

ORIGINAL

IN THE SUPREME COURT OF OHIO

RUMPKE SANITARY LANDFILL, INC.)
) Case No: 09-2004
 Appellee,)
)
 -v-) ON APPEAL from the
) Hamilton County Court of Appeals,
 STATE OF OHIO) First Appellate District
)
) Ct. of App. No.: C081097
)
 [Colerain Twp., et al.,)
 Attempted Intervenor-Appellants])
)
)

MEMORANDUM OPPOSING JURISDICTION

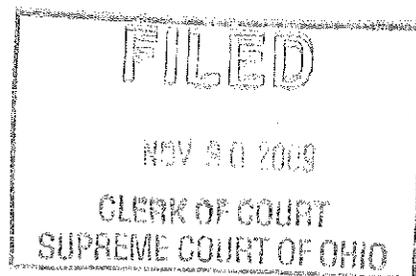
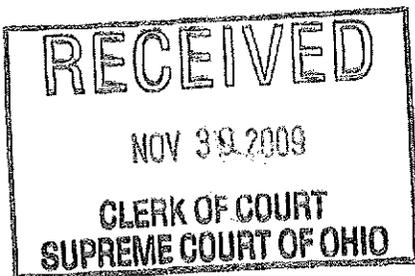
Joseph L. Trauth, Jr. (0021803)
 Thomas M. Tepe, Jr. (0071313)
 Charles M. Miller (0073844)(*Counsel of Record*)
 Keating Muething & Klekamp PLL
 One E. 4th Street, Suite 1400
 Cincinnati, Ohio 45202
 Tel: (513) 579-6400
 Fax: (513) 579-6457
 jtrauth@kmklaw.com
 ttepe@kmklaw.com
 cmiller@kmklaw.com

*Attorneys for Appellee,
 Rumpke Sanitary Landfill, Inc.*

Richard C. Brahm (0009481)
 Catherine A. Cunningham (0015730)
 Aaron M. Glasgow (0075466)
 Plank & Brahm
 145 E. Rich Street
 Columbus, Ohio 43215
 Tel: (614) 228-4546
 Fax: (614) 228-1472
 rbrahm@plankbrahm.com
 ccunningham@plankbrahm.com
 aglasgow@plankbrahm.com

James E. Reuter (0011414)
 3025 W. Galbraith Road
 Cincinnati, Ohio 45239
 Tel: (513) 521-8400
 Fax: (513) 521-8401
 jereuter@aol.com

*Attorneys for Appellants,
 Colerain Township, et al.*



Richard Cordray
Ohio Attorney General
Craig A. Calcaterra (0070177)
Robert X. Eskridge, III (0080184)
Assistant Attorney General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (614) 466-2872
Fax: (614) 728-7592
craig.calcaterra@ohioattorneygeneral.gov
robert.eskridge@ohioattorneygeneral.gov

Attorneys for State of Ohio

Michael H. Cochran (003811)
6500 Taylor Road
Blacklick, Ohio 43004
Tel: (614) 863-0045

Attorney for Amicus Curiae

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EXPLANATION OF WHY THIS CASE DOES NOT WARRANT FURTHER REVIEW

The trial court, and the unanimous court of appeals, applied well established law to correctly find that the insertion into a 900-page Capital Appropriations Bill of substantive revisions to Revised Code section governing the zoning status of sanitary landfills to be a clear violation of the single-subject rule. Recognizing this, the State of Ohio—the lone defendant in the case—has wisely decided not to file an appeal. This appeal cannot address the merits below.

Appellants (Attempted Intervenors) assert three propositions in a strained effort to gain review. *Two of the propositions are raised by Appellants for the very first time.* The second and third propositions of law address the merits of the single subject challenge. Appellants did not raise these issues below, and are barred from doing so now. Moreover, Appellants are not parties to the suit, but merely unsuccessful intervenors. They lack standing to appeal the merits.

The sole proposition of law the Appellants are entitled to raise does not warrant review. Appellants, a township and its trustees, argue that they should have been permitted to intervene in this case to defend the legislative process of the State of Ohio. Why the Constitutional Law Section of the Ohio Attorney General's Office—which regularly defends single-subject challenges—was inadequate for this task, Appellants do not say. The courts below applied time tested and uncontroversial law governing intervention to decide that Appellants were not entitled to intervene. Appellants do not argue that the relevant precedent needs to be revisited. They argue that the lower courts erred by misapplying existing law. Appellants are wrong. Moreover, this Court is not an error correction court. The first proposition of law does not merit review.

We must note that a second court also ruled that the Capital Appropriations Bill violated the single subject rule. Appellants were party to that case. They had their day in court on the merits of. They lost there too. *Any challenge Appellants would make here on remand is barred by res judicata.* The Court should decline to exercise jurisdiction over this matter.

STATEMENT OF THE CASE AND FACTS

Attempted Intervenors/Appellants Colerain Township, Ohio, Colerain Township Board of Trustees, Bernard Fiedeldey, Trustee, Keith N. Corman, Trustee, and Jeff Ritter, Trustee (collectively referred to as “Colerain Township” or “Appellants”), devote their efforts to confusing and expanding the issues involved in this appeal. Appellants were not parties to the case. Their ability to challenge the lower courts’ opinions is extremely limited.

Appellants possess standing to argue only that they should have been permitted to intervene. As nonparties, they cannot argue the merits, ripeness, standing, subject matter jurisdiction,¹ or any of the other arguments they make for the first time now. Appellants, of course, know this—which is why they did not raise these issues below. However, now that the State has admitted defeat, Appellants are thrashing wildly to keep this matter alive. Appellants’ *amici* admit this: “*Amici curiae* express no opinion on the merits of the action since without standing for [*sic*] the right to participate, the merits cannot be fully explored.” *Amici* Memo at 2.

The issue Appellants may argue is narrow—did Appellants have the right to intervene? The law on intervention is well settled and not requiring additional elaboration by this Court.

A. Procedural Posture

Appellee Rumpke Sanitary Landfill, Inc. (“Rumpke”) filed a Verified Complaint for Declaratory Judgment, Motion for a Temporary Restraining Order and Application for a Preliminary and Permanent Injunction Order against the State of Ohio (the “State”) on September 2, 2008. Rumpke challenged two violations of the Single-Subject Rule, § 15(D), Article II, Ohio Constitution, contained in the 900-page Amended Substitute House Bill 562 (the

¹ This argument was particularly odd, and too clever by half. The public’s right to repeal a law is not damaged by striking it as unconstitutional before a referendum occurs. Instead the rapid declaration of a law as unconstitutional saves the public from unnecessary effort and achieves the same goal—removing the offensive law from the books.

“Capital Appropriations Bill”). Rumpke requested that the offensive provisions of the Capital Appropriations Bill be stricken from the bill before it was scheduled to take effect on September 23, 2008. Upon joint motion of Rumpke and the State, the trial court held a consolidated preliminary injunction hearing and trial on the merits on September 18, 2008. On October 3, 2008, the trial court granted the requested relief.

Appellants filed a Motion to Intervene and a Motion to Dismiss a week before the trial. *Appellants argument was based exclusively on Civ.R. 24.* Colerain Township did not rely upon R.C. 2721.12 at the trial court.

Colerain Township also filed a motion to consolidate the instant case with *Rumpke Sanitary Landfill, Inc., et al. v. Colerain Township, et al.*, Hamilton County Common Pleas Case No. A0703073 (“Public Utility Case”), which was pending before Judge Ralph E. Winkler. Colerain Township requested that Judge Winkler conduct an “immediate hearing” on the motion.² Judge Winkler declined the invitation to consolidate.

Judge Norbert Nadel, the trial judge in this matter, conducted a hearing on all pending motions prior to hearing the merits of the case. The trial court denied Colerain’s Motion to Intervene. The trial court issued an order permanently enjoining the unconstitutional provisions of the Capital Appropriations Bill from taking effect.

² The Public Utility Case focused on whether Rumpke is a Public Utility exempt from township zoning regulations. Judge Winkler has since ruled that Rumpke is a Public Utility exempt from township zoning regulations and granted judgment in Rumpke’s favor. Colerain Township also argued in that case that the Capital Appropriations Bill did not violate the Single Subject Rule. Judge Winkler ruled otherwise. That ruling is now *res judicata* to Colerain Township.

B. Statement of Facts

1. The General Assembly Enacted Am.Sub.H.B. 562 in Violation of the Single-Subject Rule

On June 10, 2008, the 127th General Assembly passed the Capital Appropriations Bill. 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. The Capital Appropriations Bill established a \$1,312,362,848 Biennial Budget for the State of Ohio for Fiscal Years 2009 and 2010. 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.” In addition to funding the State’s operations for the 2009-2010 Biennium, the Capital Appropriations Bill enacted, repealed or amended over 400 sections of the Revised Code.

The portions of the Capital Appropriations Bill stricken by the trial court added the following sentence to both R.C. §§ 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.

The Revisions to R.C. §§ 303.211 and 519.211 were to take effect on September 23, 2008.

2. Colerain Township Attempted to Intervene Without Right or Permission

Less than six days before the trial, Colerain Township filed a Motion to Intervene despite the fact that the State of Ohio, represented by the Constitutional Law Section of the Attorney General’s Office, is best positioned to defend the legislative process of the State of Ohio.

Colerain Township did not pass the Capital Appropriations Bill. The General Assembly did. This case determined *only* that the General Assembly enacted the Capital Appropriations

Bill in violation of the Single-Subject Rule of Section 15(D) of the Ohio Constitution. It did not determine whether Rumpke is a public utility. Colerain Township has no right to defend the General Assembly's actions.

Colerain Township argued in the Public Utility Case that the revisions the Capital Appropriations Bill made to R.C. §§ 303.211 and 519.211 precluded Rumpke from being a "public utility" for zoning purposes. On March 5, 2009, the trial court in the Public Utility Case rejected Colerain Township's arguments that the amendments to R.C. §§ 303.211 and 519.211 were unconstitutional. It ruled that Rumpke is a public utility, exempt from zoning. Colerain Township had its day in court on this issue. It lost. It is seeking a second bite at the apple, which is barred by *res judicata*. *Davis v. Pub. Emps. Retirement Bd.*, 120 Ohio St.3d 386, 2008-Ohio-6254, 899 N.E.2d 975, ¶ 27.

ARGUMENT OPPOSING PROPOSITIONS OF LAW

Response to Proposition of Law No. 1: A township's interest in a single subject challenge to a General Assembly's enactment is practical, and does not grant the township a right to intervene under Civ. R. 24.

Appellants first proposition of law is artfully ambiguous. Appellants use the proposition to assert arguments regarding intervention under Civ. R. 24—which they are permitted to argue. They also, improperly, use it to challenge the trial court's jurisdiction to have entertained the case. As a nonparty, Appellants do not possess standing to appeal a jurisdictional defect. *State ex rel Sawicki v. Ct. of Common Pleas of Lucas Cty.*, 121 Ohio St.3d 507, 2009-Ohio-1523, ¶ 18. We will first address Civ. R. 24 before turning to R.C. 2721.12.

A. The Law Governing Civ. R. 24(A) Intervention by Right Is Well Settled.

This case did not involve a challenge to Colerain Township's zoning resolution or any law enacted by Colerain Township. Nor did it challenge any state statute that Colerain Township is charged with enforcing. Instead, this case found that the *General Assembly* enacted an

enormous piece of capital appropriations legislation in violation of the Single-Subject Rule contained in Section 15(D), Article II of the Ohio Constitution. Rumpke challenged the General Assembly's powers, not those of Colerain Township.

While Colerain Township might have been practically impacted by the trial court's obviously correct holding that the Capital Appropriations Bill violated the Single Subject Rule, Colerain Township did not possess a direct legal interest in the outcome of the case. As Appellants' *amici* noted, "The ruling . . . affects, however, not just Colerain Township but townships and counties in general." Appellants had no more right to participate in this case than the other trustees and commissioners of Ohio's 1,308 townships and 88 Counties.³ Surely Appellee was not required to make them all party to this case.

The elements necessary to intervene under Civil Rule 24(A) are well settled. An attempted intervenor must establish the following four elements to the satisfaction of the trial court: 1) the application is timely; 2) the Applicant has a substantial, legally protectable interest in the case; 3) the applicant's ability to protect that interest will be impaired in its absence; and 4) the parties already before the Court will not adequately represent the interest. *Fairview Gen. Hosp.*, 69 Ohio App.3d 827, 831. "Failure to satisfy even one of these requirements is sufficient to warrant denial of a motion to intervene as a matter of right." *Id.* There was reasonable grounds for the trial court to conclude that Colerain Township failed to satisfy each of these requirements. Accordingly, the First District Court of Appeals was correct to find the trial court acted well within its discretion.

³ Appellants also criticize that "RSL did not name *any* county or township as a party to this action. Particularly excluded . . . were counties and townships in which RSL had solid waste facilities . . ." Appellants' Memo at 5.

Appellants do not argue that the case law interpreting Civ. R. 24 is lacking. They do not argue that the four-part test needs to be altered. They don't even recite the test or cite one case applying the test! Appellants' entire discussion of Civ. R. 24 is limited to two citationless paragraphs. See Appellant's Memo at pp. 11-12. At best, Appellants argue that the trial court and the court of appeals misapplied existing law to the facts at hand. This is hardly cause for this Court to exercise jurisdiction over this matter, particularly here when the arguments are meritless and made without reference to existing law.

Under Ohio law, an applicant's claimed "interest" must be "something more than a passing interest" in the subject of the litigation. *Chrysler Corp. v. Mather Co.* (1980), 63 Ohio Misc. 31, 33. Interests which are remote or contingent are typically not sufficient to support intervention. *Fairview Gen. Hosp.*, 69 Ohio App.3d at 832. Rather, for purposes of intervention under Civ.R. 24(A), Colerain Township's claimed interest must be one that is "legally protectable." See *In re Adoption of Ridenour* (1981), 61 Ohio St.3d 319, 329; see also *State ex rel Dispatch Printing Co. v. Columbus* (2000), 90 Ohio St.3d 39, 49. Colerain Township's interest is not "direct, substantial and legally protectable." *Fairview Gen. Hosp.*, 69 Ohio App.3d at 833. The trial court and court of appeals found Colerain Township's interest in this case to have been **practical** in nature and did not qualify Colerain Township for intervention by right under Civ.R. 24(A).

Colerain Township has argued that its interest is premised upon it being "the largest township in Ohio and [] home to an existing 507 acre landfill." This is a practical interest. Regardless of size, any township in Ohio that has adopted a zoning resolution has the identical practical interest in the Single Subject case, not a legal one.

Turning to other factors of the test, the State is well positioned to adequately protect the Township's interests. The last two factors in the intervention analysis are closely related to each other. The State adequately represented any alleged interest Colerain Township purported to have. Both the State and Colerain Township had the same goal, namely upholding the revisions the Capital Appropriations Bill made to R.C. 303.211 and 519.211. Because Colerain Township had the same ultimate goal as a party already in the suit (the State), the trial court properly applied a presumption of adequate representation. "When the interests of a proposed intervener are 'virtually identical' to that of a party named in the action, intervention will not be granted" absent a compelling showing. *Toledo Coalition for Safe Energy v. Pub. Util. Comm.* (1982), 69 Ohio St.2d 559, 562, 433 N.E.2d 212.

Despite bearing this burden, Colerain Township did not set forth any evidence whatsoever to demonstrate adversity of interest, collusion, or nonfeasance by the existing parties. Therefore, it must be presumed that Colerain Township, like every other Township in Ohio, is adequately represented by the State in this case. No better office exists to defend the constitutionality of an action of the General Assembly than the Attorney General's Constitutional offices Section. This section specializes in defending the actions of state office holders. By never arguing that the State of Ohio's defense of this case was inadequate, Appellants conceded the adequacy of representation. A motion for intervention should be denied where the intervenor fails to satisfy *all* four of the elements for intervention under Civ.R. 24(A)(2). *State v. Schulte*, 154 Ohio App.3d 367, 2003-Ohio- 3826, 797 N.E.2d 517, ¶ 6. Accordingly, Appellants had no right to intervene.

In the instant case, Colerain Township failed to proffer *any argument* that the State and its Attorney General would not adequately represent Colerain Township's interest in upholding

the Capital Appropriations Bill. Accordingly, Colerain Township did not demonstrate a legally cognizable interest that is susceptible to being impaired in its absence. As such, Colerain Township's intervention under Civ.R. 24(A)(2) was absolutely barred under Ohio law. The lower courts did not abuse their discretion when applying existing law to stay the motion to intervene.

For the forgoing reasons, this case is not appropriate for review. If the Court took this case, all it would ultimately do is apply the same existing law to this case that both lower courts applied and reach the same conclusion. Duplicative application of existing law is not the role this Court serves. Finally, any ruling permitting Appellants to intervene would be moot, because the court in the Public Utility Case—to which Appellants were party—also ruled that the Capital Appropriations Bill violated the Single Subject Rule, rendering that case *res judicata* against Appellants. Accordingly, the Court should decline to exercise jurisdiction.

B. The Court Should Not Visit the R.C. 2721.12 Issue.

1. Appellants Lack Standing to Argue Jurisdiction.

At the trial court, Appellants did not argue R.C. 2721.12 deprived the Court of Jurisdiction. The State, however, did. The State repeated this argument on appeal, which Appellants echoed then. Both Courts found that R.C. 2721.12 did not deprive the trial court of jurisdiction.

Appellants are attempting to use the similarities between the law on intervention and the precedent interpreting R.C. 2721.12 to bootstrap a subject matter jurisdiction challenge into this appeal. *Sawicki*, 121 Ohio St.3d, at ¶ 18. Appellants cite no law, nor advance a proposition of law, that would permit a nonparty to challenge the jurisdiction of a court. *Willoughby Hills v. C.C. Bar's Sahara, Inc.* (1992), 64 Ohio St.3d 24, 26, 591 N.E.2d 1023 (appeals generally limited to parties).

R.C. 2721.12 is not a sword for intervenors such as appellants. *Accord, Cicco v. Stockmaster* (2000), 89 Ohio St.3d 95, 98, 728 N.E.2d 1066. Properly understood, the statute affords nonparties a shield to invoke, when proper, in subsequent cases to which they are party. “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.” R.C. 2721.12(A). This language simply codifies the rule against non-mutual *res judicata*. *Broz v. Winland* (1994), 68 Ohio St.3d 521, 525, 629 N.E.2d 395 (superseded by statute on other grounds). Nothing in R.C. 2721.12(A) creates a right to intervene. Nor did Appellants argue as much in the trial court. Thus, any such argument has been waived.

2. The Lower Courts Properly Applied R.C. 2721.12.

The State elected not to appeal. Had the State (as a proper party) asserted this proposition of law, it still would not merit review.

This Court has held, “ ‘the section [R.C. 2721.12] is in accord with the general policy of the law that only those persons who are legally affected are proper parties to a lawsuit.’ ” *Driscoll v. Austintown Associates* (1975), 42 Ohio St. 2d 263, 273. Essentially, R.C. 2721.12 converts the Civ. R. 24(A)(2) standard for intervention by right into a jurisdictional requirement in declaratory judgment actions. As discussed *supra*, Colerain Township had no right to intervene, thus there was no jurisdictional abnormality.

Although others “may have a practical interest in the outcome of a declaratory judgment action . . . they have no legal interest in the outcome. Therefore, they are not necessary parties-defendant to such an action.” *Id.* Colerain Township did not enact the Capital Appropriations Bill. It does not have a legally protected interest in whether the bill violated the Single Subject Rule.

Colerain Township argues that its interest in the Single Subject case stems from its role as the purported “enforcing agency” of R.C. 519.211. As a whole, R.C. Ch. 519. establishes the framework under which a township may enact a zoning code. No section of R.C. Ch. 519. is enforced by a Township. Rather, they enforce whatever zoning code they adopt. The lower courts found that R.C. 519.211 *limits* the zoning powers of townships by excluding certain uses from zoning. A township is not the “enforcing agency” of the limitations to its zoning powers. If anything, R.C. 519.211 is enforced against a township.

Rumpke challenged the unconstitutional provisions of the Capital Appropriations Bill. The trial court struck the unconstitutional provisions, and rendered them void *ab initio*. *Wendall v. Ameritrust Co., N.A.* (1994), 69 Ohio St.3d 74, 77, 630 N.E.2d 368 (holding that a ruling that a statute is unconstitutional applies retrospectively). The ruling “terminate[d] the uncertainty or controversy” because the offensive language never became effective. *Middletown v. Ferguson* (1986), 25 Ohio St.3d 71, 495 N.E.2d 380 (“An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.”).

There are 1308 townships in Ohio’s 88 counties. Each of those townships and counties have, respectively, trustees or commissioners. Colerain Township would have this Court hold that thousands of defendants are necessary in order for the trial court to consider the constitutionality of any section of R.C. Titles III and V. This simply is not so. The burden of compliance would violate due process as applied to this case because it would functionally deny Rumpke the opportunity to be heard. *State v. Cowan*, 103 Ohio St.3d 144, 2004-Ohio-4777, 814 N.E.2d 846, at ¶ 8. This would be equivalent to requiring every police department and every

police officer to be named to an declaratory judgment action challenging the constitutionality of a criminal statute in R.C. Title XXIX.

A Single Subject case is a challenge directed at the *legislative process*—not the substance of the law. Neither court below analyzed the scope or extent of county and township zoning powers. The analysis was wholly procedural, focusing on whether modifying the definition of “public utility” under zoning laws was a capital appropriation. There is no question in this case “that the parties [were] properly adverse, that the issues involved [were] fully presented, that the uncertainty or controversy [was] terminated, and that the public interest [was] adequately protected without a multiplicity of suits.” *Whitman*, 44 Ohio St.2d at 61. The lower courts properly applied existing Supreme Court precedent.

In *Driscoll*, this Court held that the mere fact that one will be impacted by a case is not sufficient to make the person a “necessary party.” The Second District followed *Driscoll* in a dispute over whether a government agency possessed the authority to hear employment discrimination claims lodged against another agency. *Dayton Metro. Housing Auth. v. Dayton Human Relations Council* (1992), 81 Ohio App. 3d 436, 611 N.E.2d 384. The employee was not made parties to the action. The appellate court rejected the argument that R.C. 2721.12 deprived the trial court of jurisdiction to hear the matter. “[The employee’s] claim of discrimination related only indirectly to the issue in dispute”. *Id.* at 441. “[The employee’s] claim was not directly affected by the action. Therefore, we conclude that the trial court was not precluded from exercising jurisdiction”. *Id.* Even though the agency was precluded from hearing the employee’s claim, the employee was not legally interested in the narrow question of whether the agency had jurisdiction.

The District Courts of Appeals consistently applied *Driscoll* as intended by this Court. Appellants do not contend there is a conflict. Absent a conflict, there is no need for this Court to revisit this area of the law.

The Court should not accept jurisdiction over the First Proposition of Law. The law governing intervention is sound. Appellants lack standing to challenge the ruling on R.C. 2721.12, which was properly applied. Finally, this appeal is mooted by Appellants' loss on the merits in the Public Utility Case, which is *res judicata* to Appellants..

Response to Proposition of Law No. 2: Striking a law as unconstitutional does not deprive the people of their right of referendum.

As discussed above, Appellants lack standing to assert the second proposition of law because they were not parties below. Additionally, this proposition was not raised by Appellants or any party below and has been waived. *Gallagher v. Cleveland Browns Football Co.* (1996), 74 Ohio St.3d 427, 436-437, 659 N.E.2d 1232. Finally, the proposition is absurd.

Appellants begin with the statement that “a bill becomes law immediately upon the signature of the governor.” From there, Appellants leap to the untenable conclusion that a law cannot be constitutionally challenged until after its effective date, even though it is already “law.” The only cited case clarifies precisely when a law becomes effective after a referendum petition was submitted without a sufficient number of valid signatures. It is inapposite. No case has ruled as Appellants suggest.

The only public policy rationale the Appellants offer is that striking a law as unconstitutional prior to its effective date deprives the people of their right to repeal the same law by referendum. Other than “stealing their thunder,” Appellants posit no particular harm to “the people” where the law they wish to repeal is declared unconstitutional prior to being repealed. Appellants' public policy argument is as frail as their standing to assert the proposition

of law. Their argument also ignores the fact that the offensive portion of Capital Appropriations Bill was in fact declared unconstitutional *after* the bill's effective date. The Court should decline to exercise jurisdiction over the second proposition of law.

Response to Proposition of Law No. 3: The Lower Courts Properly Applied Existing Law to Find the Inclusion of the "Public Utility" Revisions in the Capital Appropriations Bill to be a Violation of the Single Subject Rule.

Again, as nonparties, Appellants lack standing to attack the merits of the decision below. Also again, Appellants never argued the merits below and waived the right to do so. The State recognized that an appeal to this Court would be fruitless and did not appeal. Appellee will briefly explain why.

This Court has adopted a very specific test for Single Subject challenges to budget bills. "[A]ppropriations bills are different from other Acts of the General Assembly because they encompass many items, all bound by the thread of appropriations." *State ex rel. OCSEA v. SERB*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, ¶ 30 (internal punctuation and citation omitted). This Court has rejected assertions that a tenuous connection to the state budget is sufficient to withstand the single subject rule, finding such an argument to render the rule "meaningless". *Id.* at ¶ 33. In order to be properly part of an appropriations bill, a Revised Code amendment must "*clarify or alter the appropriation of state funds.*" *Id.* at ¶ 34 (emphasis added). Appellants do not argue that existing law on this topic is inadequate. Rather, they merely argue unconvincingly that the lower courts misapplied the law.

In this case, the Capital Appropriations Bill's primary purpose was to enact a \$1.3 billion budget. The Legislative Service Commission labeled the fiscal impact of the Revisions as "uncertain." Even *amicus* OTA's analysis acknowledged the provision is a rider. See <http://cpmra.muohio.edu/otaohio/OTALegislation.htm> ("It is common for riders to be attached to bills like the Capital Appropriations Bill even if the riders are not making any type of

appropriations.”). It may be common, but it is not constitutional. Altering the definition of “public utility” does nothing to “clarify or alter the appropriation of state funds.” *OCSEA*, 104 Ohio St.3d., at ¶ 34.

Appellants argues that the Revisions relate to appropriations made to a capital improvement fund overseen by the Public Works Commission (“PWC”). The Revisions do not relate to the PWC. The PWC is empowered to issue loans to political subdivisions for “Local Public Infrastructure.” However, a privately owned landfill, albeit a “public utility” for zoning purposes, is not *publicly owned* infrastructure. Appellants improperly conflate the funding of public improvements under R.C. Ch. 164, with the “public utility” status of a private company under R.C. Ch. 504. A privately owned “public utility” is not funded by the Capital Appropriations Bill. Appellants’ argument is a red herring.

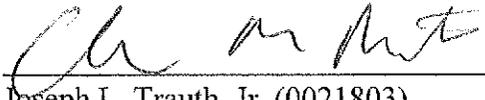
An appropriations bill is a prime target for the inclusion of riders because the appropriations bill “must pass.” The Revisions to R.C. §§ 303.211 and 519.211 were tacked onto the Capital Appropriations Bill as riders to assure their passage without debate. This violates the Single Subject Rule. The Revisions were properly declared unconstitutional.

There is no real dispute here about the law governing this case. To be part of an appropriations bill, a provision must “clarify or alter the appropriation of state funds.” The lower courts properly applied existing law.

CONCLUSION

Appellants possess standing to argue only whether they should have been permitted to intervene. The law governing intervention is clear. Appellants were properly excluded from this case. Moreover, Appellants’ intervention has been mooted by their loss of the identical single subject issue in the Public Utility Case, which is *res judicata* against Appellants. The Court should decline to exercise jurisdiction over this matter.

Respectfully submitted,



Joseph L. Trauth, Jr. (0021803)

Thomas M. Tepe, Jr. (0071313)

Charles M. Miller (0073844)

KEATING MUETHING & KLEKAMP PLL

One East Fourth St., Suite 1400

Cincinnati, Ohio 45202

Phone: (513) 579-6400

Fax: (513) 579-6457

jtrauth@kmklaw.com

ttepe@kmklaw.com

cmiller@kmklaw.com

Attorneys for Appellee,

Rumpke Sanitary Landfill, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by ordinary mail this 25th day of November, 2009 on:

Richard C. Brahm
Catherine A. Cunningham
Aaron M. Glasgow
Plank & Brahm
A Legal Professional Association
145 E. Rich Street
Columbus, Ohio 43215

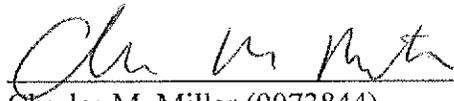
James E. Reuter
3025 W. Galbraith Road
Cincinnati, Ohio 45239

Attorneys for Appellant

Michael H. Cochran
6500 Taylor Road
Blacklick, Ohio 43004

Attorney for Amicus Curiae

Richard Cordray
Ohio Attorney General
Craig A. Calcaterra
Robert X. Eskridge, III
Assistant Attorney General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215



Charles M. Miller (0073844)