

IN THE SUPREME COURT OF OHIO

ORIGINAL

LANCE A. GILDNER, et al.,	:	
	:	Case No. 2009-2054
Appellants,	:	
	:	On Appeal from the Franklin County Court
v.	:	of Appeals, Tenth Appellate District
	:	
ACCENTURE LLP,	:	Court of Appeals Case No. 09AP-167
	:	
Appellee.	:	

**APPELLEE ACCENTURE LLP'S MEMORANDUM
IN OPPOSITION TO JURISDICTION**

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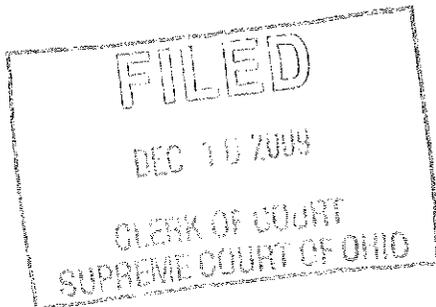


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**EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC
OR GREAT GENERAL INTEREST**

This common law taxpayer¹ lawsuit does not involve an issue of public or great general interest and, thus, does not warrant review.² Doors to Ohio courthouses have always been, and remain, open to Ohio taxpayers who meet the requirements for standing. Standards governing common law taxpayer standing were addressed over fifty years ago by this Court in *State ex rel. Masterson v. Ohio State Racing Commission* (1954), 162 Ohio St. 366, 123 N.E.2d 1, and more recently reiterated in *State ex rel. Dann v. Taft*, 110 Ohio St. 3d 1, 2006 Ohio 2947 (“*Dann I*”) and *State ex rel. Dann v. Taft*, 110 Ohio St. 3d 252, 2006 Ohio 3677 (“*Dann III*”). The law is well settled that, to have standing, taxpayer plaintiffs must have a “special interest” in the particular funds at issue.

The Court of Appeals did not err in affirming the Ohio Court of Claims’ entry of summary judgment in favor of Appellee Accenture LLP (“Accenture”) and finding that the Gildners lack standing to pursue this action as common law taxpayers. The court’s Decision, which overruled its prior decision in *United McGill Corp. v. Hamilton* (1983), 11 Ohio App. 3d 102, 463 N.E.2d 405, brings the Tenth District in line with all other Ohio appellate courts and, more importantly, this Court’s decisions regarding common law taxpayer standing. In *United McGill*, the court of appeals had held, in contravention of *Masterson*, that common law taxpayers could base standing on tax payments to the general revenue fund *whether or not they alleged or proved damages different in character from that sustained by the public generally*. *United*

¹ Appellants (the “Gildners”) allege no *statutory* entitlement to taxpayer standing.

² Nor does this case involve a substantial constitutional question. Although Appellees assert two propositions of law purporting to invoke the Equal Protection and Due Process provisions of the Ohio and United States Constitutions, neither of these arguments was raised below and, therefore, both have been waived. *Klein v. Klein*, Montgomery App. No. 22525, 2008 Ohio 6234 at ¶ 11 (“Generally, a party cannot assert new legal theories for the first time on appeal.”); see also Argument in Opp. to Appellants’ Propositions of Law Nos. IV and V.

McGill, 11 Ohio App. 3d at 103. The reversal of that decision in this case was consistent with the standing requirements established by all other Ohio appellate courts and this Court.

Even if the Gildners had standing—and they do not—they were unable to present any facts to support their claim that the Settlement Agreement was a product of fraud. As the Court of Claims concluded, the Gildners could not prove either fraud in the inducement or fraud in factum, and without such proof, their claims are precluded by the Settlement Agreement. No reason exists for this Court to assert jurisdiction here.

COUNTERSTATEMENT OF THE CASE AND FACTS³

In the fall of 2001, the State of Ohio and Accenture settled a dispute over a project Accenture performed under the last of five serial contracts (the “Welfare Reform Contracts”) with ODJFS to modernize Ohio’s welfare systems. Under the Welfare Reform Contracts, the first of which was signed in 1996, Accenture provided numerous services to ODJFS, including the creation of a statewide computer system known as OhioWorks.com. Deposition of Diana Redman, 6/11/08 (“Redman Dep.”) at 22-24, 36, 37, 62, 205.

Several years into the relationship, a significant and public disagreement arose over Accenture’s performance of the last of the Welfare Reform Contracts as it related to the functionality of OhioWorks.com. ODJFS claimed the internet-based computer system did not function as it should have, and disputes arose over the ownership of hardware associated with the system and the amounts due under Accenture’s invoices. Deposition of Chris Carlson, 4/30/08 (“Carlson Dep.”) at 16-17, 32, 37, 83, 338, 361-62. The dispute was well publicized, receiving

³ The Gildners purport to rely on affidavits, exhibits and deposition testimony in support of their statement of the case, in which they accuse Accenture of engaging in a fraudulent scheme to steal \$60 million from the State and its taxpayers and to conceal such fraud by entering into a Settlement Agreement with the State. Yet, they fail to provide a single cite to any deposition or exhibit that supports their grand conspiracy theory. Given the severity of the allegations made against Accenture—which Accenture submits are wholly unsupported by the facts of this case—Accenture’s counterstatement includes citations to both depositions and exhibits.

extensive attention from State officials and scrutiny from the press and public. At the time the settlement negotiations took place in the third quarter of 2001, State representatives had access, and the opportunity, to review an Inspector General's Report on the contracts, as well as an initial business case analysis report from Compuware (an Accenture competitor), both of which were critical of Accenture's work. Deposition of Craig Mayton, 4/22/08 ("Mayton Dep.") at 52-53; Carlson Dep. at 359-361.

The extensive arms-length negotiations that resulted in the subsequent settlement of the dispute included high-ranking representatives from several State agencies:

- Christopher Carlson, then-Assistant Deputy Director of ODJFS
- Thomas Charles, Inspector General for the State of Ohio
- Michael Grodhaus, then-Chief Legal Counsel to Auditor of the State of Ohio
- William Klatt, then-Chief Counsel to Governor Bob Taft
- Art Marziale, former Assistant Attorney General
- Craig Mayton, former First Assistant Attorney General
- Bob Mullinax, Chief Legal Counsel to ODJFS
- Richard Whitehouse, former Counsel to the Inspector General
- James Winfree, former Assistant Attorney General Business Counsel

ODJFS *insisted* upon the participation of these agencies, "so that if anybody had any concerns over this and any issues, that those issues would be raised." Carlson Dep. at 359. *None* of the state officials or Accenture employees whom the Gildners allege had "conspired" together to defraud the State respecting OhioWorks.com were involved *in any way* with the settlement negotiations.

The Settlement Agreement that the parties eventually reached reflected a mutually-agreed compromise that resulted from those arms-length negotiations. Carlson Dep. at 32-33, 83, 338-361; Mayton Dep. at 243; Art Marziale Dep., at 45. The Agreement contained a full, mutual release of all potential claims related to the Welfare Reform Contracts. Settlement Agreement,

Defendants' Dep. Ex. E at Attachment D; Carlson Dep. at 349-52. As the Court of Claims put it, "the only reasonable conclusion to be drawn from the evidence is that the state officers who signed the agreement did so with a full and complete understanding that they were executing a settlement agreement and that such agreement included a release of all possible claims." Jan. 20, 2009 Decision at 9 (App. A19).

On October 6, 2005, more than four years after the Settlement Agreement was executed, the Gildners—individuals with no involvement in, or connection to, the underlying events and with no "special interest" in the funds at issue—filed two meritless common law taxpayer lawsuits, one against ODJFS and the Attorney General in the Ohio Court of Claims and this one against Accenture in the Montgomery County Court of Common Pleas ("Montgomery County Court"). In both suits, the Gildners alleged that the awarding of the underlying Welfare Reform Contracts had resulted from a conspiracy to defraud the State and that Accenture had breached the underlying Welfare Reform Contracts by providing unsatisfactory performance. Recognizing that they had missed the applicable two-year statute of limitations to assert claims against the State, the Gildners almost immediately dismissed their lawsuit against the State, electing to pursue only their claims against Accenture.

In the suit against it, Accenture properly raised the Settlement Agreement as a bar to the Gildners' claims, first in a motion to dismiss and then in a motion for summary judgment. Accenture argued from the outset that the Gildners lacked standing. The Gildners, in turn, requested a declaration that the Settlement Agreement was void, claiming that the settlement required approval by the Attorney General and that then-First Assistant Attorney General Craig Mayton's signature under a notation of "Approved as to form" was insufficient. The Attorney General filed two briefs as a friend of the court, asserting that no approval had been required and

that if approval were required, approval as to form was sufficient. Merit Brief of Amicus Curiae, 7/18/06; Reply Brief of Amicus Curiae, 9/11/06.

On October 18, 2006, the Montgomery County Court denied Accenture's motion for summary judgment and declared the Settlement Agreement invalid for lack of prior substantive approval by the Attorney General (Oct. 18, 2006 Decision at 19). Recognizing the importance of the issue, however, the court found "no just reason to delay" an appeal. *Id.* at 22. Although the Gildners did not object to that determination, when Accenture appealed, they moved to dismiss the appeal for lack of a final appealable order. Ultimately, the Second District Court of Appeals declined to review the trial court's order, holding that it was not a declaratory judgment subject to immediate appeal because neither party had pled a formal declaratory judgment claim. Second Dist. App. Decision and Final Judgment Entry, 1/16/07, at 3.

With leave of court, Accenture then filed a Counterclaim specifically requesting, *inter alia*, a declaratory judgment concerning the validity of the Settlement Agreement. Am. Answer and Counterclaim, 5/4/07. To adjudicate the validity of the Settlement Agreement, however, Accenture had to make the State a party, and it did so by asserting all of the claims it had against the State, including three specific damage claims. Then, as required by R.C. §2743.03(A), (E), Accenture removed the action to the Court of Claims, which later denied the Gildners' challenge to the removal. Oct. 2, 2007 Decision at 3.

Following the close of discovery, Accenture sought summary judgment on the grounds that (1) the Gildners lacked standing; (2) the Settlement Agreement was valid and binding; (3) the Gildners had failed as a matter of law to prove fraud in connection with the Settlement Agreement; and (4) the Gildners' contract claim was barred by the statute of limitations. The State also moved for summary judgment, contending that the Gildners lacked standing and had failed to establish fraud in connection with the Settlement Agreement.

On January 20, 2009, the Court of Claims issued a Decision dismissing the Gildners' claims in their entirety. The Court of Claims elected not to decide the issue of standing and, instead, properly found that, despite extensive discovery, including over forty depositions, the Gildners had presented no *facts* to support their claim that the Settlement Agreement was a product of fraud. In granting summary judgment in favor of Accenture and the State, the Court of Claims also expressly affirmed the well-settled public policy of the State of Ohio that settlements entered into by the State are entitled to deference.

On October 6, 2009, the Franklin County Court of Appeals affirmed the decision of the Court of Claims, albeit on different grounds. Whereas the Court of Claims had elected not to decide the issue of standing,⁴ the Court of Appeals correctly concluded that the Gildners possessed no special interest in the public funds at issue and, therefore, lacked standing. It is from this Decision that the Gildners seek a further appeal to this Court.

Both the Franklin County Court of Appeals Decision and the Decision of the Court of Claims are correct, and nothing in those Decisions, or this case generally, involves an issue of public or great general interest. Accordingly, this Court should decline jurisdiction.

ARGUMENT IN OPPOSITION TO APPELLANTS' PROPOSITIONS OF LAW

Proposition of Law No. I: A common law taxpayer must have a "special interest" in the particular funds at issue to have standing to bring suit in the name of the State.

Over fifty-five years ago, this Court rendered its decision in what continues to be the leading case on taxpayer standing, *Masterson*, supra. The Court announced the general rule that:

[A]t common law . . . a taxpayer cannot bring an action to prevent the carrying out of a public contract or the expenditure of public funds unless he has some special interest therein by reason of which his own property rights are put in

⁴ Without deciding the issue of standing, the Court of Claims concluded that "the Gildners' standing as taxpayers arises either from their status as general fund taxpayers under the rule of law set forth in *United McGill*," which the Court of Appeals has now overruled, "or not at all." Jan. 20, 2009 Decision at 6 (App. A16).

jeopardy. *In other words, private citizens may not restrain official acts where they fail to allege and prove damages to themselves different in character from that sustained by the public generally.*

Id. at 368 (emphasis added).

This Court has more recently reiterated that principle. See *Dann II*, supra; *Dann III*, supra. In *Dann II*, Marc Dann, suing as a private citizen, represented to the Court that he intended to file a taxpayer suit based on his status as a contributor to Ohio's general fund. The Court, interpreting *Masterson*, unambiguously rejected Dann's argument:

[W]e do acknowledge that the common law has long recognized the right of a taxpayer to seek relief from a court of equity to prevent the consummation of a wrong such as an attempt by public officers to make an illegal expenditure of public money or to create an illegal debt, which the taxpayer, together with other property holders of the taxing district, may otherwise be compelled to pay. *In the absence of statutory authority, however, a taxpayer lacks legal capacity to institute a taxpayer action unless he has some special interest in the public funds at issue.* (citations omitted)

Dann II at 5-6 (emphasis added).

Soon thereafter, in *Dann III*, the Court again addressed Dann's claim that he had standing based on his status as a contributor to the general fund and even more clearly rejected his argument:

Dann's status as a taxpayer who paid taxes into the general fund and paid gasoline taxes is shared by nearly all adult Ohio citizens. There is nothing particularized about a need asserted on that basis. *Nor would the fact that Dann may be contemplating the filing of a taxpayer suit alleging unspecified misconduct on the part of government officials demonstrate a particularized need, because, in the absence of statutory authority, a taxpayer in his position lacks standing to file a taxpayer suit. Ohio law does not authorize a private Ohio citizen, acting individually and without official authority, to prosecute government officials suspected of misconduct based on the citizen's status as a taxpayer of general taxes, including the gasoline tax.*

Dann III at 254 (emphasis added) (citing *Masterson*, 162 Ohio St. 366).

Ignoring the distinctions between judicial dicta and obiter dicta, the Gildners, both below and before this Court, contend that the above passage and citation to *Masterson* is merely dicta

and, therefore, lacks significance. The Franklin County Court of Appeals rejected the Gildners' attempt to downplay *Masterson*, and this Court should as well. Judicial dicta "has the force of a judicial determination and is entitled to much weight[.]" *Exelon Corp. v. Dep't of Revenue* (Feb. 20, 2009), Ill. S. Ct. No. 105582, 2009 Ill. LEXIS 188 at *30 (explaining difference between judicial dicta and obiter dicta, the latter of which "is a 'remark or expression of opinion that a court uttered as an aside, and is generally not binding authority or precedent'"). The *Dann III* Court's discussion of *Masterson* and the particularized need requirement was *central* to the analytical structure of the overall opinion and, thus, has the force of law.

The Gildners do not dispute that *Masterson* is controlling, nor do they contend that *Dann II* and *Dann III* were wrongly decided. Instead, recognizing that the special interest requirement of *Dann II* and *Dann III* was fatal to their claims, they strained below to come up with arguments to satisfy that requirement for common law taxpayer standing. First, Lance Gildner claimed that, because he is a tax attorney who represents Ohio taxpayers, he has a special interest in ensuring that the taxes paid by him and his clients are not used improperly. Gildners Memo in Opp. to Mtn. for Summary Judgment, 9/25/08, at 9. Second, the Gildners claimed a special interest exists because certain employer surveys relating to OhioWorks.com may have been incidentally directed to Mr. Gildner's former law firm, Coolidge, Wall, Womsley & Lombard Co., LPA. Neither remotely satisfies the applicable standing requirement.

The mere fact that Mr. Gildner is a tax attorney whose law firm may have received a survey does not elevate his status above that of any other taxpayer. An Ohio tax lawyer has no more interest in this case than does an ordinary citizen. The employer survey his law firm may have received is in no way a special interest in particular *funds* as *Masterson* requires. Moreover, the "survey" admittedly went to Mr. Gildners' law firm, not Lance Gildner himself. No standing

argument was even offered as to Mrs. Gildner. The Gildners simply do not have a “special interest” in particular funds that this Court requires to establish common law taxpayer standing.

The lower courts correctly rejected the Gildners’ arguments that they possess a special interest in the funds at issue. Jan. 20, 2009 Decision at 5-6 (App. A15-A16). As the Court of Claims observed, the Gildners’ relationship to the underlying events was tenuous at best and did not constitute a “special interest” sufficient to convey standing. Jan. 20, 2009 Decision at 5 (App. A15). The Franklin County Court of Appeals did the same.

In support of their argument that this Court should exercise jurisdiction, the Gildners underscore that the Franklin County Court of Appeals overruled *United McGill* and “its progeny,” but ignore the fact that *United McGill* had deviated from *Masterson* and its progeny respecting the requirement that common law taxpayers demonstrate a special interest in particular public funds to establish standing. Memo. in Support of Juris. at 6. In particular, *United McGill* purported to do away with the *Masterson* requirement of a demonstrable “particularized need” as well as the Court of Appeals’ prior precedent applying *Masterson*. See *Andrews v. Ohio Building Authority* (Sept. 11, 1975), Franklin App. No. 75AP-121, Ohio App. LEXIS 8467 (no taxpayer standing where plaintiff did not show “any special interest in the expenditure of” the funds at issue, not followed by *United McGill*). The Gildners also fail to acknowledge that every court of appeals that has considered a similar issue after *Dann III* has agreed that the *Masterson* special interest requirement remains controlling Ohio law. See *State ex rel. Christopher Karwowski v. Granger Township Trs.*, Medina App. No. 08CA-0017, 2008 Ohio 4946 at ¶29 (“Longstanding Ohio law does recognize that a taxpayer with a ‘special interest’ in particular public funds has standing to seek equitable relief in a court of equity to remedy a wrong committed by public officers in the management of those funds.”) (emphasis added); *Brinkman v. Miami Univ.*, Butler App. No. CA2006-12-3131, 2007 Ohio 4372, *29

(same). Even before its Decision in this case, the Franklin County Court of Appeals had moved away from *United McGill* in *Brown v. Columbus City Sch. Bd. Of Educ.*, Franklin App. No. 08AP-1067, 2009 Ohio 3230, and held that, because the appellant taxpayers “could show no personal harm or damage that would result as separate from any harm suffered by the general taxpaying public,” they lacked standing to challenge the expenditure of the public funds there at issue.

By its decision below in this case, the Franklin County Court of Appeals has come back into line with the decisions of this Court and all of the other Ohio courts of appeal. As has been the case for over fifty-five years, Ohio courthouse doors remain open to all taxpayers with standing, either as a result of statute, or at common law by demonstrating a special interest in the public funds at issue. Applying this Court’s well-established standards for standing, the Franklin County Court of Appeals correctly held that the Gildners lack the special interest required for standing. As a result, this case does not involve any issue of public or great general interest and, therefore, does not warrant review.

Proposition of Law No. II: No evidence of fraud in the factum exists.

Ohio law is well settled that, where a public entity desires to settle pending or anticipated litigation, “the paramount public welfare demands that such settlement not be hindered or thwarted by a single taxpayer.” *City of Cincinnati ex rel. Ritter v. Cincinnati Reds*, 150 Ohio App. 3d 728, 743-44, 2002 Ohio 7078. Thus, to pursue their claims against Accenture, the Gildners first had to set aside the Settlement Agreement by proving fraud in the factum.⁵ As the Court of Claims correctly determined, the Gildners could prove no fraud in the factum.

⁵ The Settlement Agreement could also have been set aside by proving fraud in the inducement, but the Gildners had previously conceded that they were not claiming fraud in the inducement. Plaintiffs’ Mtn. to Dismiss Sixth Claim for Relief, 11/1/07 at 7 (“The fraudulent nature of the ‘settlement agreement’ is *not that ODJFS was fraudulently induced* to sign the ‘settlement

Fraud in the factum exists when an alleged misrepresentation, device, trick, or want of capacity prevents a signatory from knowing the nature of the instrument he or she is signing. *Picklesimer v. Baltimore & Ohio RR Co.* (1949), 151 Ohio St. 1, 5. In other words, the fraud at issue results in a party signing a document that differs from that to which he or she gave consent. *Boyd v. Allied Home Mortg. Capital Corp.* (N.D. Ohio 2007), 2007 U.S. Dist. LEXIS 85764, *12 (“Fraud in the factum occurs where a party signs a document that differs from the document he or she was led to believe he or she would be signing.”); see also *Haller*, at 13-14.

Here, no evidence exists that anyone at Accenture tricked then-Director Hayes into signing the Settlement Agreement. Rather, as the court below correctly noted, he signed the agreement on the advice of counsel for ODJFS, Bob Mullinax, and the Deputy Director of ODJFS, Chris Carlson. Jan. 20, 2009 Decision at 7 (App. A17). Moreover, every deponent involved in the negotiation, execution, and/or review of the Settlement Agreement has unequivocally testified that he had no knowledge of any fraud.

Ohio law is well settled that “where there is a mere misrepresentation by one party about the contents of a release,” the release is not void if the person signing the agreement had an opportunity to read it. *Haller supra* at 14. Such is the case even if the alleged misrepresentation goes to the economic value of the release. *Boyd supra* at *13. No question exists that all individuals involved with the negotiation and execution of the Settlement Agreement had an opportunity to read it. Moreover, then-Director Hayes testified that he *had no discussions with any representative of Accenture before signing the Settlement Agreement*. Hayes Dep. at 101. In the absence of any conversation with Accenture, he could not have been tricked by Accenture

agreement[.]”); see also Memo. in Supp. of Juris. at 11. That concession aside, the Gildners could not prove fraud in the inducement because they failed to tender to Accenture the consideration it paid in settlement. See *Haller v. Borrer Corp.* (1990), 50 Ohio St. 3d 10, 14 (explaining that the tender rule is the product of long-standing public policy which favors the compromise and settlement of controversies).

into signing an agreement he did not understand. Significantly, Director Hayes testified that his counsel, not anyone from Accenture, recommended that he sign the Agreement and that he followed their recommendation. (Id. at 110-112.) When, as here, “the parties have negotiated the release with the assistance of legal counsel, and both sides have agreed to the language included in the release, there is an assumption that the parties are fully aware of the terms and the scope of their agreement.” *Weisman v. Blaushild*, Cuyahoga App. No. 88815, 2008 Ohio 219 at ¶24.

Because the Gildners could not establish that ODJFS was tricked into signing the Settlement Agreement, their fraud in the factum claim failed as a matter of law, and summary judgment in favor of Accenture was appropriate. Thus, further review is not warranted.

Proposition of Law No. III: Accenture’s claims against the State were warranted and mandated removal of this case to the Court of Claims.

The Gildners’ claim that Accenture engaged in forum shopping is patently false. The Gildners’ Amended Complaint sought a declaration that the Settlement Agreement was void — a judgment that would necessarily abrogate not only Accenture’s, but also the State’s contract rights. The Gildners, however, did not name the State as a party even though it was the real party in interest. *Busch v. Premier Integrated Med. Assocs., Ltd.*, Montgomery App. No. 19364, 2003 Ohio 4709 (the real party in interest is the “party possessing a substantive right to relief,” and includes one who signed the disputed contract). Moreover, the Declaratory Judgment Act requires that “all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding.” R.C. §2721.12(A).

Accenture thus made the State a party to its counterclaim and asserted all of the equitable and legal claims against the State that it had, as it was required to do. In doing so, Accenture became “a party who files a counterclaim against the State,” and R.C. §2743.13(E) *required*

removal of the action to the Court of Claims. *University Circle, Inc. v. Cohen* (1986), 1986 Ohio App. LEXIS 7331 (“[O]nce the state is joined as a party, a petition for removal to the court of claims is mandatory.”). The case was thus properly removed to the Court of Claims.

The Gildners’ assertion that the court below erred by not remanding the matter is based on a claim that Accenture’s counterclaim sought solely equitable relief. That contention is flatly inaccurate. Accenture’s counterclaim included three claims seeking money damages: (1) a breach of contract claim (claim four), (2) a claim for negligent misrepresentation (claim five), and (3) an alternative legal claim for rescission and restitution (claim six) seeking both money damages and the return of the consideration paid under the Settlement Agreement in the event it is invalidated. Accenture’s Am. Answer and Counterclaim at ¶¶20-28. Because Accenture sought both legal and equitable relief, and the equitable relief arose out of the same facts and circumstances as the legal relief, the Court of Claims correctly determined that it had exclusive jurisdiction to adjudicate Accenture’s claims. See *Tiemann v. University of Cincinnati* (1998), 127 Ohio App. 3d 312, 712 N.E.2d 258 (where complaint against the State seeks both legal and equitable relief, the Court of Claims has exclusive jurisdiction). As such, no basis existed to remand the case, and the court’s refusal to remand does not warrant review by this Court.

Proposition of Law No. IV: Any claims of constitutional violations were waived.

From the outset of this case, Accenture argued that the Gildners lack standing to pursue this action, and the Gildners made numerous arguments to suggest they have standing, but they never claimed *in any court below* that a denial of standing would violate either the Ohio or U.S. Constitutions. Accordingly, they have waived this argument. *Klein supra*.

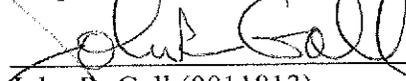
Proposition of Law No. V: No court below held that tender back of consideration was a prerequisite to standing.

Understanding that they could not avoid their prior concession that they were not claiming fraud in the inducement or the tender back required to prove fraud in the inducement, the Gildners attempt to resurrect their fraud in the inducement claim before this Court by asserting that the court below denied them *standing* based on their failure to tender back to Accenture the consideration it paid to the State in settlement. That assertion is wrong. The Court of Claims' discussion of the tender rule was in conjunction with its analysis of the elements of fraud in the inducement, not standing. The court below never ruled that tender of consideration is a prerequisite for *standing* to pursue a common law taxpayers' suit. Moreover, under the circumstances presented by this case—specifically where the Gildners concede they are not claiming fraud in the inducement—the court's ruling does not give rise to either a constitutional question or a question of public or great general interest.

CONCLUSION

For all the reasons discussed above, this Court should decline jurisdiction. This case presents no constitutional questions or issues of public or great general interest. The Franklin County Court of Appeals correctly applied well-established standing requirements, and the Court of Claims committed no error in ruling that the Settlement Agreement bars the Gildners' claims.

Respectfully submitted,



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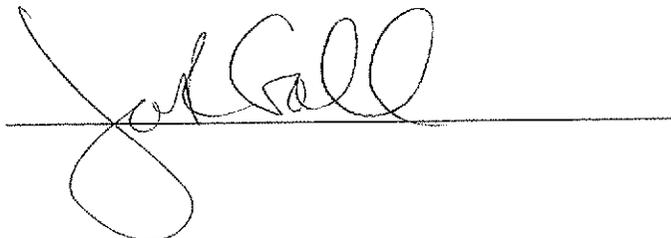
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A handwritten signature in black ink, appearing to read "Randall W. Knutti", is written over a solid horizontal line. The signature is cursive and stylized, with a large loop at the end.