

ORIGINAL

IN THE SUPREME COURT OF OHIO

10-0943

|                                   |   |   |
|-----------------------------------|---|---|
| STATE EX. REL., NORTHERN OHIO     | : | Case No.:                                 |
| CHAPTER OF ASSOCIATED             | : |   |
| BUILDERS & CONTRACTORS, INC.,     | : | On Appeal from the Summit County Court of |
| <i>et. al.</i>                    | : | Appeals, Ninth Appellate District         |
|                                   | : | Case No. CA-24898                         |
| Plaintiffs/Appellants,            | : |   |
|                                   | : |   |
| v.                                | : | Summit County Court of Common Pleas       |
|                                   | : | Case No. 2009-04-2636                     |
| THE BARBERTON CITY SCHOOLS        | : |   |
| BOARD OF EDUCATION, <i>et al.</i> | : |   |
|                                   | : |   |
| Defendants/Appellees.             | : |   |

**NOTICE TO THE SUPREME COURT OF OHIO  
 THAT A MOTION TO CERTIFY A CONFLICT IS PENDING  
 BEFORE THE NINTH APPELLATE DISTRICT COURT**

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FILED  
 MAY 26 2010  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

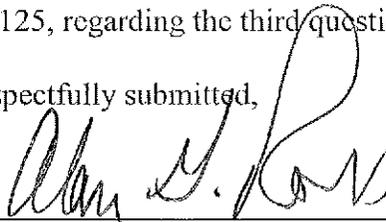
NOW COME Appellants The Northern Ohio Chapter of Associated Builders & Contractors, Inc., Dan Villers, Jason Antill, and Fechko Excavating, Inc., by and through the undersigned counsel and pursuant to S.CT. Prac. R. 4.4 (A), and hereby give notice to the Supreme Court of Ohio that a Motion to Certify a Conflict Pursuant to APP.R. 25 was filed in Summit County Court of Appeals, Ninth Appellate District Case No. CA-24898 on May 10, 2010. The following questions were presented to the Ninth District for Certification of a Conflict to the Ohio Supreme Court:

1. Whether standing to bring a common law taxpayer action against a school district is sustainable by a showing that the taxpayer(s) whose taxes will be burdened by a school levy, are residents and taxpayer(s) of the school district, thereby creating their "special interest" sufficient to sustain their common law taxpayer cause of action, or must such taxpayer(s) show that they have sustained damages different in kind than those sustained by any other taxpayer in a school district whose property taxes are burdened by the same levy?
2. Whether damages and/or injury are presumed in a common law taxpayer action which alleges that the execution of a public construction contract violated the mandatory provisions of statutes respecting such contracts or alleges that the expenditure of public funds is for an unlawful purpose, such that the foregoing is sufficient to confer standing on such common law taxpayers, or is standing of such common law taxpayers limited and restricted to only those situations where a public contract was awarded to a bidder in violation of the statutory requirement that the award be made to the "lowest and best bidder?"
3. Does a contractor/bidder have to be the apparent low bidder whose bid was subsequently rejected by a governmental entity in order to have standing to challenge unlawful bid specifications on the project, or is submitting a bid on the project sufficient to establish standing to challenge unlawful bid specifications?

The Ninth District decision is in conflict with *East Liverpool City School Dist. ex rel. Bonnell v. East Liverpool Bd. of Educ.*, 7th Dist. No. 05CO32, 2006-Ohio-3482, and *State ex rel*

*Connors v. Ohio Department of Transportation*, (1982), 8 Ohio App.3d 44, regarding the first and second questions presented. The Ninth District decision is in conflict with *State ex rel Connor, supra, Cedar Bay Constr., Inc. v. Fremont*, (Nov. 18, 1988) 6<sup>th</sup> Dist. App. No. CA S-87-36, 1988 Ohio App. LEXIS 4508, and *C. E. Angles, Inc. v. Evans*, (Dec. 14, 1982), 10<sup>th</sup> Dist. App. No. 82AP-635, 1982 Ohio App. LEXIS 13125, regarding the third question presented.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Notice of a pending Motion to Certify a Conflict was served via ordinary U.S. mail, postage prepaid, upon the following:

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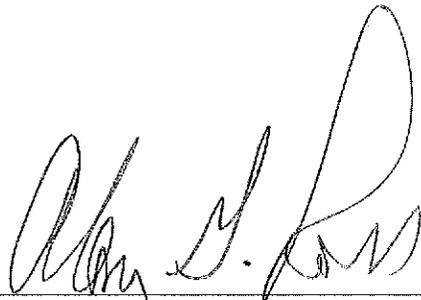
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this 25<sup>th</sup> day of May 2010.

  
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Counsel for Appellants