

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-Appellants.)

Case No. 2010-0118
 On Appeal from the Franklin
 County Court of Appeals,
 Tenth Appellate District
 Court of Appeals Case Nos.
 09AP-768, 09AP-785, 09AP832

ROBERT G. MILLER, JR., et al.,)
 Plaintiffs-Appellants,)
 v.)
 STATE OF OHIO, et al.,)
 Defendants-Appellees.)

On Appeal from the Franklin
 County Court of Appeals,
 Tenth Appellate District
 Court of Appeals Case Nos.
 09AP-769, 09AP-786, 09AP-833

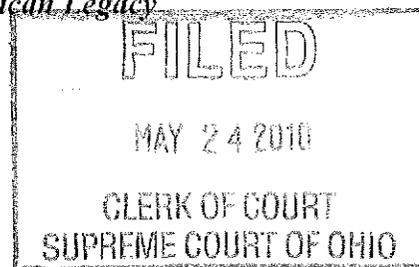
**BRIEF OF AMICUS CURIAE IN SUPPORT OF DEFENDANT-APPELLEES,
 THE VOICES FOR OHIO'S CHILDREN**

Daniel A. Richards (0059478)
Weston Hurd LLP
The Tower at Erieview
1301 East 9th Street, Suite 1900
Cleveland, Ohio 44114-1862
216.241.6602
216.621.8369 Facsimile
DRichards@westonhurd.com

*Counsel for Amicus Curiae,
 The Voices of Ohio Children*

John W. Zeiger (0010707)
Stuart G. Parsell (0063510)
Zeiger, Tigges & Little LLP
3500 Huntington Center
41 South High Street
Columbus, Ohio 43215
614.365.9900

*Counsel for Plaintiffs-Appellants
 Robert G. Miller, Jr., David W.
 Weinmann and American Legacy
 Foundation*



Russell A. Kelm (0011034)
Joanne W. Detrick (0041512)
Law Offices of Russel A. Kelm
37 W. Broad Street, Suite 860
Columbus, Ohio 43215
614.246.1000/614.246.8100 (fax)

Harvey Kurzweil
Matthew L. DiRisio
Joseph A. Murphy
Dewey & LeBoeuf LLP
1301 Avenue of the Americans
New York, New York 10019
212.259.8000
212.259.6333 (facsimile)

*Counsel for Amicus, Citizens'
Commission to Protect the Truth*

Damian Sikora (0075224)
Assistant Attorney General
Constitutional Offices
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3400
614.466.2872

*Counsel for Defendant-Appellee
Ohio Treasurer of State*

Katherine J. Bockbrader (0066472)
Assistant Attorney General
Health & Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428

*Counsel for Defendants-Appellees
The Ohio Department of Health and its
Director Alvin D. Jackson*

Alexandra T. Schimmer (0075732)
Chief Deputy Solicitor General
Richard N. Coglianesi (0066830)
Craig A. Calcaterra (0070177)
Assistant Attorneys General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
614.466.8980

*Counsel for Defendant-Appellants
State of Ohio and Ohio Attorney General
Richard Cordray*

Steven McGann (0075476)
Assistant Attorney General
Court of Claims Section
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215
614.723.5470

*Counsel for Plaintiff Board of Trustees
of the Tobacco Use Prevention and
Control Foundation*

Ann Marie Sferra (0030855)
Daniel C. Gibson (0080129)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
614.227.2300
614.227.2390

*Counsel for Amici Curiae,
Ohio Dental Association,
Ohio Optometric Association,
Ohio State Chiropractic Association, and
Ohio Association of Community Health
Centers*

TABLE OF CONTENTS

INTRODUCTION1

 A. Statement of Interest of Amicus Curiae1

 B. The health and welfare of Ohio's children will be better served by
 permitting the Ohio General Assembly to re-allocate the Ohio Tobacco
 Use Prevention and Control Endowment Fund money towards expanded
 health care and welfare interests for children.1

STATEMENT OF FACTS AND STATEMENT OF CASE2

ARGUMENT IN RESPONSE TO APPELLANTS' PROPOSITIONS OF LAW3

CONCLUSION3

CERTIFICATE OF SERVICE4

TABLE OF AUTHORITIES

H.B. 11

I. INTRODUCTION

A. Statement of Interest of Amicus Curiae

Amicus Curiae, Voices for Ohio's Children is the non-partisan voice of Ohio's nearly three million children. The organization works to impact the changes and public policy that improve the health, safety, education, family stability and child care of Ohio's children and their families. Amicus Curiae submits this brief in support of Defendants-Appellees The State of Ohio, Ohio Attorney General Richard Cordray, Ohio Treasurer Kevin L. Boyce, and Ohio Department of Health & Director Alvin D. Jackson. Amicus Curiae endorses the position and arguments set forth by the Defendants-Appellees as well as those set forth by Amici Curiae The Ohio Dental Association, Ohio Optometric Association, Ohio State Chiropractic Association and Ohio Association of Community Health Centers. The Voices for Ohio's Children files this separate amicus curiae brief to point out the adverse impact which will be vested upon the health and welfare of Ohio's children and their families in the event that this Court upholds Appellants' Propositions of Law and does not permit the General Assembly to reallocate the Ohio Tobacco Use Prevention and Control Endowment Fund money towards more critical needs.

B. **The health and welfare of Ohio' children will be better served by permitting the Ohio General Assembly to reallocate the Ohio Tobacco Use Prevention and Control Endowment Fund money towards expanded health care and welfare interests for children.**

Amicus Curiae respectfully urges this Court to affirm the well-reasoned opinion of the Tenth District Court of Appeals which applied well-established constitutional principles and Ohio law, holding that the General Assembly has a right to reallocate the funds at issue to address the economic crisis facing the State of Ohio. Although the goal of promoting smoking prevention and cessation is admirable and important, the General Assembly, via H.B. 1, has

reallocated the funds to more critical needs including child Medicaid programs which will expand children's health insurance coverage for up to 21,000 Ohio children who live in families with incomes between 200-300% FPL. Permitting the General Assembly's reallocation of funds will ensure that these children have a regular place to obtain medical care; receive preventive care visits; have fewer unmet health care needs; and will serve the interest of reducing racial disparities. The General Assembly has also reallocated funds to give Ohio's counties resources to address over 106,000 new allegations of child abuse and neglect. The Voices for Ohio's Children recognizes that smoking cessation and prevention programs are also important to the health and welfare of Ohio's children. However, due to the adverse economic climate in the State of Ohio and the limited resources currently available, it is necessary to prioritize. Amicus Curiae submits that the expansion of healthcare benefits to Ohio's children and the additional resources which will be available to address child abuse and neglect through the reallocation of the endowment fund money are more immediately critical to the health and welfare of Ohio's children than the promotion of smoking prevention and cessation. The children of the State of Ohio and their families should not continue to suffer from the continued deprivation of these funds.

II. STATEMENT OF FACTS AND STATEMENT OF CASE

Amicus Curiae adopts and incorporates the Statement of Facts and Statement of Case set forth in the Brief of Defendants-Appellees State of Ohio, Ohio Attorney General Richard Cordray, Ohio Treasurer Kevin L. Boyce, and Ohio Department of Health & Director Alvin D. Jackson.

III. ARGUMENT

Amicus Curiae adopts and incorporates the argument set forth in in the Brief of Defendants-Appellees State of Ohio, Ohio Attorney General Richard Cordray, Ohio Treasurer Kevin L. Boyce, and Ohio Department of Health & Director Alvin D, Jackson.

IV. CONCLUSION

For the reasons set forth above and in the Brief of Defendants-Appellees, this Court should affirm the decision of the Tenth District Court of Appeals.

Respectfully submitted

Daniel A. Richards by J.Q. Dorgan 0076780
DANIEL A. RICHARDS (0059478)
Weston Hurd LLP
The Tower at Erieview
1301 East 9th Street, Suite 1900
Cleveland, OH 44114-1862
(216) 241-6602/Fax: (216) 621-8369
Counsel for Amicus Curiae,

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Amicus Curiae Brief of Voices of Ohio Children was served this 24th day of May, 2010 by first class U.S. Mail, postage prepaid, upon counsel as follows:

John W. Zeiger (0010707)
Stuart G. Parsell (0063510)
ZEIGER, TIGGES & LITTLE, LLP
41 South High Styreet, Suite 3500
Columbus, Ohio 43215

Counsel for Plaintiffs-Appellants
Robert G. Miller, Jr., David W. Weinmann,
and American Legacy Foundation

Russell A. Kelm (0011034)
Joanne W. Detrick (0041512)
Law Offices of Russel A. Kelm
37 W. Broad Street, Suite 860
Columbus, Ohio 43215

Harvey Kurzweil
Matthew L. DiRisio
Joseph A. Murphy
Dewey & LeBoeuf LLP
1301 Avenue of the Americans
New York, New York 10019

Counsel for Amicus, Citizens'
Commission to Protect the Truth

Damian Sikora (0075224)
Assistant Attorney General
Constitutional Offices
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3400

Counsel for Defendant-Appellee
Ohio Treasurer of State

Katherine J. Bockbrader (0066472)
Assistant Attorney General
Health & Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428

Counsel for Defendants-Appellees
The Ohio Department of Health and its
Director Alvin D. Jackson

Richard Cordray (0038034)
Attorney General of Ohio
Alexandra T. Schimmer (0075732)
Chief Deputy Solicitor
Richard N. Coglianese (0066830)
Michael J. Schuler (0082390)
Assistant Attoreny General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

Counsel for Defendant-Appellees
State of Ohio and Attorney General

Steven McGann (0075476)
Assistant Attorney General
Court of Claims Section
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215

Counsel for Plaintiff Board of Trustees
of the Tobacco Use Prevention and
Control Foundation

Daniel A. Richards by J. Q. Dorgan
Daniel A. Richards 0076780