

ORIGINAL

In the Supreme Court of Ohio

STATE OF OHIO, EX REL.
ELIZABETH A. KOBLY, ROBERT A.
DOUGLAS, JR., and ROBERT P.
MILICH, Judges, Youngstown
Municipal Court

Relators

-US-

YOUNGSTOWN CITY COUNCIL, *et al.*

Respondents

Case No. 2009-0866

RELATORS' MERIT BRIEF

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RECEIVED
AUG 12 2010
CLERK OF COURT
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FILED
AUG 12 2010
CLERK OF COURT
SUPREME COURT OF OHIO

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STATEMENT OF FACTS

Relators, ELIZABETH A. KOBLY, ROBERT A. DOUGLAS, JR., and ROBERT P. MILICH, are the judges of the Youngstown Municipal Court, which is established pursuant to OHIO CONST., art. IV, §1 and OHIO REV. CODE ANN. §1901.01(A).¹ Relators bring this action pursuant to OHIO REV. CODE ANN. §§1901.36, and 2731.01 *et seq.*, and OHIO CONST., art. IV, §1. Respondents GILLAM, KITCHEN, BROWN, RIMEDIO-RIGHETTI, DRENNEN, TARPLEY, and SWIERZ are the members of the Youngstown City Council. Respondent SAMMARONE is the president of the Youngstown City Council. Respondent WILLIAMS is the Mayor of the City of Youngstown. The City of Youngstown operates pursuant to its charter, and, to the extent that the charter is silent, the statutes of the State of Ohio.

The Youngstown Municipal Court, the Probation Department, Clerk's Office, and administrative offices are located on the second floor of Youngstown City Hall, where they have been located for quite some time. (See, Deposition of Jay Williams, p. 10, line 21; Deposition of Annie Gillam, p.14.)

As outlined in the complaint, Relators, and their predecessors in office, have sought suitable accommodations for the Youngstown Municipal Court in order to administer justice properly, these requests dating back at least to July of 1996. On

¹ OHIO CONST., art. IV, §1 provides: "The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, *and such other courts inferior to the supreme court as may from time to time be established by law.*" (Emphasis added.) OHIO REV. CODE ANN. §1901.01(A) provides in pertinent part: "(A) There is hereby established a municipal court in each of the following municipal corporations ... Youngstown"

August 28, 1998, the Youngstown Municipal Court issued an amended Judgment Entry that increased court costs and established a special projects fund. Youngstown City Ordinance 98-369 authorized the Finance Director of the City to establish a special projects fund in the Youngstown Municipal treasury, fund 214. The fund “was a special projects fund specifically for the construction of a court facility, and specifically for that, and couldn’t be used for anything else.” (Deposition of Judge Robert A. Douglas, Jr., p. 26, lines 9-12.)

In 2002, Youngstown City Ordinance 02-65 expressed the intent of the Youngstown City Council to allocate future city capital improvement funds, collected pursuant to an increase in the City’s income tax levy, for the construction of a city justice center. At that time, the City envisioned constructing a facility that combined the Youngstown Municipal Court and a Youngstown City Police Station. However, for more than a decade, the Respondents and their predecessors in office have failed and otherwise refused to furnish suitable accommodations for the operation of the Youngstown Municipal Court.

In fact, all or most of the monies that are collected and segregated into the capital improvements fund are transferred out to other departments on an annual basis.

Q ... Is it a fair statement to say that all or most of the monies that are collected and segregated into this capital improvements fund are transferred out to other departments?

A Yes.

...

(Deposition of David Bozanich, p. 26, lines 19-24.)

Q So what I'm getting at is, if you collect, for example, \$4.3 million, most of that \$4.3 million is getting transferred out, correct?

A Correct.

These are not paltry sums that the City has been collecting.

Q Are you able to tell me in raw dollars, from looking at that document, how much money, let's say in the year 2009, the City collected and segregated into a capital improvements fund?

A Yes, I can.

Q Okay. Can you tell me what that number is, please?

A Fiscal 2009, \$4,325,000.

(Bozanich Deposition, p. 16, lines 22-24, and p. 17, lines 1-5.) The amount collected in 2008 was \$5,048,000.00 (Id., p. 20, lines 20-21.) For 2007, the amount was \$5,045,000.00. (Id., p. 21 lines 1-2.) For 2006, the amount was \$4,990,000.00. When these monies are transferred from the capital improvements account, they are allocated to other departments. For example, in 2009, the City distributed \$1,878,000.00 to the Parks Department, \$2,429,000.00 to the Street Department, and \$50,000.00 to the Demolition Department. (Bozanich Deposition, p. 21, lines 13-16.) Moreover, when the funds designated for capital improvements are transferred, they are not used solely for capital improvements: they are used for current operations:

Q ... Are capital improvements monies that are segregated into those, that account that we spoke of earlier, are they also transferred to the parks department? I thought I heard you say that earlier.

A Yes, they are.

Q And sort of the same set of questions. First of all, does that transfer help fund not only capital improvements but also current operations in terms of payroll, fringes, that sort of thing?

A Yes, it does.

(Bozanich Deposition, p. 24, line 16 - p. 25, line 1.) These decisions are made as policy decisions or value judgments by the political branches of the City government.

Q So what I'm getting at is, if you collect, for example, \$4.3 million, most of that \$4.3 million is getting transferred out, correct?

A Correct.

Q If I understood your testimony earlier, and correct me if I'm wrong, the amounts of those transfers, and the places to where they go is in essence a policy function; is that fair to say?

A That would be a value decision of the administration and city council.

Q The administration would make recommendations to city council about -- I think we should transfer X number of dollars, for example, to the street department, correct?

A Correct.

Q And then the ultimate responsibility, at least legally, lies with city council because it has to be done by a legislative action; am I correct?

A Correct.

Q Okay. And so city council can either say, yes administration, we agree that we should transfer that much money to the street department, or they can change the number?

A Correct.

(Bozanich Deposition, p. 27, lines 5-24.) Thus, the evidence in this case establishes that the Respondents have diverted funds from the capital improvement fund and

they have chosen to spend the money elsewhere while the Municipal Court remains in shambles. Both City Council and the Mayor have remodeled their offices. (See Bozanich Deposition, p. 33, lines 7-24.)

The record in this case clearly establishes that the present facilities do not constitute "suitable accommodations" for the daily administration of justice in the Youngstown Municipal Court. The courtrooms lack adequate seating. Courtroom 1, assigned to Relator Douglas, is the largest of the three courtrooms. The two remaining courtrooms, Courtroom 2, assigned to Relator Milich, and Courtroom 3, assigned to Relator Kobly, are small. (Relator's Exhibit J-38, a photograph of Courtroom N^o 3, with "overflow" litigants in jury box.) The space between counsel tables is insufficient to allow litigants and their counsel to consult privately during court proceedings. (Relators' Exhibit J-33, a photograph of Courtroom N^o 2, showing the narrow "trial" tables, and the small amount of space between them.)

Parties and witnesses often must confer wherever they can, usually in a hallway or a corner of the courtroom. (Relators' Exhibit J-36, a photograph of a lawyer conferring with client at the bar in Courtroom N^o 2; and, Relators' Exhibit J-9, a photograph of an attorney meeting with his client in entrance hallway, using window sill as table to go over legal documents.) There are no witness waiting rooms. (*E.g.*, Williams deposition, p. 16, line 24; Gillam deposition, p. 17, line 16 - p. 18, line17):

Q ... Are you aware of whether there are any separate rooms for witnesses to wait on the second floor of Youngstown City Hall before they are called into court to testify? In other words, a witness waiting room.

A No, I am not aware.

Q Okay. Can you, from your knowledge of being on the second floor, tell me if there is such a room?

A No.

Q Can you tell me, from your knowledge of being on the second floor, whether there are any rooms where lawyers may consult with their clients in private?

A No.

Q No, you're not aware?

A I'm not aware.

Q Are you able to point to any particular room that lawyers use or could use for consulting their clients?

A No.

Q Is it fair to say, based upon your observation of what you've seen of the court proceedings, that lawyers basically have to talk to their clients either in the hallway or up in the jury box?

A Yes.

There are no attorney-client conference rooms. (Deposition of Carol Rimedio Righetti, p. 9, line 23- p.10, line 2.) The courtrooms lack blackboards and other necessary demonstrative aids. The Court's magistrate does not have an office facility similar to those of the judge, nor a magistrate's courtroom. The courtrooms do not have individual soundproof jury deliberation rooms located near the courtrooms. (Douglas deposition, p. 8, line 22; Williams deposition, p. 14, lines 19-22.) The seating

is inadequate. (Relators' Exhibit J-38, a photograph of Courtroom N^o 3, with overflow litigants in jury box.)

Indeed, the three courtrooms share one jury deliberation room, which is poorly furnished. (Relators' Exhibits J-12 and J-13, photographs of the jury deliberation room showing table, chairs, TV and boxes.) Jury sessions must be scheduled among the three courtrooms so that the three trial courts can share the lone jury deliberation room.

Q ... Moving along, would you agree that, based on the number of jury trials that a court has and that the number of courtrooms that may be needed at any one time or the number of jury rooms that may be needed at any one time may differ between courts?

...

A No, I think that the courts always need to have a jury room available, because you never know when in each session your jury trial is going to go forward.

Q But if you're not having two jury trials simultaneously, why do you need a jury room for each court?

...

A We only -- we don't have jury trials simultaneously now because we can't, because we only have one room, so we can't have simultaneous jury trials. There's no way physically we could accommodate that.

Q But if you look at the historical use, if you only have one Judge who tries 14 cases in a year and the other two Judges try only one or two, isn't it reasonable to look at the use of the facility for jury trials and determine that one way of not wasting space is just to schedule your trials so that they don't occur simultaneously?

...

A I don't agree with your comment about wasting space at all. Right now we don't have the ability to have jury trials at the same time. We never had, we never will as long as we're stuck in this dungeon. We

all need to have a jury room, we're supposed to have a jury room, and the standards require that we each have the ability to have jury trials simultaneously. But right now we can't do that.

Q Okay.

A Regardless of the number of jury trials we each have, we still don't have the ability right now to have them at the same time. ... And we won't as long as we're in here.

(Deposition of Judge Elizabeth A. Kobly, p. 76, line 4-p. 77, line 19.)

There is no jury assembly room. The jurors are assembled in the Youngstown City Council chamber. Although Council Chambers have been renovated (Relators' Exhibits J-46, J-47, and Exhibit K), and the conditions there are not "very deplorable" (Rimedio Righetti Deposition, p. 23, line 14) as are the second floor facilities, the council chambers nonetheless are inadequate for use as a jury assembly room. The council chambers lack reading materials, public telephones and televisions.

There are no "personal convenience facilities" for the jurors. (Complaint, Affidavit of Judge Elizabeth A. Kobly, ¶7). In fact, there are no personal convenience facilities for litigants, witnesses, or lawyers. The Court, located on the second floor, must direct individuals who attend court to a one room, unisex restroom located two floors below the court. While there are restrooms adjacent to the stairwell on each floor of City Hall, those restrooms are kept locked and are not accessible to the public. There are no public telephones available on the second floor where the Court is located.

General court security, too, is inadequate. A recent melee on July 14, 2010, is captured in Relators' Exhibits L1-L4, security videos that depict the melee and the danger posed to court staff and the public. Prisoners are not held in a separate, secure, waiting area, but often are deposited in the jury box. (Affidavit of Judge Robert P. Milich, ¶4.) Prisoners are regularly transported into and within the Court facility through public hallways. (Relators' Exhibits J-7 and J-8, photographs of a prisoner being transported through public hallway, and an arrestee from probation transported, cuffed in front, through public hallway, respectively.) Transportation of those prisoners is not done in accordance with proper security guidelines. (Relators' Exhibit J-8.)

Not only are the actual physical accommodations inadequate for properly functioning court services, but also the physical condition of the facilities is deplorable. The ceilings in the courtrooms and judges' chambers reflect damage from water leaks and mold. (Relators' Exhibit J-15, a photograph of the light fixture in Courtroom N^o 3, assigned to Judge Kobly, showing mold and soot around fixture; Relators' Exhibit J-22, a photograph of water damage to the ceiling in chambers of Judge Douglas, Courtroom N^o 1; Relators' Exhibit J-24, a photograph of water damage in the Chambers area Courtroom N^o 1; Relators' Exhibit J-26, a photograph of water damage in Judge Douglas' chambers, Courtroom 1; Relators' Exhibit J-27, a photograph showing water/mold damage in the chambers of Judge Milich, Courtroom N^o 2, and, Relators' Exhibit J-30, a photograph of the Chambers of Judge

Milich, Courtroom N^o 2, showing the area where sewer water leaked in; Relators' Exhibit J-39 - Photograph of Courtroom N^o 3 showing Judge Kobly on the bench with water damage above; and, Relators' Exhibit J-40, a photograph of Courtroom N^o 3 showing water damage to the ceiling.)

Carpets are torn and damaged, "repaired" with duct tape employed to minimize hazards of tripping. (Relators' Exhibit J-20, a photograph of entrance to secretarial area from hallway outside Courtroom N^o 3, showing taped carpet; Relators' Exhibits J-23 and J-25, photographs of damage to carpeting in Courtroom N^o 1.) Heating and air conditioning is inadequate and antiquated, often leading to more damage to the court facilities. (See, Relators' Exhibits J-31 and J-32, photographs of the window air conditioner in Courtroom N^o 2, the latter photo also depicting rags under air conditioning unit.) Paneling is stained and pulling away from the walls. (See, Relators' Exhibit J-21, a photograph of paneling in Judge Douglas' chambers pulled away from wall with a pen inserted for perspective; Relator's Exhibit J-35, a photograph of Courtroom N^o 2 showing dirty and stained walls.) Wires are exposed (Relators' Exhibit J-14, a photograph of exposed wiring in hallway area) and plaster is cracked and crumbling. (Relator's Exhibits J-43 and J-44, photographs of damage to a wall in the secretary's office, Courtroom N^o 3.)

After years of asking for suitable accommodations,² Relators finally, on January 26, 2009, adopted an entry which directed Respondents to provide suitable accommodations and facilities for the operation of the Youngstown Municipal Court and related offices. The entry was directed to City Council, because of its control of the purse strings, and, the entry was also directed to the Mayor because he sits on the City's Board of Control, the Board through which the City enters into contractual agreements. (Williams deposition, at p. 20, line 3). The Mayor appoints the remaining members of the Board of Control. When the City still failed to act upon the January 26, 2009 order, Relators commenced this action in mandamus.

Though the original discussion involved a City Justice Center, containing a court facility, a police station, and a jail (Deposition of Judge Robert A. Douglas, Jr., p. 22, line 3), when it became obvious that construction of such a facility was unlikely, Relators, faced with the challenges of an inadequate court facility, engaged in site acquisition and the design of a facility. To assist in this process, the City hired Olsavsky-Jaminet Architects. A site was selected and a design was created. The City made it clear, however, that it did not go forward with the project, and the City failed to appropriate funds for the preparation of construction drawings. Thereafter, in an effort to save the City money, Relators asked the project architects, Olsavsky-

² The delays and the frustration engendered by those delays is evidenced in the record. Relator Douglas testified:

The answer is no on both, because we see that as another stall, to start all over again and talk to Strollo from the beginning, another year stall, just like mediation was a stall, just like every year for the last 12 years was a stall. We got tired of all the stalls, understand.

Jaminet, to design a plan that would provide suitable accommodations to the Relators for the operation of the Youngstown Municipal Court, while at the same time using an existing City facility so as to avoid the additional expense of site acquisition. Olsavsky-Jaminet completed a design to fit within an existing City-owned building, known as the City Hall Annex.

Although the City had engaged Olsavsky-Jaminet, the City hired a second architect, Strollo & Associates, to design a cheaper facility. (Deposition of Judge Robert A. Douglas, Jr., p. 46, line 18.) Unlike Olsavsky-Jaminet, Strollo & Associates did not meet with the Court or its personnel (Deposition of Judge Elizabeth A. Kobly, p. 92, line 20), and Relators found the design wholly unsatisfactory. (Kobly Deposition, p. 85, line 16 *et seq.*; 47, Milich Deposition, line 8 *et seq.*)

ARGUMENT

Proposition of Law N^o 1: The legislative authority of a municipal corporation is constitutionally and statutorily required to provide suitable accommodation for a Municipal Court and its offices.

“The courthouse must be accessible, efficient, convenient and safe. Our courthouses are the most significant public buildings that we have here in America. The courthouse is the cornerstone of authority and the cornerstone of the community it serves.” So said Justice Maureen O’Connor of this Court, who was the keynote speaker at the dedication of an addition to the Martin P. Joyce Juvenile Justice Center in Youngstown held June 15, 2010. That the current Municipal Court facilities are “very deplorable” (Deposition of Carol Rimedio-Righetti, p. 23, line 14)

and inadequate cannot be disputed. (*See, e.g.*, Deposition of Carol Rimedio-Righetti, p. 11, lines 22-25; p. 23, line 11.)

Nor can it be disputed that Respondents, the City Council members, have a legal obligation to provide suitable accommodations for the Court. OHIO REV. CODE ANN. §1901.36 provides:

(A) The legislative authority of a municipal court shall provide suitable accommodations for the municipal court and its officers. The legislative authority of a county-operated municipal court may pay rent for the accommodations.

The legislative authority shall provide for the use of the court suitable accommodations for a law library, complete sets of reports of the supreme and inferior courts, and such other law books and publications as are considered necessary by the presiding judge, and shall provide for each courtroom a copy of the Revised Code.

The legislative authority shall provide any other employees that are necessary, each of whom shall be paid such compensation out of the city treasury as the legislative authority prescribes, except that the compensation of these other employees in a county-operated municipal court shall be paid out of the treasury of the county in which the court is located, as the board of county commissioners prescribes. It shall provide all necessary form books, dockets, books of record, and all supplies, including telephone, furniture, heat, light, and janitor service, and for such other ordinary or extraordinary expenses as it considers advisable or necessary for the proper operation or administration of the court.

(B) The legislative authority of the municipal court shall provide suitable accommodations for the housing or environmental division of the court. The accommodations shall be in the courthouse, include at least one courtroom in which jury trials can be conducted, be located in one or more adjacent rooms, and be provided in accordance with the Rules of Superintendence for Municipal Courts and County Courts.

This Court has held that, by enacting that statute, “which is mandatory in its terms, the General Assembly recognized that municipal courts, as an essential part of the justice system in this State, must be given the means to carry out their duties under the law.” *See, State, ex rel. Taylor v. Delaware* (1982), 2 Ohio St.3d 17, 18, 442

N.E.2d 452, 453, 2 O.B.R. 504. Thus, just as in the *Taylor* case where there was “a clear legal duty on the part of respondents to ‘provide suitable accommodations’ for the Delaware Municipal Court,” so, too, there is here a clear legal duty on the part of respondents to ‘provide suitable accommodations’ for the Youngstown Municipal Court.

In *State, ex rel. Hillyer, v. Tuscarawas Cty. Bd. of Commrs.*, 70 Ohio St.3d 94, 1994 Ohio 13, 637 N.E.2d 311, County Court Judge Hudson Hillyer brought an action in mandamus because in the Tuscarawas County Court, it was difficult to separate opposing witnesses due to limited space, counsel were required to take their clients outside to discuss confidential matters, the courtroom was too small to hold all defendants and spectators during traffic court, there was no waiting room for jurors, there was no private access from chambers to the courtroom, there was no consultation room for attorneys and clients, and the facilities did not comply with the predecessor to Appendix D to the Rules of Superintendence. There was no jury room, and the court furniture was old and insufficient. Judge Hillyer testified that the facilities were inadequate and the respondents admitted that the facilities were inadequate. While the courts have found that the Superintendence Rules are not mandatory in *all* respects, they are to be considered when determining what are suitable facilities.

OHIO REV. CODE ANN. §1901.36(A) standing alone, provides a clear legal duty on the part of the Respondents to “provide suitable accommodations” for the

Youngstown Municipal Court. This mandatory duty to provide suitable accommodations furnishes the basis for the issuance of a writ of mandamus. *Taylor*, 2 Ohio St.3d at 18, 442 N.E.2d, at 454.

Relators here clearly have met the elements of mandamus. In *State, ex rel. Consolidated Rail Corp., v. Gorman* (1982), 70 Ohio St. 2d 274, 275, 436 N.E.2d 1357, 24 Ohio Op.3d 362, this Court held that: “A writ of mandamus may issue only where the relator shows (1) a clear legal right to the relief prayed for, (2) a clear legal duty upon respondent to perform the act requested, and (3) that relator has no plain and adequate remedy in the ordinary course of the law.” As to the need for suitable accommodations for a municipal court, the recent Fourth District case, laid out the elements to be proved: (1) a clear legal right to the requested relief; (2) a clear legal duty to perform these acts on the part of Respondents; and (3) the lack of a plain and adequate remedy in the ordinary course of law. See, *State, ex rel. Badgett v. Mullens*, 177 Ohio App.3d 27, 2008 Ohio 2373, 893 N.E.2d 870, citing *State, ex rel. Neff, v. Corrigan*, 75 Ohio St.3d 12, 16, 1996 Ohio 231, 661 N.E.2d 170. The “function of mandamus is to compel the performance of a present existing duty as to which there is a default. It is not granted to take effect prospectively, and it contemplates the performance of an act which is incumbent on the respondent when the application for a writ is made.” See, *State ex rel. Willis v. Sheboy* (1983), 6 Ohio St.3d 167, 6 OBR 225, 451 N.E.2d 1200, syl. 2. Given the conditions of the present

accommodations, there is a duty devolving upon Respondents to furnish the Relators suitable accommodations *now*.

In cases such as this, the legal right to relief and the legal duty to perform acts are correlative. The record shows that the existing municipal court facilities are wholly inadequate. Under OHIO REV. CODE ANN. §1901.36, the Respondents have a clear legal duty to provide suitable court facilities. The entire record supports the claims that the current court facilities are not “suitable” as OHIO REV. CODE ANN. §1901.36 requires. The Complaint and the affidavits of Relators appended to them, the depositions of the Relators, and indeed the depositions of the Respondents do nothing but support the conclusion that the facilities are inadequate. The record shows that since being served with the order a year and a half ago in January of 2009, the Respondents have done nothing to educate themselves about the court facilities. Of the Respondents who actually knew about the municipal court’s facilities, they conceded the insufficiency of the court’s physical plant.

Councilman John Swierz testified: (p. 10, line 5 to p. 11, line 5):

Q Very well. Can you and I agree that there is no jury assembly room in Youngstown City Hall where jurors, who are summoned for jury duty, can assemble until they are called down to the court?

A I cannot answer that question that I actually know that there is a jury room.

Q All right -- very well. Can you and I agree that there are no individual jury deliberation rooms attached to or adjacent to each of the three (3) Youngstown Municipal Court trial courtrooms?

A To the best of my knowledge, there isn't.

Q Can you and I agree that there are no witness waiting rooms -- places for witnesses who are subpoenaed to wait, in a safe and unharrassed manner, until they're called into court to testify?

A I was under the assumption there was one, but to the best of my knowledge, I don't know that for fact.

Q Okay -- and can you and I agree that there are no attorney-client conference rooms, where lawyers can meet in private with the clients to discuss their on-going case in the Youngstown Municipal Court?

A It was my understanding that they met somewhere down that one hallway back where the elevator for the prisoners is.

He also testified about public restrooms, which the City employees keep locked for their own use and public telephones: (Swierz Deposition, p. 16, line 19 - p. 18, line 3):

Q Are you aware of whether there are public telephones on the second floor for use by the public, who might come to court?

A I believe there was in the hallway, but I believe they took that one out.

Q Are you aware that there are no public restroom facilities on the second floor?

A I thought that there was one in the hallway, going down the stairs. Not directly in the courtroom, that I know of, but in that hallway when you get out of the elevator.

Q Is that for men or women, if you know?

A Can't honestly tell you.

Q Do you know if that door is locked, or whether it's accessible to the public?

A I believe a lot of those are locked.

Q Can you and I agree that the only unlocked restroom facility that the public can use is two (2) floors below in the basement of the Municipal Building?

A You mean coming out of the courtroom?

Q No, I mean --

A -- or anyplace? There are -- I believe you could -- there's public that can use the one down on the sixth floor. I think they alter-one's a mens and one's a ladies, going down -- down each stairwell.

Q And is your recollection that those rooms are locked or unlocked?

A I believe they're locked.

Q They're locked, okay. So, in terms of a restroom that somebody could just walk into, as a member of the public, there's nothing like that on the second floor, is there?

A To the best of my knowledge, no.

Respondent Williams likewise, to the extent that he knows about the Court facilities, conceded through his testimony that the facilities are inadequate. (See Deposition of Mayor Jay Williams, p. 12, line 19 through 15, line 23):

Q Are you aware, Mayor, of whether the court has a magistrate?

A Yes, I am.

Q Okay. And do you know if the court has one magistrate or more than one magistrate?

A My understanding, the court has one magistrate.

Q Do you know if that magistrate has a separate court available for him to use without having to borrow one of the judges' courtrooms?

A Not to my knowledge.

Q Okay. You and I can agree that there are three courtrooms, correct?

A That's correct.

Q And three judges?

A That's correct.

Q Is there a separate, to your knowledge, a jury assembly room located anywhere in Youngstown City Hall?

A Not to my knowledge.

Q Are you aware of whether there are any convenience facilities for those folks who are summoned as jurors, convenience facilities such as restrooms, televisions, telephones, reading material?

A Within City Hall?

Q Yes, sir.

A There are restrooms within City Hall, yes.

Q How about in the area where jurors are called to assemble?

A I, I don't know.

Q Do you know where jurors are called to assemble?

A I often see jurors assemble up in the city council chambers. And if that's, if that's where they assemble, then there are restroom facilities on the sixth floor.

Q Are there telephone facilities?

A Public telephone facilities?

Q Yes, sir.

A No.

Q Are there television facilities for jurors who might be waiting to be summoned to court?

A No.

Q Any reading materials that you're aware of that would help jurors pass the time?

A I'm not aware of any.

Q Can you and I agree that there are no separate jury deliberation rooms attached to or adjacent to each of the three municipal courts located on the second floor?

A None that I'm aware of.

Q Can you tell me if there are any public restroom facilities on the second floor of Youngstown City Hall that could be used by folks who would be summoned as witnesses, jurors, litigants, and even just observers?

A Not, I'm not sure if they're on the second floor or if they're a flight below in the stairwell, a flight below or above in the stairwell somewhere.

Q Are those restrooms that are a flight below and above, are those restrooms that are unlocked and available to the public, or are they used primarily by City Hall employees? If you know.

A I'm not sure. I've seen both.

Q There is a restroom located in the basement of the City Hall; are you familiar with that particular restroom?

A I am.

Q It is a unisex restroom, is it not?

A I believe so.

Q Do you know if that is the only restroom available to individuals who come either to participate in or watch proceedings in Youngstown Municipal Court?

A I don't know if that's the only one available.

Although some of the Respondents, like Councilman Brown, quibble with the idea that the facilities are unsuitable, the Respondents were and are forced to concede that the items lacking at the Municipal Court are reasonable. There is significant room for improvement of the court facilities. Councilman Jamael Brown testified at page 16 of his deposition that he "can't say that I agree [the facilities are]

unsuitable.” Yet, he acknowledged that “could they use some improvements and/or updating, absolutely.” And when asked why he thought the facilities are suitable, replied weakly that “It’s the place that justice has been doing for some time now. It’s been the facility—it’s not—anything has changed.” (Deposition of Jamael Tito Brown, pp. 16, line 25-17, line 14.) That is precisely Relators’ point: *nothing* has changed at Youngstown Municipal Court.

Councilwoman Janet Tarpley would not agree that the present facilities are unsuitable (Deposition of Janey Tarpley, p. 13, line 10), but in the same sentence agreed that “the court needs to have better facilities” and that “it should be better.” (Id., at lines 11-14) Still, she conceded that the things that the Court does *not* have, like witness rooms, jury rooms, and attorney conference rooms are “reasonable.” (Id., p. 16, line 10.)

While acknowledging the duty to furnish suitable accommodations, Respondents are almost entirely unaware of what facilities the Court has and what it lacks. Respondent Tarpley did not know if the Court had a jury assembly room. (Tarpley deposition, p. 9, lines 3-7.) Nor did she know if there was a jury deliberation room, or a witness waiting room. She has never seen any attorney-client consultation rooms, and acknowledged that she has seen lawyers meet with their clients in the hallways.

Councilman Demaine Kitchen did not know if there were jury rooms or a jury assembly room. He was not aware of public restrooms on the same floor as the Court. As to public restrooms, he said:

Q Are you aware of any restroom facilities -- public restroom facilities on the second floor of Municipal Court?

A I'm not aware -- never used it.

Q Okay. Isn't it true that there's a unisex bathroom in the basement of the Municipal Building?

A I'm not even sure.

Q You're not aware of that?

A Uh-uh.

Q You've not been down there?

A No.

Q As you sit here today, are you able to tell me, with any certainty, if I'm a visitor to the Youngstown Municipal Court, here's where I could use the restroom?

A I could tell you on the sixth floor where to go, and I could tell you some hallways where to go, but not on the second floor, uh-uh.

(Deposition of Demaine Kitchen, p. 18, line 17- p.19, line 9.)

Respondent Williams conceded that it's "reasonable that there would be space for jurors." (Williams Deposition, p. 24, lines 13-14.) He also conceded that it "would be reasonable" to have a room where jurors can deliberate once the evidence has been presented to them where they can deliberate in private to come up with a verdict. (Id., at line 21.)

The Respondents did nothing to give effect to the order of January, 2009 (Relators' Exhibit A.) Whatever their reasons, the record makes plain that they have not done any investigation into the current court conditions. They have not met with Relators except to discuss ordinary budget matters, nor have they introduced legislation to furnish suitable accommodations for the Court. Faced with a complaint in mandamus that recites that the facilities which house the Youngstown Municipal Court and the Court's support services are, and have been, entirely inadequate, and faced with a laundry list of those inadequacies, the Respondents have done nothing. The affidavits of the Relators, attached to the Complaint, specify that the facilities do not comport with Appendices C and D of the Ohio Superintendence Rules, and the Court facility is not clean, adequately heated and air-conditioned, or adequately maintained. The affidavits also list that the courtrooms do not have adequate seating capacity so that litigants and others are not required to stand or wait in hallways and areas adjacent to the courtroom; that desks, tables, and chairs are insufficient for all court personnel regularly present in the courtroom; that tables and chairs cannot be situated in the courtrooms to allow private interchanges between litigants and counsel away from jurors and other courtroom participants; that blackboards and other necessary demonstrative aids are not available in all courtrooms; that the Court's Magistrate does not have courtroom and office facilities similar to those of a judge; that the courtrooms do not each have a soundproof jury deliberation room located in a quiet area as near the courtroom as possible; that there are no private

personal convenience facilities available for the jurors for the rooms that are used as jury assembly and deliberation rooms; that there is no adequate waiting room for jurors, nor reading material of general interest, television, or telephones; that there is no waiting room for witnesses, and witnesses are often relegated to standing in the hallway when a separation of witnesses is ordered; that there are no consultation rooms for use by attorneys; that the violations bureaus and pay-in windows are not located near public parking areas; that there is insufficient space and equipment for court personnel to prepare, maintain, and store necessary court records; that there are no adequate restroom facilities separate from public restroom facilities for use by court personnel; that in fact there are no clean, modern restroom facilities in the vicinity of the public areas of the court, and indeed, the only public restroom facility is a one commode unisex restroom two floors below the floor on which the court, violations bureau, and pay-in windows are located, and that restroom is not handicap accessible; that there are no public telephones available; that prisoners are not transported into and within the court facility through areas that are not accessible to the public, and because there is no separate entrance, public hallways must be utilized; that during the transport of prisoners, law enforcement officers in direct contact with the prisoners carry firearms; that there is no secure prisoner holding area equipped with video monitoring; that there is no effective secondary security perimeter at the entrance to the office space housing judges and court personnel; that there is no ability to stop anyone from accessing the court area at

any time of the day or night; and, that the floor on which the Court is located is the only means by which persons access all of Youngstown City Hall during non-business hours.

One Councilman admitted he had done nothing to give effect to the order. When asked why, he offered as a defense the present lawsuit, which was commenced months after the order was entered, and then ignored. (See Deposition of Paul Drennen, p. 26, lines 17 *et seq.*, and p. 27, lines 1-5.)

Q So what I'm trying to find out is -- I think you've already told me you have not introduced any legislation, or voted on any legislation to try to do anything to implement that court order; am I correct?

A I personally have not.

Q And aside from the existence of the lawsuit, is there any other reason why you have not introduced legislation to try to give affect to that court order?

A Aside from getting the information from the administration about where we are in the process, there is no other reason.

Councilwoman Janey Tarpley testified she has never even since the Municipal Court order of January, 2009. (Tarpley deposition, p. 18, line 22.) Despite their answer to the complaint, the record as a whole here confirms that Respondents either admit the facilities lack the items described above, or they simply proffer ignorance of the conditions.³

³ They have also posited the absurd suggestion that the Relators were *too* patient, too conciliatory, too reasonable; that Relators should have sued the Respondents sooner. (See, Douglas deposition, at page 11, line 5 through page 12, line15:)

A... But to answer your question, we didn't want to do a combative

(continued...)

To determine whether there is a clear legal right to the relief prayed for by the Relators and a clear legal duty upon Respondents to perform the act requested, furnish accommodations that comport with the Municipal Court's January, 2009 entry—the first determination is, what is the definition of “suitable accommodations” as that phrase was employed by the General Assembly in OHIO REV. CODE ANN. §1901.36.

The statute does not explicitly define the phrase “suitable accommodations.” The Fourth District Court of Appeals, in *State, ex rel. Badgett v. Mullens*, 177 Ohio App.3d, at 37, 2008 Ohio 2373, at ¶21, 893 N.E.2d 870, 878, found the term ambiguous, but found guidance from this Court in addressing how to determine

³(...continued)

approach. My experience as an administrator is that you just don't, you know, go, you know, headlong into a lawsuit. Lawsuits are very expensive, can be very long. And, again, you need some basis to establish that. So we decided to take a very prudent approach and establish the need for that.

As well, my style as an administrator, having been an administrator of a public agency eight years in one place and two years in another place, you try -- and in government, my experience in government is that you try to seek cooperation and seek consensus, exhaust that approach as long as possible. And I think the public prefers that, that you try to work together and have cooperation and develop consensus.

So to answer your question immediately, that in terms of laying a foundation and style, administrative style, I think a more appropriate and prudent approach was not to do a lawsuit right away.

Q Not for 12 years?

...

A Repeat the question.

Q You chose not to do a lawsuit for 12 years; is that correct?

...

A No, we did not choose not to do a lawsuit. We chose to exercise the approach that I just mentioned, and that is to work with -- in fact, we worked with two administrations, we've worked with probably two sets of Council members, but the choice was not to file a lawsuit. The choice was to try to do it in a cooperative way and get consensus to do it.

whether court accommodations are “suitable” within the meaning of OHIO REV. CODE ANN. §1901.36. *Badgett* cited to this Court’s decision in *State, ex rel. Taylor, v. City of Delaware* (1982), 2 Ohio St.3d, at 18, where this Court held that M.C. SUP. R. 17, the predecessor to Appendix D to the Rules of Superintendence, was “intended to provide basic guidelines for facilities of municipal and county courts.” The Court held that while “not all of the provisions of the rule are mandatory in character, the standards set forth in the rule should be taken into consideration in measuring the adequacy of existing court facilities and in the planning of new facilities.”

The Court in *Badgett* relied upon this Court’s holdings in *Taylor* and *Hillyer*, and looked “to the Rules of Superintendence for guidance in determining whether the legislative authority of Marietta has met its duty of providing ‘suitable accommodations’ for the municipal court as required by R.C. 1901.36.” It found from the record there, just as the record demonstrates here, that the “municipal court facilities impede the fair and efficient administration of justice in Marietta and appear to be an unsafe environment for the judge, court staff, litigants, counsel, and the general public.” *Badgett, supra*, at ¶28. And so it is in Youngstown.

In *Badgett*, the Court of Appeals acknowledged that:

a deficiency concerning one or two—or perhaps even more—of the guidelines in Appendix D or Appendix C would not render a court facility unsuitable. However, here the deficiencies are so numerous and so serious that we simply cannot conclude the City has provided “suitable accommodations” for the municipal court as required by R.C. 1901.36. We find that Mr. Badgett has demonstrated that he has a clear legal right to the relief requested—on behalf of the taxpayers of Marietta—and that the City has a clear legal duty to provide “suitable accommodations” for the Marietta Municipal Court pursuant to R.C. 1901.36. Therefore, we

conclude Mr. Badgett has established the first two requirements for the issuance of a writ of mandamus.

Badgett, supra, at ¶38. Here, Relators have demonstrated a veritable abundance of deficiencies that render these present facilities unsuitable. In this original action, this Court is the trier of fact. Relators have presented overwhelming evidence that the present court facilities are unsuitable. Just as in the *Badgett* case, this is not a difficult determination to make. Like the City and the intervenors in *Badgett*, the Respondents in this case “acknowledge that the facilities have many flaws and dispute very few of the claimed inadequacies cited by [Relators.]” *Badgett, supra*, at ¶27.

Relators must also demonstrate that they have no plain and adequate remedy at law. This Court and the appellate courts of this State have found that mandamus is proper and that there is no plain remedy at law when dealing with budgetary, space and security issues. *See, e.g., State, ex rel. Dellick, v. Sherlock*, 100 Ohio St.3d 77, 2003 Ohio 5058, 796 N.E.2d 897; *State ex rel. Donaldson, v. Alfred* (1993), 66 Ohio St.3d 327, 612 N.E.2d 717; *In Re: 2008 Operating Budget Lake County Juvenile Court*, Lake App. No. 2008-L-044, 2008 Ohio 4048, 2008 Ohio App. LEXIS 342; *State, ex rel. Judges of the Toledo Municipal Court v. Mayor of the City of Toledo*, Lucas App. No. L-08-1236, 2008 Ohio 5914, 2008 Ohio App. LEXIS 4969.

In its answer, the Respondents deny that Relators have a plain and adequate remedy at law. However, the alternatives offered by Respondents are illusory. These judges and their predecessors in office have tried for a dozen years to get relief. Even

now, the Relators deny the ability to pay for a court when in fact they spend more than \$4,000,000.00 annually on “value decisions.” The Mayor has said that he will blame a shift in these value decisions on the Court, even though the capital improvements monies are being spent on non capital, current expenses. Relator Douglas testified:

And the Mayor and I had a very long, very long conversation about the project and paying for it, the cost of the project and how it could be paid for and, you know, capital improvement monies for special project funds. And at the end of that long conversation, the Mayor said about the Masters Block property—in fact, he pointed to the picture up on the wall that I had there. He said it is reasonable. He said that, yes, the City could pay for it, could float bonds and pay for it, but that he would not do it because he did not want to trade off the projects that he needed to do it and that if the Judges forced him to do it, he would say that we are forcing him to lay off police and fire.

(Douglas Deposition, p. 42, lines 5-17.)

The Respondents’ claimed inability to pay is illusory. In *Taylor*, this Court’s *per curiam* opinion said in part: “In holding that the writ of mandamus should be allowed in this cause, this court is not unmindful of the present financial problems being experienced by political subdivisions in the state. Of necessity, those problems must be taken into account by both relator and respondents in satisfying the mandatory obligations imposed by R.C. 1901.36.”

Respondents’ proffered ignorance of the condition at the Municipal Court is insufficient to excuse their failure to respond to the order here sought to be enforced. Faced with an order to furnish the Municipal Court suitable accommodations, Respondents have failed to act. Most of the Respondents even have failed to

investigate. They have chosen instead to rely upon the Mayor and his Finance Director and offer the defense that the City simply cannot afford a new facility. (See, *e.g.*, Tarpley deposition, p. 26, line 19.) But time and again, this Court and the appellate courts of this State have held that claims of an inability to pay, whether feigned or real, provide a weak reed against which to cling, a reed ultimately bent over and washed away by the constitutional and statutory obligations to furnish suitable accommodations.

The decision to spend the money elsewhere was not done after careful review of the conditions of Youngstown Municipal Court. (Some Respondents claimed not even to know how much the City collected annually for capital improvements. (See, Brown deposition, p. 24, line 19.) Councilwoman Gillam seemed particularly uninformed on the issue. (See Deposition of Annie Gillam, p. 36, lines 13-19.):

Q Okay, does the City of Youngstown, to your knowledge, collect money from income tax that is segregated into a capital improvements fund?

A That's what they say. That's always been kind of a divisive issue. Some say that we do, and some say that it doesn't. You know, it's not separated.

Nor was the decision to divert funds elsewhere the result of an analysis that led to the conclusion that the current facility properly provided that which is necessary for operation of a municipal court. Rather, in deposition after deposition, Respondents testified they were not even aware of what was and was not available for proper operation of the Municipal Court. The record reflects the decision to divert funds

elsewhere was done simply because Respondents chose not to address the funding needs of the Municipal Court. (See, Gillam Deposition, p. 41, line 6- p. 42, line 23):

Q But yet, somehow, you did not vote to appropriate any money because you say you can't afford something that you didn't even know how much it costs. Am I stating your testimony accurately?

A Yes.

Q And aside from what you have told me about your conversations with the Finance Department, have you otherwise asked the City administration why they're not proposing that any money be set aside for capital improvements to furnish and provide a new Youngstown Municipal Court?

ATTORNEY FARRIS: Objection.

A No.

Q (By Attorney Juhasz:) Other than what we have already talked about here today, Miss Gillam, what if any steps have you taken, personally, as a Councilperson, to try to implement Exhibit A -- that is, to try to furnish the Youngstown Municipal Court the facilities that the Judges say they need?

A Basically, to let the administration know that we need to take care of this. We need to take care of this problem that we have with the Judges, but we have to be reasonable in the request.

Q Have you asked any questions about how much, if any, money the City segregates for capital improvements?

ATTORNEY FARRIS: Objection.

A No, but I have -- I keep my budget in hand to see what we do appropriate. I could not tell you right now offhand, you know, what is in capital improvements.

Q (By Attorney Juhasz:) Do you know if any money was appropriated for capital improvements?

A I'm probably sure it was. I'm not sure if it was for the Judges.

Q Okay, but you believe that there was money appropriated for capital improvements, just not for the Judges?

A Well, we have capital improvements every year. I know we have the water tank that's going on, you know, right now. I just can't think of just what all is going on; but I just -- I don't know of anything separate for the Judges.

Moreover, the Respondents' claims of a financial inability to pay are grossly exaggerated. This case is perhaps different than many to come before this Court and the appellate courts of this State. The difference is that in this case, the City of Youngstown has a dedicated capital improvement fund. The Finance Director has testified that the City collects \$4.5 million annually which is segregated in this capital improvement fund. Rather than honoring their promise to the voters, the political branches of Youngstown City government breach that promise on an annual basis when they transfer the capital improvements money to other operations, mostly the Parks Department and the Street Department. Though they were reluctant to admit it, some of the Respondents eventually conceded that the decision not to use this capital improvements money to furnish suitable accommodations to the Court, or to defray the annual debt service for funds borrowed to accomplish the same goal, was, and is, an annual discretionary funding decision.

While the City may be in financial difficulty, that is true of every local government across America. If these Judges were asking for the Taj Mahal, it would be one thing. Here, the City uses the \$4.5 million it collects for capital improvements every year for everything other than the Court or debt service for court renovations. The Relators have shown a clear right to relief. The Respondents' proffered

arguments of inability to pay must fall on deaf ears, lest every court in the State be subject to the spending priority decisions of the political branches of government.

Proposition of Law N^o 2: The constitutional separation of powers doctrine compels the conclusion that a determination of what constitutes suitable accommodations necessarily rests with the court, and not with the legislative authority of a municipal corporation.

The doctrine of separation of powers is grounded in the Constitution. Though statutes such as OHIO REV. CODE ANN. §1901.36 may be enacted by the legislature to enforce and breathe life into the doctrine of separation of powers, the duty to ensure sufficient resources rests upon the coordinate political branches of government independent of and in the absence of any statutory enactment. Put another way, if OHIO REV. CODE ANN. §1901.36 were never enacted, or if the statute were repealed tomorrow, the Respondents nonetheless would have the obligation to furnish the funds necessary for the administration of justice. This constitutional doctrine of separation of powers “requires that the funds necessary for the administration of justice be provided to the courts.” *See, State, ex rel. Badgett v. Mullens*, 177 Ohio App.3d 27, 44, 2008 Ohio 2373, at ¶49, 893 N.E.2d 870, 883. In *State, ex rel. Foster v. Board of County Comm’rs* (1968), 16 Ohio St.2d 89, 242 N.E.2d 884, 45 Ohio Op. 2d 442, this Court held:

It is a well-established principle that the administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers. The proper administration of justice requires that the judiciary be free from interference in its operations by such other branches. Indeed, it may well be said that it is the duty of such other branches of government to facilitate the administration of justice by the judiciary.

The constitutional separation of powers doctrine was properly stated by this Court in *Zangerle v. Court of Common Pleas* (1943), 141 Ohio St. 70, 46 N.E.2d 865, 25 Ohio App. 199, at syl. 2: “courts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled, or impeded therein by other branches of government. The *Zangerle* case also established that courts of general jurisdiction, whether named in the Constitution, or established pursuant to the provisions thereof, pass upon the suitability and sufficiency of quarters and facilities for their occupation and use. *Zangerle v. Court of Common Pleas*, 141 Ohio St. 70, at syl. 3.

This is scarcely a novel principle. In fact, in *Zangerle*, this Court quoted from 21 Corpus Juris Secundum 255, §166, which stated the general principle that while other bodies or officers are charged with the duty of providing suitable buildings or rooms for the holding of courts, the court or judge may pass upon the suitability of the quarters furnished and may exercise control over the courthouse to the extent necessary to secure suitable rooms for, and to prevent interference with, the discharge of public business. Thus, aside from the statutory obligation of Respondents to furnish suitable accommodations, there is a constitutional duty to insure that the Municipal Court has the tools necessary to administer justice effectively, because, as shown below, though they are not named in the Constitution, they are

created pursuant to the Constitution and are entitled to the same respect as all other courts.

Proposition of Law No. 3: Courts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to pass upon the suitability and sufficiency of quarters and facilities for their occupation and use, and, subject to an abuse of discretion, their judgment is superior to that of the executive or legislative branches.

Zangerle v. Court of Common Pleas, supra, established that courts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions. Just as they cannot be directed, controlled or impeded by other branches of the government when it comes to matters such as budgets and necessary personnel, so, too, the courts are in the best position to pass upon the suitability and sufficiency of quarters and facilities for their occupation and use. As with any rule of law, there must be a limit or an exception, and there must be one here. The Youngstown Municipal Court, as opposed to the City Council or the Mayor, has the constitutional authority to pass upon the sufficiency—the suitability—of their accommodations, absent an abuse of discretion.

The political branches of the Youngstown government want to restructure the design the Municipal Court has arrived at. This design, incidentally, is just that. Relator Milich made clear that the Municipal Court's order is not a construction drawing, but the Respondents' counsel attempted to engage him in petty debate:

Q Well, Your Honor, when you and your colleagues set forth the order as described in Exhibit A, you indicated what must minimally be included, as well as the Supreme Court standards. Would you agree that if a person complied -- that if, I'll be frank, the City of Youngstown complied with this order in that it met both your list of minimum needs and the Supreme Court standards which you attached, that would provide you with suitable accommodations?

...
A Well, if this was all complied with, it would still only provide a framework for a final court facility. Because the standards that are in here, as well as some of the parts of the order, like we say, an adequate law library, that still is a judgment call based on the architect's recommendations. So I don't think this order anticipates being the end all and be all to cover all of the aspects. This is the initial effort that was made to get the -- get the facility started, the issue started. It's not the end all, and--

Q Well, Your Honor, if I may ask --

A -- there's a lot more involved in there.

Q If I could just go back for one second to what -- just in terms of fairness, Your Honor, if Your Honor -- if the court issues an order and the party to whom the order is issued expresses a willingness to comply with it, they are not in violation of your order, are they?

...
A No. If the party complies with the order, they're not in violation. That doesn't mean this is the only order that will ever be issued or has been issued.

(Deposition of Judge Robert P. Milich, p. 13, line 1 - p. 14, line 9.)

Counsel's efforts at being clever have never been the law of this State. Were it so, every judicial order for space or facilities would have to be specific and include detailed construction drawings. The evidence in this case demonstrates that, after twelve years of stalling, stonewalling, and foot-dragging; after eight years of spending the City's capital improvement fund for current expenses as a result of

“value decisions,” the City now wants to furnish Relators with accommodations “on the cheap, but to cut costs at the expense of safety, design. That was evident in the bringing on the new architect, who wasn’t with us from the beginning.” (Douglas deposition, p. 46, lines 17-21). That new architect, engaged to furnish a municipal court “on the cheap,” devised a plan that is wholly unsuitable for the Youngstown Municipal Court. The Judges have rejected that alternative plan for a variety of reasons, spelled out by Relator Kobly in her deposition beginning at page 85, line 16:

Q Would you agree with me that that schematic design [the Strollo design] meets all of the court facility standards enunciated in the Court Facility Standards?

A Not even close.

Q What specifically does not?

A I thought you’d never ask. Okay. By definition, it doesn’t, because in Mr. Strollo’s draft that I don’t believe you have marked as an exhibit, it states that its purpose is not to comply with the standards. However, it substantively complies with the intent of the standards, whatever that means. So these plans by their very definition don’t comply. But even if you don’t believe that, I’d be happy to point them all out to you.

The Judge then went on for several pages describing why the City’s design, the Strollo design done “on the cheap,” was, and is, entirely inadequate.

One doubts very much that this Court stood back while the political branches of the State government appropriated and spent over \$101,000,000.00 to renovate the Ohio Judicial Center, and said to those branches, “just fix it up however you think best.” These municipal judges are not asking for marble floors, brass doors, or crystal chandeliers that admittedly are fitting for the State’s highest court. But when

it comes to safety, design, and day to day usefulness, the law recognizes what the facts of this case compel: that we should entrust a determination of the needs of a court to the judge or judges of that court rather than to the city council or the mayor. In this case, it is a city council that does not know if the Municipal Court has public restrooms or telephones, does not know if the Court has witness waiting rooms, jury deliberation and assembly rooms, attorney-client conference rooms, to name but a few. Time and again, from *Marbury v. Madison* (1803), 5 U.S. 137, 1 Cranch 137, 177, 2 L.Ed. 60, through the Watergate tapes case, see, *United States v. Nixon* (1974), 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039, the courts have echoed that “[i]t is emphatically the province and duty of the judicial department to say what the law is.” While sometimes, to be sure, the law is that the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights, see, e.g., *Nixon v. United States* (1993), 506 U.S. 224, 113 S.Ct. 732, 122 L.Ed.2d 1, this issue clearly does involve judicially enforceable rights. Indeed, the very ability of the judicial branch of city government to exist as a separate, independent, and co-equal branch of government is at stake. This is scarcely the type of “nonjusticiable,” or “political question” from which the Courts must refrain. The statute directs the legislative branch to provide suitable accommodations. Who, if not the judicial branch, is there to say whether or not the “accommodations” that the legislative branch has furnished are “suitable”? Obviously, if left to the legislative branch alone

to decide, the Court would be in its present location for decades to come, while Relators wait for a pot of gold to pay for a court.

In *State, ex rel. Finley, v. Pfeiffer* (1955), 163 Ohio St. 149, 126 N.E.2d 57, 56 Ohio Op. 190, the Court observed that the majority opinion of the Court of Appeals, where the action was commenced, held that a probate court is a court of general jurisdiction, and that the law as indicated in the syllabus of *Zangerle, supra*, applies to a probate court. The dissenting appellate court judge said that a probate court is not a court of general jurisdiction but one of limited jurisdiction. But this Court rejected that view, because the probate court had full authority and power to deal with all the subjects entrusted to it, and, if it can be said that the probate court was a court of limited jurisdiction, the same postulate can be made with reference to any of the courts of the state. Each court has only such jurisdiction and power as the Constitution and the laws enacted thereunder give to it. This is no less the case with a municipal court, a court which, while not named in the Constitution, is certainly “established pursuant to the provisions thereof.” The Municipal Court has full authority and power to deal with all the subjects entrusted to it by the jurisdictional statutes that have been enacted. Were it otherwise, the balance of powers that is the genius of our constitutional system would be lopsided in the City of Youngstown and every other municipality across the State.

Speaking recently about which branch of government determines the security needs of a court, the Sixth District Court of Appeals in *State, ex rel. Judges of the*

Toledo Municipal Court v. Mayor of the City of Toledo, Lucas App. No. L-08-1236, 2008 Ohio 5914, 2008 Ohio App. LEXIS 4969, had this to say:

In our view, Ohio's statutory scheme does not specifically reserve discretion to the legislative authority over the provider, the number of security officers needed, or the details of how those services are provided. Rather, R.C. 1901.36 requires that the legislative authority provide the "necessary" employees, including those needed for proper security. In addition, unlike court personnel who manage the court's documents, scheduling, and other "paper work," court security officers must have specialized training to deal with courtroom security, transportation and supervision of prisoners, and general courthouse security, addressing issues with the public-at-large in a variety of situations.

As a result of the specialized nature of security services, upon consideration of the Rules of Superintendence and prior case law, we conclude that decisions regarding specific security requirements are within the municipal court's purview and control. The court's judges are in the best position to know how many officers are needed to effectively secure courtrooms and the courthouse, whether such officers should be full-time or part-time employees, and which agency would best be able to provide qualified officers.

We are not unmindful of the city's concern about budgetary funding and projected financial conditions. Nevertheless, respondents do not claim that relators' cost proposals for 2008 or 2009 are facially groundless or unreasonable. Instead, the city appears to have merely reduced the court security budget as part of an "across-the-board" cut in overall expenses, and expected the court to accommodate the reduction by lowering court security levels. Since respondents have not shown that the amount requested by relators for 2008 or that the same system be implemented for 2009 to be unreasonable, we conclude that, as a matter of law, relators are entitled to summary judgment regarding the authority to make such decisions.

Id., at ¶¶35-37. This holding does little more than apply the longstanding rule in this State that the courts must be independent and are in the best position to determine their own needs. As always, those decisions are subject to the abuse of discretion standard. But the choice between the Jaminet design, which has taken into account the needs of the Municipal Court, and the Strollo design, which has not and is nothing more than an attempt to furnish a court "on the cheap," is clear. Subject to

an abuse of discretion, the judges must determine the needs of the court they are entrusted to operate. Thus, the City will not have furnished “suitable accommodations” if it simply presses forward and implements the Strollo design.

CONCLUSION

The thorny issue of the expenditure of public tax dollars arises in virtually every case involving furnishing proper facilities or proper funding for the operation of the court. Municipal legislative authorities, and boards of county commissioners, doubtless will continue to complain that they cannot furnish what the courts require for their proper operation simply because they lack the money to do so. This Court and the appellate courts have taken claims of financial hardship into account. But taking those claims into account and allowing them to stand as an absolute bar are two separate matters entirely. The courts have not allowed claims of financial hardship to stand as an absolute bar to the issuance of a writ of mandamus. These holdings are eminently sensible, because the holdings not only jealously guard the independence of the judiciary that is required by the Constitution, but also, these holdings ensure that legislative bodies and boards of county commissioners do not defeat bona fide claims for the proper operation of the judiciary simply by allocating the money elsewhere as those appropriating authorities see fit. Put another way, if all funding decisions were permitted to be discretionary, the independence of the courts as a third and co-equal branch of government would quickly be emasculated. The decisions of this Court, the appellate courts of this State, and the supreme and

appellate courts of other jurisdictions all have wisely recognized that while funding authorities are granted discretion in how they appropriate, that discretion is not limitless. They must provide for the sufficient and proper operation of the judicial branch, and thereafter funding may be exercised with discretion.

Just as there are limits, then, in how a legislative authority or a board of county commissioners may appropriate public funds, so, too, there are limits upon the ability of the courts to order funding, facilities, and furnishings. That limitation is that the order must be reasonable. The order in this case, attached to the complaint and also an exhibit in the depositions of the Respondents, demonstrates that it is patently reasonable. The Court has set out space requirements which are scarcely opulent. The order contains no requirements for oak or imported teak wood paneling, marble floors, or brass fixtures. What is called for by the order is a moderately sized court facility with a design that satisfies court security and design standards, standards that, while not mandatory, should be taken into consideration in the construction or remodeling of court facilities. Indeed, the very fact that the judges modified their plan from new construction to remodeling of the existing City Hall Annex is testament to the fact that what is sought here is reasonable.

It is an inescapable human psychological feature that appearances have an impact upon the effect of what our courts do. This Court, rather than convening in the Ohio Judicial Center, with its wide hallways, vaulted ceilings, and large courtrooms, and rather than issuing its decisions in bound and printed format, could

meet in the conference room of a Best Western Hotel and issue its opinions on construction paper, the scrivener employing crayon. The oral arguments and conferences would still be valid, having been conducted by the duly constituted Supreme Court of this State. The construction paper opinions would be the law of this State, having been handed down by the State's duly constituted highest court. This silly, and concededly extreme, example is made to highlight a point – a point in fact that this court made tacitly when it moved from the State Office Tower into the Ohio Judicial Center. Justice in America and justice in Ohio operates largely on citizen respect for the law, as opposed to the force of arms. To the extent that court decisions are respected and obeyed, it is because of the things the courts themselves do to engender respect. And so the Court holds oral arguments and conferences in, and issues decisions from, the Ohio Judicial Center, not the conference room of a sleazy hotel, not from a warehouse and not from someone's garage. From the earliest days of the United States Supreme Court, when the opinions of individual justices were printed *seriatim* to today, courts issue opinions explaining their decisions. A simple "judgment affirmed," or "judgment reversed," will not do. Court proceedings are open to the public. Indeed, this Court has gone further in recent years, making the oral arguments available over the Internet and over cable television to those who may wish to observe the workings of the Court, but are unable to attend its proceedings in Columbus. The Court has also made its opinions available to the

public, so that interested members of the public who cannot afford the monthly fee of LexisNexis or Westlaw can nonetheless have access to the Court's decisions.

All of these things are designed to foster respect for the Court by showing that it conducts its proceedings in dignified accommodations befitting the State's highest Court; that its proceedings are conducted with the seriousness and decorum attendant to deciding legal questions that affect not only the individual litigants, but all citizens of this State. The Court issues its decisions with explanations of its reasoning, and why certain arguments made before the Court fail the test of law and logic while other arguments are persuasive and just.

The photographs submitted in this case are representative of the deplorable conditions which exist in the Youngstown Municipal Court. Relators do not claim that only surroundings analogous to those of this Court will do – quite the contrary in fact. At the same time, justice cannot be dispensed from a setting that looks more like a cheaply paneled basement from the 1970s than from the halls of justice.

The primary Respondents in this case are, of course, the members of the Youngstown City Council. As mentioned elsewhere, the City Council pursuant to its charter, enters into contracts through its Board of Control. With due respect to those Council Members, however, several points must be made.

The first is that many of them appear to know almost nothing about the operation of the Court, and, more importantly, the details of the Court facility. Equally troubling is the fact that they appear to defer almost entirely to the Mayor

and his administration when it comes to the appropriation and allocation of public monies. These points are not meant to be a commentary on whether the political branches of the City of Youngstown engage in good government, bad government, or lethargic government. But the point for present purposes is this: the City of Youngstown collects, according to its Finance Director, some \$4.5 million per year, money which according to the City's income tax levy is dedicated solely to capital improvements. The City chooses, instead of dedicating money to capital improvement, to transfer virtually all of that money to current operations for the Parks Department and the Street Department.

Whether that is sound—whether it is even legal—are not questions raised by Relators here nor questions that this Court must necessarily answer to resolve the present controversy. But the City cannot claim, as it appears to do, that it simply cannot afford a new court facility, and that is the end of the story. Unlike many other cities, the City of Youngstown has a dedicated capital improvement fund that is funded in an amount of \$4 million or more every year. Even if the debt service on the estimated \$8 million that it would cost to renovate the City Hall Annex to provide suitable accommodations for the Court were \$1 million per year, that would be less than 25% of what the City collects annually in its capital improvement fund.⁴

⁴ The Finance Director, in his deposition, said that he prefers not to borrow money for more than fifteen years. (Bozanich Deposition, p. 45, line 21.) That is, as the popular idiom, nice work if you can get it. It appears, however, improvident in circumstances such as this. First, a City claiming to be financially strapped undoubtably has fewer borrowing options than cities that are a little more well off. Moreover, given the deplorable condition in the Youngstown (continued...)

The City Council and the City administration have operated with their heads in the sand, professing poverty, and hoping that the Court's demands would die on the vine due to a lack of attention. Certainly, the City Council and the City administration were not so oblivious when they were arranging for their own council chambers to be suitably remodeled five years ago, and for a similar remodeling of the Mayor's suite and other first floor offices.

The Relators have convincingly demonstrated a clear legal right to relief and a clear legal duty on the part of Respondents to furnish it. They have no plain and adequate remedy at law. This Court must issue a writ of mandamus, compelling Respondents to do all things necessary to implement the Court's order of January 26, 2009, so that the Youngstown Municipal Court will be accessible, efficient, convenient and safe. Our courts are the most significant public buildings that we have here in America, and are the cornerstone of authority and the cornerstone of the community. Unless and until the writ issues to compel Respondents to furnish the suitable accommodations that the Relators have ordered, the Youngstown

⁴(...continued)

Municipal Court, and the length of time that the City has refused to do anything about it, is it realistic to assume that, assuming that this Court grants the writ of mandamus, the City will do anything to upgrade the court fifteen years after the renovations sought here are completed? In fact, the history of this case demonstrates that the City could borrow money for thirty years without being in danger of paying for two sets of renovations at the same time. Under such borrowing terms, even with what the City professes to be its abysmal bond rating, it is absurd to think that more than 25% of the City's annual capital improvement collections would be spent to provide suitable accommodations for one-third of the City government.

Municipal Court will continue to be excluded from that apt description of a court that serve the community.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing [] sent by regular United States Mail, postage prepaid, [] hand delivered to counsel or counsel's office; [] sent by telecopier this 11th day of August, 2010 to Iris T. Gugliucello, Esq., and Anthony Farris, Esq., Counsel for Respondents, 26 South Phelps Street, Youngstown, Ohio 44503.



JOHN B. JUHASZ

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