

ORIGINAL

In the
Supreme Court of Ohio

BOARD OF TRUSTEES OF THE
TOBACCO USE PREVENTION AND
CONTROL FOUNDATION, et al.,

Plaintiffs-Appellants,

v.

KEVIN L. BOYCE, TREASURER OF
STATE, et al.,

Defendants-Appellees.

: Case No. 2010-0118
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: On Appeal from the
: Franklin County
: Court of Appeals,
: Tenth Appellate District
:
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: Court of Appeals Case
: Nos. 09AP-768, 09AP-785,
: 09AP-832
:

ROBERT G. MILLER, JR., et al.

Plaintiffs-Appellants,

v.

STATE OF OHIO, et al.,

Defendants-Appellees.

FILED
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CLERK OF COURT
SUPREME COURT OF OHIO

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: On Appeal from the
: Franklin County
: Court of Appeals,
: Tenth Appellate District
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: Court of Appeals Case
: Nos. 09AP-769, 09AP-786,
: 09AP-833
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**EMERGENCY MOTION OF DEFENDANTS-APPELLEES STATE OF OHIO AND
THE OHIO ATTORNEY GENERAL
FOR AN EXPEDITED BRIEFING SCHEDULE**

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The State of Ohio and the Ohio Attorney General, on behalf of all Defendants-Appellees, respectfully move under S.Ct.Prac.R. 14.4 for an expedited briefing schedule in this matter. Expedited briefing is appropriate—and important—because this case concerns approximately \$260 million of the Tobacco Use Prevention and Control Foundation (TUPAC) funds that were appropriated in the most recent budget bill (H.B. 1) for vital medical and child protection services, and specifically:

- \$129,280,718 for adult Medicaid services, including oxygen, wheelchairs, incontinence garments, private-duty nursing services, vision and dental care, and physical therapy.
- \$2,191,218 for the Children’s Buy-In Program, a public health insurance program available to children in Ohio who are not eligible for Medicaid but who are unable to obtain health insurance coverage (because they have a pre-existing condition, or because they lost the only available coverage due to an exhaustion of a lifetime benefit, or for certain other reasons).
- \$30,150,954 to expand Medicaid eligibility to children living at 300% of the federal poverty level.
- \$5,000,000 for Ohio’s Breast and Cervical Cancer Project, which provides cancer screenings, diagnostic testing, and case management services at no cost to low income women in Ohio.
- \$92,000,000 for Ohio’s child welfare and protection system, which is state-funded and county administered; the funds have been allocated for child, family, and adult protective services, including adoption, day care, adult day care, physical protection, homemaker services, job training, counseling, and legal services.

These funds have been frozen since the inception of this litigation and will remain frozen until the case is resolved. This funding uncertainty threatens serious budget problems in at least three ways; indeed, regardless of the action’s ultimate outcome, certainty is what is needed as quickly as possible.

First are the problems arising from state and local agencies’ inability to plan for the next budget cycle (the 2012-2013 biennium)—planning that will begin imminently. Agency budgets

take months to generate; and the proposed budgets for the 2012-2013 biennium must be submitted to the State's Office of Budget and Management ("OBM") by *September 15, 2010*. Agencies that are awaiting the TUPAC funds have no way to know whether or not, or how, to budget for the programs that depend on those funds. And the uncertainty threatens a domino effect that will obstruct agency planning more broadly. That is, if the TUPAC funds are ultimately not available for certain programs, then the agencies must adjust other aspects of their budgets accordingly. Budget-making is a holistic undertaking and is seriously encumbered when aspects of an agency's budget are unknown. In short, numerous State agencies and programs will be hindered in their efforts to devise proposed budgets by mid-September, as they are required to do, unless this case is briefed and resolved expeditiously.

Second are the problems that this case, if unexpedited, poses to the *entire* State budget. As just discussed, OBM's planning for the next biennium begins this summer. Unless this action is resolved speedily, then OBM will not know the total amount of money available for the State budget—which is the single most important data point for OBM—and will not have the complete information that it needs to devise a budget for the State.

Third, and already ongoing, are the problems caused by depriving various medical and child protection programs of critical state funding. Because the funds remain frozen in this litigation, over 20,000 children in Ohio currently have no health care coverage, even though they are entitled to it by virtue of the Medicaid eligibility expansion program. Similarly, the Ohio Breast and Cervical Cancer Project is not able to serve the more than 19,000 low-income women it has projected it would serve. Continued uncertainty over these funds also means that the budgets for these state and local programs remain unsettled nearly ten months into the

biennium—an administrative burden that affects more than just the services for which the funds were appropriated.

The slow procession of this case through the lower courts has already inflicted significant harm on the State and its citizens. Despite repeated entreaties from the State for expedited review below, the action languished in the trial court for 16 months. And despite a unanimous finding that Appellants' claims lacked any merit, the Tenth District has maintained the trial court's injunction, thus protracting the State's budgetary uncertainty. In short, speedy resolution of this case—regardless of the ultimate outcome—is essential to the stability of the State's budget.

For all of these reasons, Appellees respectfully ask this Court to order expedited briefing in this case. Appellees request a schedule wherein Appellants shall file their brief within 10 days of the record being filed; Appellees shall file their brief within ten days of the filing of Appellants' brief; and Appellants' may file a reply brief within five days of the filing of Appellees' brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion was served by e-mail and U.S. mail this 16th day of March, 2010, upon the following counsel:

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