatory authority of the township depends entirely on the nature of the constitutional challenge. In short, the court of appeals’ analysis depends on a case that has little applicability or relevance to the facts in this case.<sup>2</sup>

Certainly, the court of appeals’ flawed analysis and its reliance on *Driscoll* should be reversed because it creates a wrong legal result in this case, and prevents a township from participating in a case in which the township’s very ability to regulate the largest industrial property owner within its jurisdiction, a very large landfill, hangs in the balance. However, the decision is also harmful from the larger perspective of the jurisprudence of Ohio, and has implications for the state beyond the parties to the case. As set forth above, over three and

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<sup>2</sup> Appellants correctly cited numerous cases to the court of appeals and in their jurisdictional memorandum to this Court suggesting that where a constitutional challenge effects the regulatory authority of a governmental entity, the enforcing governmental authority is a necessary party under R.C. 2721.12. See *Barnesville Edn. Assn. OEA/NEA v. Barnesville Exempted Village School Dist. Bd.*, Belmont App. No. 06 BE 32, 2007-Ohio-1109; *Klein v. Leis* (2002), 146 Ohio App.3d 526. *Amici* agree that these cases are far more applicable to the case at bar than *Driscoll*.

one-half million Ohioans live in townships, and their interests are represented by the township governments and their representation organizations, like OTA and CLOUT. Because townships are creatures of statute, the constitutionality of the state laws that empower townships to act are at the center of litigation that comes before Ohio courts. The townships that are affected by the outcome of those cases, and their representative organizations, are the best, most interested and often the most knowledgeable of possible parties in such action. If the court of appeals' decision is left to stand, unreviewed and unrefined by this Court, a rather large and inviting door will be left open to private parties to initiate actions to attack the constitutionality of statutes empowering townships while at the same time excluding townships from participating in those actions.<sup>3</sup> In short, the court of appeals, through its strained interpretation of a minor and inapplicable aspect of *Driscoll*, has set up a "practical interest v. legal interest" test to be applied universally for standing for townships in declaratory judgment actions that has not existed previously. There is no basis in R.C. 2721.12 for such a test, and if this decision is not reviewed and reversed, it will stand as an invitation for private parties to continuously litigate whether townships truly have sufficient legal interest in declaratory judgment actions in which the authority of the township is challenged.

Based on the above, there is no sound legal basis or policy reason that supports the court of appeals' decision. The court adopted a new test that is not contained in Ohio law. Accordingly, this Court should reverse the court of appeals' decision.

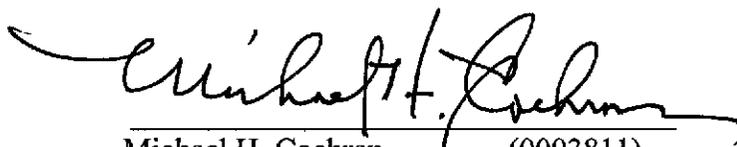
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<sup>3</sup> It is clear from the record in this case that this is exactly what was intended and accomplished by Appellee Rumpke in this case. Appellee Rumpke instituted this action to collaterally attack the zoning authority of Colerain Township and brought this suit separately from the central lawsuit in which the statute was directly applicable to exclude Colerain Township from helping to defend on the constitutional issue.

**CONCLUSION**

For the reason discussed above, this case involves matters of public and great general interest. The Ohio Township Association and the Coalition of Large Ohio Urban Townships, *amici curiae*, urge that this Court accept jurisdiction in this case so that the important issue presented will be reviewed on the merits and reverse the decision of the Hamilton County Court of Appeals.

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 2<sup>nd</sup> of November, 2009:

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