

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

-vs-

YOUNGSTOWN CITY COUNCIL, *et al.*

Respondents

Case No. 2009-0866

ORIGINAL ACTION IN MANDAMUS

RELATORS' REPLY BRIEF

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## REPLY TO FACTUAL CLAIMS

After 12 years, the Respondents have failed to commit one red cent to the construction or renovation of a suitable facility for the Youngstown Municipal Court. This is despite the fact that every year another \$4,500,000.00 is poured into the City's Capital Improvement Fund. Respondents have chosen simply to use the money elsewhere. After 12 years of empty promises, Relators ordered Respondents to provide suitable accommodations. Once again, Respondents did nothing. Relators commenced this action in mandamus. Respondents now claim that there is nothing wrong with the Youngstown Municipal Court facilities, save and except some occasional water damage and a wire exposed here or there. But if this Court disagrees with Respondents' fallacious factual proposition, as the Court should, Respondents say they are now prepared to furnish accommodations, accommodations which *they* claim are suitable, despite the fact that they have not sought one word of input from Relators as to what is required to operate a court facility.

Perhaps one might find Respondents' position marginally reasonable—might, that is, if Respondents knew *anything* about the daily operation of the Municipal Court, or anything about court facility standards, jury management standards, or court security standards. It is abundantly clear from the evidence in this case that they do not. Respondents claim that the business of the municipal court is declining—as if that justifies dispensing justice in rooms that look more like the basement of a low income residence from the 1970s than from courtrooms. While

Respondents make claims about the numbers of cases, they are curiously silent about the *types* of cases that the Municipal Court handles, the types of cases that seem to go hand in hand with a deteriorating economy. Handling ten misdemeanor assault or domestic violence cases consumes far more resources than handling 50 or 75 speeding cases or parking ticket cases. Everyone knows that. The public fracas of July 14, 2010 depicted in Relators' Exhibits L1 - L4 show the need for more resources even when dealing with felony cases that the Court handles through the preliminary hearing.

Relators are not asking for, and have not ordered, a palace of justice, simply accommodations that are suitable in light of modern standards and the type of cases that are dealt with on a daily basis. Nor do Relators seek a decision of this Court that the Youngstown Municipal Court, or indeed any court in Ohio, has unlimited authority to declare what the political branches of government shall furnish. The law imposes a limitation on the ability of the judicial branch to appropriate to what is needed for its proper operation. At the same time, the law recognizes that the courts have the ability to secure what they need to operate properly. The test, of course, is what is reasonably necessary—is what Relators have ordered reasonably necessary to administer justice? It is a standard that has withstood the test of time. Despite the proclamations of this City and almost every local government in Ohio of a financial inability to fund the courts properly, no local

government has been crumbled by compliance with an order to fund a court, or an order to furnish a court suitable accommodations.

Respondents continue to press arguments before this Court that border upon the disingenuous. For example, Mayor Williams submits an affidavit that it was his intention upon assuming office to obtain improved municipal court facilities. (Respondents' Submission of Evidence, Williams Affidavit, Volume One, Exhibit A.) Yet, the Mayor's lawyers argue that there is nothing wrong with the Municipal Court, other than a little water damage and a couple of loose wires. Despite professed commitment to furnishing a court facility, the Mayor, instead of committing funds for construction or renovation, commissioned a financial study in November of 2007 to show that a court could not be built. (See, Respondents' Submission of Evidence, Volume One, Exhibit A, Exhibit Two.) But the study is founded on a false premise. The paragraph entitled "Funds on Hand" reports that as of December 31, 2007, the balance in the Court Special Projects Fund was \$1,431,688.00. Here is the false premise: the report says that "*the only additional funds available* to supplement this would be the cash balance of the City's general fund. The cash balance of the general fund as of December 31, 2007, is estimated to be \$472,064.00." (Id., at 5.) (Emphasis added.) But the General Fund is not the only additional source of funds. The entire study overlooks the fact that there is a voter approved, legally dedicated, capital improvements fund. The study ignores the fact that the City chooses to use that fund for current operations, without, in the

last decade, setting aside even one penny for the Municipal Court. How objective can a study be that talk about funding a capital improvement without looking at the capital improvements fund? The City's "study" ignores the most logical and legally accessible source of revenue, then concludes that City has no money to build or renovate a court facility and cannot borrow the money. The Respondents position is like saying that a person has to borrow money for college tuition because he has no money, but every year he spends the accumulation in his college fund on sports cars and big screen televisions. And no one will loan him money because potential lenders recognize that he is a spendthrift.

Respondents' are myopic about the fact that the Municipal Court is the third and co-equal branch of city government. Respondents also overlook the nature of a court. Though Respondents collect and spend more than \$70,000,000.00 annually in the General Fund, they complain bitterly that the Court and the Clerk's Office cost nearly 6% of that, or \$4,000,000.00, and bring in only \$750,000.00. A court is not an enterprise fund. Courts are not designed to be self-sufficient, and fines and court costs should never be based upon the operational needs of the court. Respondents offer no explanation for the number of financially destitute people who commit offenses, have no money for counsel, and are assigned community service because they cannot afford to pay fines and court costs. Respondents claim is that the administration of justice is "draining" the City. (Respondents' Brief, at 8.) The Finance Director says that the City has been in "near-constant state of economic

distress for over thirty years.” (Respondents’ Submission of Evidence, Volume One, Exhibit C, ¶3.) Yet, the City managed to remodel the Mayor’s Office and Council Chambers, while doing nothing about the Court. The City has managed to maintain the parks and streets with a fleet of new vehicles, but the court facilities are crumbling.

Faced with litigation, Respondents, while claiming they have no money, want to furnish the Court “on the cheap.” If the premise the City posits—that the City is and has been unable to pay for a new or remodeled court facility—is accepted, then the Youngstown Municipal Court will continue to languish in its present “deplorable” surroundings for the next fifty years while Respondents spend the City’s revenues elsewhere as they see fit.

Respondent’s claim that “Relators are so enamored of the \$8,000,000.00 plan they prefer that they will not even consider the City’s proposed \$6,000,000.00 renovation plan which would satisfy all standards of the Ohio Supreme Court, the additional requirements set forth in the Order, and would constitute suitable accommodations.” (Respondents’ Brief at 7.) The judges find the Strollo plan unacceptable and the Jaminet plan workable because Mr. Jaminet, the City’s architect on the project, met with the judges and their staff, and his plan takes into account work flow and the flow of human traffic. Perhaps if Mr. Strollo or his associate had spoken with the judges instead of waiting for feedback, they would understand why their plan is unworkable. Relators are not brushing aside the

burden of additional expense. They have abandoned new construction in favor of remodeling a city-owned building.

Respondents' claims are as insulting as they are obtuse. Respondents sully themselves and insult the intelligence of this Court when they claim that the photographs of the present court facilities submitted by Relators "depict fairly typical municipal court facilities with the exception of those photographs which are close-ups of minor flaws in the building; an exposed set of wires or an area with water damage." (Respondents' Brief, at 12.)

It is evident throughout the course not only of this litigation but throughout the entire 12 years that the judges have been attempting to gain a "new" court facility<sup>1</sup> that the coordinate political branches of government have treated the judicial branch not as a coequal branch of government, but as an administrative department of the City, entitled to whatever resources the city council and the city executive chose to allocate. At bottom, this case involves wholly unsuitable facilities for the operation of a Municipal Court. If further involves years of the municipal judges, the current incumbents and their predecessors in office, asking, pleading, begging, and cajoling to obtain suitable court facilities. Promises were made by city

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<sup>1</sup> The word "new" is in quotation marks because what Relator's seek here is not "new" construction, but the renovation of an existing building. Contrary to what Respondents melodramatically have suggested in their brief, Relator's did not insist upon new construction at the Master's Block to the exclusion of every other possibility else in the world. The fact that they now seek to remodel the City Hall Annex is the proof in the pudding.

council and by this and former mayors.<sup>2</sup> In exasperation, the judges finally filed an order for the City to furnish suitable accommodations. But the order was ignored. City council member after city council member testified that they did absolutely *nothing* even to attempt to comply with the order.

Only now that they have been sued in mandamus do the incumbents of the political branches of government claim that the Municipal Court doesn't generate enough money, that the Municipal Court wants accommodations to which it apparently is not entitled, that the judges are unreasonable, and that the Court should be happy with whatever accommodations the City elects to furnish, so long as the accommodations comply with the Rules of Superintendence.<sup>3</sup>

The City's true position is not in its attempts to portray the Relators as unreasonable, but in its claim that the "high cost of the operation of the Youngstown Municipal Court and the Youngstown Municipal Court Clerk of Courts Office

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<sup>2</sup> This is, as the phrase from the draft of the 1774 Massachusetts Constitution, a government of laws and not of men. Throughout this litigation, the mayor and several council members have suggested that the office of mayor and the office of city Council on are not seamless, despite a movie incumbents of the office might be. Rather, they have suggested that, for example, the actions of prior city councils do not mind them. And so well they have struggled valiantly to in many ways make this about personalities, it is not. Regardless of who the incumbent judges are, the court facilities are inadequate. Regardless of the identity of the incumbents of City Council and mayor's office, the City Council, with the mayor and the Board of Control complicit in the inaction, have failed to furnish "suitable accommodations."

<sup>3</sup> This position reflects the callous attitude epitomized by the phrase coined in Book 6 of Jean-Jacques Rousseau's *Confessions*:

*Enfin je me rappelai le pis-aller d'une grande princesse à qui l'on disait que les paysans n'avaient pas de pain, et qui répondit : Qu'ils mangent de la brioche.*

Which means:

Finally I recalled the last resort of a great princess who was told that the peasants had no bread, and who responded: "Let them eat brioche."

which has the “effect of *draining* \$3,000,000.00 a year from the general fund where it could have been used to fund other city departments.” (Respondents’ Brief, at 8.) *That* is Respondents’ problem with Relators’ order. Respondents are tired of the Court “draining” nearly 6% annually from the City’s \$70,000,000.00 general fund budget that Respondents could spend elsewhere. We are to believe that the administration of justice is a drain on the City’s resources, causing, Respondents claim implausibly, the City to use capital improvements funds for current operations. This, Respondents claim, makes the City’s capital improvement fund “ineffective” for its stated purpose. (Respondents’ Brief, at 8.) No one can accept such an implausible claim.

The Respondents’ true position in this lawsuit has nothing to do with the elements of mandamus. City Council has allowed the mayor to take the lead. And the Mayor’s position is reflected not in his self-serving affidavit, but in his comments to Judge Douglas. Though the Mayor’s affidavit proclaims that he was always committed to securing improvements to the Court facility, his comments to Judge Douglas, not even about this proposed renovation of an existing City-owned building, but about a more costly new construction project, are highly illustrative. These comments, together with more than a decade of false promises and inaction, reveal the City’s true position. Judge Douglas testified that:

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.

(Emphasis added.) (See, Douglas Deposition at 42.) This is the City's *true* position.

## RESPONSE TO LEGAL ARGUMENTS

### *Reply Concerning Relators' First Proposition of Law*

Respondents weakly claim that Relators have failed to establish that they are entitled to a mandamus ordering suitable accommodations for the Youngstown Municipal Court. Respondents claim that Relators have failed to identify any constitutional or inherent right of the Youngstown Municipal Court which is implicated in the analysis of whether they are entitled to a mandamus based on the argument in Relators' First Proposition of Law. Relators' statutory basis for the claim is clear. The constitutional basis equally clear: "Congress and the President, like the courts, possess no power not derived from the Constitution." So said the United States Supreme Court in *Ex parte Quirin* (1942), 317 U.S. 1, 25, 63 S.Ct. 1, 87 L.Ed. 3. Accord, *United States v. Curtiss-Wright Export Corp.* (1936), 299 U.S. 304, 57 S.Ct. 216, 81 L.Ed. 255; *Ex Parte Grossman* (1925), 267 U.S. 87, 45 S.Ct. 332, 69 L.Ed. 527, 38 A.L.R. 131. The premise applies with equal force to Ohio's system of tripartite governments, both state and local. The courts, state and federal, have always held that, despite the absence of any language in the

Constitution about separation of powers or the balance of powers, those propositions are inherent in the nature of the form of our government. Relators need not rely upon the act of the legislature telling them that they have a right to suitable accommodations. The statute simply adds an arrow to the Relators' quiver. This Court has recognized this precept in court funding and in court facility cases time and again. *See, e.g., State, ex rel. Taylor, v. City of Delaware* (1982), 2 Ohio St.3d 17, 442 N.E.2d 452, 2 Ohio B. Rep. 504; *State, ex rel. O'Farrell v. New Philadelphia City Council* (1991), 57 Ohio St.3d 73, 565 N.E.2d 829.

Respondents' shotgun argument goes on to say that the plain language of OHIO REV. CODE ANN. §1901.36 creates a duty only on the part of the legislative authority of the City of Youngstown, the Youngstown City Council. Therefore, continue Respondents, there is no duty on the part of the Mayor to furnish suitable accommodations. Relators agree that Roy Williams is not a member of City Council. Relators' argument was set forth earlier when Relators argued that the Mayor should remain a party. "As the City's executive and member of the City's Board of Control, any contracts to provide suitable accommodations for the Municipal Court would be executed by the Board of Control, of which the Mayor is an integral part. The remainder of the Board of Control is composed of mayoral appointees." (See,

Relators' Motion and Memorandum Opposing Respondents' Motion for Judgment on the Pleadings, at 4.)<sup>4</sup>

Respondents claim that in October of 2008, they presented an analysis of the suitability of the Youngstown City Hall Annex as the site for a renovated Youngstown Municipal Court facility and a schematic plan for said facility, as if Relators had not had Olsavsky-Jaminet ever tackle the question. In fact, Mr. Strollo was engaged to gut the Olsavsky-Jaminet design, to, as Judge Douglas testified, "do it on the cheap." (Douglas Deposition, 46.) Strollo came up with a plan that the Respondents now say complies with the January 26, 2009 order of the Municipal Court without Strollo ever having met with the Municipal Judges or their staff. Curiously, neither the Strollo nor the Kreuzwieser Affidavits mention that the Affiants met with, or sought input from, Relators, only that they Affiants never received any feedback from the Judges. (See, Respondents' Evidence, Volume One, Exhibits D and E.) Judge Kobly confirmed that Strollo never consulted the judges.

Q Okay. Do you know whether or not Mr. Strollo ever attempted to meet with any of the Judges to discuss their needs as to new court facilities?

MR. JUHASZ: Objection.

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<sup>4</sup> With only City Council as Respondents, the Council could, voluntarily or by writ of this Court, appropriate the funds for a court facility as ordered by Relators, and could enact legislation that authorizes the Board of Control to enter in the contracts necessary to complete the construction or renovation. But if the Mayor, and the Board of Control appointed by the Mayor, refused to enter into the contracts, the Relators and the citizens whom they serve would be no closer to a court facility consisting of suitable accommodations than when the January 2009 order was entered. Perhaps then, if the Mayor is dismissed as a party here, Relators would have to bring another action (at public expense) to compel the Mayor and the Board of Control to enter into the agreements authorized by City Council's legislation.

A I know he's never met with me.

Q Has he ever asked to meet with you?

A No.

Q Do you know whether he's ever asked to meet with any of the other Judges?

A No.

(Kobly Deposition, p. 60.)

In their desperate attempt to explain why they should not have to furnish suitable accommodations (while at the same time offering to furnish accommodations *they* deem suitable), Respondents forget one essential thing: the law. OHIO REV. CODE ANN. §2731.05 provides: "The writ of mandamus must not be issued when there is plain and adequate remedy in the ordinary course of the law." The statute is a restatement of the common law and predecessor statutes since Ohio became a state. See, *State, ex rel. Sibarco Corp. v. City of Berea* (1966), 7 Ohio St.2d 85, 218 N.E.2d 428, 36 Ohio Op.2d 75. Here, there is no plain and adequate remedy at law. What Respondents overlook is that, for a remedy to be adequate, the remedy should be complete in its nature, beneficial and speedy. See, *State, ex rel. Williams, v. Belpre City School Dist. Bd. of Edn.* (1987), 41 Ohio App.3d 1, 534 N.E.2d 96. The alternatives that Respondents ineffectively posit are none of these things. While they are alternatives, they are not *legal*.

This is true of the recommendation of former Youngstown State University President Dr. David Sweet that the parties engage in direct negotiations. Despite

the Respondents' efforts to minimize twelve years of inactions by Respondents as Relator's "references to the events of a decade ago," (Respondents' Brief, at 14), this is not a remedy at law. Dr. Sweet's apparent hope that the parties could somehow now negotiate what they have been unable to agree upon for a dozen years, whatever else that hope may be, is not an adequate remedy at law, a remedy that is equally as beneficial, convenient, and effective.

The same is true of Ohio Supreme Court Administrative Director Steven C. Hollon's recommendation that the judges and the City should enter into direct negotiations to determine how a suitable facility might be secured and put into operation. With due respect, that has been going on for 12 years. While there was a professional mediator engaged by this Court after the lawsuit was commenced, talking about what happened and why this case is back on the docket is prohibited. What is *not* prohibited is to say is that mediation is not a legal ground for relief such as to make mandamus unavailable.

Equally absurd is Respondents' suggestion that the Strollo Plan is compliant with the January 26, 2009 order, and that Relators have the plain and adequate remedy of contempt. If that were true, the City would be building the Strollo design at this very moment. Despite the efforts of Respondents' counsel to be deft, Judge Milich testified that the Relators' order was not a construction document, laying out the size and location of every room, door, or coatrack: the order provides "a framework for a final court facility." "It's not the end all ... ." (Milich Deposition,

14.) Of equal significance, Respondents conveniently overlook the fact that they have done nothing to comply with the January 26, 2009 order in the 1 year, 7 months, and 12 days since the order was entered.

Respondents' counsel should have checked to see what their clients had said under oath before counsel represented to this Court that "Respondents are in compliance with" the January 26, 2009 order "and have expressed their willingness to carry it out." (Respondents' Brief, 29.) Councilwoman Gillam, when asked why Council had done nothing to comply with the order, testified that she could not:

really explain it to you in a flat answer. It's, basically -- the way that we saw it was the money just wasn't there.

We were going to try our best to do court facilities; but like I say, we really didn't have the money for Strollo's design, let alone something more expensive than his. Well, we really don't even have a cost for either one of them, but it just looked more expensive.

(Gillam Deposition, at 39-40.) Councilman DeMaine Kitchen testified that "apart from the normal operating expenses [of the Municipal Court], I do not believe that we did" commit capital improvement monies for the purpose of acquiring a new court facility. (Kitchen Deposition, at 30.) Councilwoman Janet Tarpley testified that the City did nothing to comply with the order, does not have the money to comply with the order, and that she is concerned about the neighborhoods:

[Q] Are you able to tell me anything that--not just you, but Youngstown City Council has done to comply with, honor, or give affect [sic] to that Entry since it's been enacted in January of 2009?

A No. Can I say why?

Q Sure.

A Well, basically, it's because of our financial situation -- with us. I can say -- and I think I need to go on record to say that I have no problem with the Judges getting new accommodations.

I do believe they need them; however, the matter is how much it's going to cost, and where we're going to get the money from. So that's where we're at with that.

I'm all for them having it, but it's just a matter of how much it is going to cost, and where it's going to go; and actually, my concerns are—even though I'm concerned about the Judges and the facilities, but I'm also concerned about the neighborhoods.

(Tarpley Deposition, 22.) Councilman Jamael Tito Brown testified at page 34 of his deposition:

[Q] And having had that Resolution before you— or excuse me, that Judgement Entry, Exhibit A, before you, did the City, in 2009, appropriate any money for the furnishing of a new and suitable facility for the Youngstown Municipal Court?

A No.

Q Can you tell me why not?

A Because the monies were not there.

Councilman John Swierz testified that the only efforts in which he is aware that City Council has engaged is that “we have met on a couple of occasions; and other than that, we have looked -- looked for a lead from the administration ... .” (Swierz deposition, 23.) Councilwoman Carol Rimedio-Righetti testified in her deposition, at pp. 21 *et seq.*, that Council has set aside no money to comply with the Municipal Court's Order. Finally, Councilman Paul Drennen said that he had done nothing to comply with the entry, and that's because there is a lawsuit pending. (Drennen Deposition, pp. 24 *et seq.*) Of course, had Council complied with the order there would not *be* any litigation pending.

*Combined Reply Concerning Relators' Second and  
Third Propositions of Law*

Respondents say that Relators have not established that they are entitled to a finding that they possess the sole authority to determine what constitutes suitable accommodations. Respondents' position would make the actions of City Council unreviewable: they could furnish what *they* think it suitable.<sup>5</sup> Relators are not seeking declaratory judgment, as Respondents argue. Nor have Relators asserted the right to dictate the facility plan any more than any other case in this state where a judge declared what was needed for the operation of the Court. It has long been the law that courts may pass upon the suitability and sufficiency of quarters and facilities for their occupation and use, and may exercise control over other public facilities to the extent required to assure the provision, equipment and maintenance of rooms and facilities essential for their proper and efficient operation.

Respondents argue that because the legislature creates the court and defines its jurisdiction, the Youngstown Municipal Court is exempt from this rule. But there are insurmountable problems with this argument. First, while common pleas courts, for example, are mentioned in the Constitution, their jurisdiction is a

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<sup>5</sup> The Respondents use the phrase "host city" (Respondents' Brief, 21) as if they are one of several subdivisions where a court whose territorial jurisdiction is defined by law could be located. This is not, for example, the Girard Municipal Court, which could be located in the City of Girard or the City of Hubbard. This Youngstown Municipal Court is the third and co-equal branch of Youngstown City government.

matter of legislative definition. Second, while municipal courts are not mentioned by name in the Constitution, the Ohio Constitution does vest “[t]he judicial power of the state” in, *inter alia*, “other courts inferior to the Supreme Court as may from time to time be established by law.” *See*, OHIO CONST., art. IV, §1. Are municipal and county courts to be treated as something other than a co-equal branch of government? Are they unable to compel the funding and facilities necessary to perform their high functions of administering justice because they are not specifically named in the Constitution, though the judicial power of the State is vested in them? Of course not.

Respondents claim that there is “no circumstance in which the municipal court may, by fiat, select a facility plan which it determines will provide it with suitable accommodations and compel the municipality to execute that specific facility plan.” Indeed, fiat is an anathema to a representative government of limited powers. When a respondent, or a group of Respondents, fails to comply with an order, and when a writ of mandamus is sought to enforce the order, the reviewing court decides whether the actions of the Relators are by fiat, or are reasonable. The reviewing court decides if the Respondents have a clear duty to comply or if the order is unreasonable. That’s how the law in this State works. Respondents offer no compelling reason to change the law.

Respondents’ citation to *State, ex rel. Foreman, v. Bellefontaine Municipal Court* (1967), 12 Ohio St. 2d 26, 231 N.E. 2d 70, is unconvincing. That case had to

do with the jurisdiction of a municipal court to render a declaratory judgment. While the case held that municipal courts do not have such power, every court in this State, including this one, has limited jurisdiction. The courts can decide only the questions that the law or the Constitution permit them to decide. An appellate court's jurisdiction to reverse on weight of the evidence is limited to situations where all of the judges on the panel concur. *See*, OHIO CONST., art. IV, §3(B)(3).

Interestingly, a case cited by Respondents, *State ex rel. Slaby v. Summit Cty. Court* (1983), 7 Ohio App.3d 199, 454 N.E. 2d 1379, 7 OBR 258, recognizes that courts authorized by—not named in, but authorized by—the Constitution have the inherent authority to perform acts necessary to safeguard and retain their very identity as courts. *Slaby* also quotes from *Hale v. State* (1896), 55 Ohio St. 210, 213, 45 N.E. 199:

*The difference between the jurisdiction of courts and their inherent powers is too important to be overlooked.* In constitutional governments their jurisdiction is conferred by the provisions of the constitutions and of statutes enacted in the exercise of legislative authority. That, however, is not true with respect to such powers as are necessary to the orderly and efficient exercise of jurisdiction. Such powers, from both their nature and their ancient exercise, must be regarded as inherent. They do not depend upon express constitutional grant, nor in any sense upon the legislative will. The power to maintain order, to secure the attendance of witnesses to the end that the rights of parties may be ascertained, and to enforce process to the end that effect may be given to judgments, must inhere in every court or the purpose of its creation fails. Without such power no other could be exercised.

...  
A people does not lose majesty by achieving liberty. The powers of government are the same, whatever may be the form. Here, the *people possessing all governmental power*, adopted constitutions *completely distributing it* to appropriate departments. They created courts, *and, in some instances, authorized the legislatures to create others.* The courts so created and authorized have all the powers which are necessary to their

*efficient action*, or embraced within their commonly received definition. The power in question was lodged permanently in the courts to be exercised by those who, for the time being, may be charged with the performance of judicial duties. But judges may not remain in office and resign their functions. The suggestion that this power may be abused raises no doubt as to its existence. ....

(Emphasis added.) If this is no longer the law of Ohio, then this Court should say so, and say what the law is. But to retreat from this holding is to retreat from a tripartite government of co-equal branches.

#### CONCLUSION

Relators have stated a cause of action in mandamus. Their order of January 26, 2009 is reasonable. Respondents have not shown otherwise. The only claim that they believe they can do it cheaper. But good work is not cheap, and cheap work is not good. While economy is always a concern, there are no opulent settings contemplated here. Respondents have not even attempted to cost out the debt service. They could service the debt and still continue to transfer most of their \$4,500,000.00 annual capital improvements income to current operations.

For these reasons and those set forth in Relators' Merit Brief, the writ should issue.

Respectfully submitted,



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COUNSEL FOR RELATORS

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 4<sup>th</sup> day of September, 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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