

**CASE NO. 2009-0213
IN THE SUPREME COURT OF OHIO**

**OHIO APARTMENT ASSOCIATION, GREENWICH APARTMENTS LTD.,
AND D&S PROPERTIES,
*Appellants,***

v.

**RICHARD A. LEVIN, TAX COMMISSIONER,
*Appellee.***

**ON APPEAL FROM THE BOARD OF TAX APPEALS
CASE NO. 2006-0861**

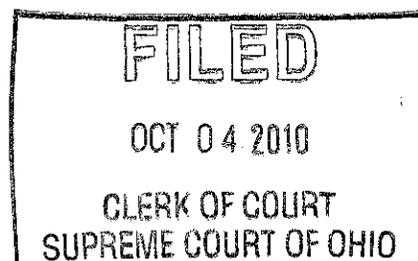
APPELLANTS' MOTION FOR RECONSIDERATION

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Pursuant to S. Ct. Prac. R. XI § 2, Plaintiffs-Appellants, Ohio Apartment Association, Greenwich Apartments, Ltd., and D&S Properties (collectively “Appellants”), respectfully move the Court to reconsider its September 23, 2010 Slip Opinion (the “Opinion”) affirming the Board of Tax Appeals’ decision in this matter. The Court’s Opinion adopts for the first time a limit on its review of the constitutionality of executive branch action that the Court has continually rejected for over a century. The Court’s authority to review and overrule precedent that is contrary to the Ohio Constitution cannot and should not be limited. The Court’s Opinion is itself bad precedent, obvious error and must be reconsidered.

Appellants set forth significant law and argument as to why Ohio Department of Taxation Rules 5703-25-18 and 5703-25-10 (collectively, the “Rules”) conflict with the clear language of Article XII, Section 2, of the Ohio Constitution (the “Uniformity Clause”). Because the Rules are unlawful, the Court’s duty is clear: “the court shall reverse and vacate the decision [of the Ohio Board of Tax Appeals] or modify it and enter final judgment in accordance with such modification.” R.C. § 5717.04 (emphasis added). However, rather than determine that the Rules violate the Uniformity Clause, the Court’s Opinion avoids this mandated review on the ground that Appellants failed to address two of three prongs of a stare decisis test described in *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849. The Court has applied the *Galatis* test to determine whether to overrule precedent involving non-constitutional questions. In contrast, prior to its Opinion here, the Court has indicated that this test should not apply to the Court’s review of constitutional challenges. Application of the *Galatis* test here to a question of constitutional interpretation is inappropriate and will improperly restrict the Court’s review of future constitutional challenges. The Court must uphold and support the Ohio Constitution and,

in fact, it is the only body that can protect the Ohio Constitution from incursion by the legislative and executive branches of government. It failed to do so here.

Accordingly, Appellants request that this Court reconsider and vacate its Opinion and address the merits of Appellants' arguments regarding the Uniformity Clause.

Respectfully submitted,

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I. INTRODUCTION

The Court's September 23, 2010 Slip Opinion (the "Opinion") improperly limits the Court's ability to protect and support the Constitution. This Court held more than an century ago that "the plain letter of the Constitution of Ohio cannot be altered or amended by judicial construction." *State ex rel. Guilbert v. Lewis* (1903), 69 Ohio St. 202, 210. As the Court explained:

[T]he integrity of the Constitution is of supreme importance in every free government, and every departure therefrom should be closely scrutinized and rigidly restrained. It cannot be tolerated that those whose duty it is to support the Constitution may subvert it by a construction, inadvertent or deliberately formed, which shall be forever after binding upon their successors and the people.

Id., 69 Ohio St. at 207 (holding the Court to be "constrained to formally overrule" a prior decision because sustaining it would subvert the Constitution). The "supreme importance" of the Constitution requires that the Court be able to review and reverse erroneous precedent involving constitutional interpretation. Such precedent is reversed not because it is confusing, unworkable or creates undue hardship, but because it conflicts with the Ohio Constitution and cannot be allowed to stand.

The Opinion diverged from this well-established precedent by applying a stare decisis test to Appellants' appeal that was not raised by any party and has no applicability to constitutional claims, such as Appellants' arguments that Ohio Department of Taxation Rules 5703-25-18 and 5703-25-10 (collectively, the "Rules") violate Article XII, Section 2, of the Ohio Constitution (the "Uniformity Clause"). Thus, the Court should grant rehearing so that it may fulfill its duty to act as a check on legislative and executive branch actions that violate the Ohio Constitution.

The Court should reconsider its Opinion for three reasons. First, the Court failed to apply the standard of review required by R.C. § 5717.04. Second, the Court need not overturn precedent in order to address Appellants' Uniformity Clause arguments because the precedent at issue did not involve the Rules. Third, even if the previous decision must be overruled, the test established in *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, cannot be the exclusive means by which the Court determines that it should overrule a prior decision that was incorrectly decided. The *Galatis* test includes requirements that necessarily cannot be met in every case and would, therefore, serve to preclude the Court from overruling certain previous decisions, even when those decisions were wrong. While the Court may be willing to value consistency over correctness when reviewing precedent involving statutory or contract interpretation, it cannot do so when reviewing constitutional challenges. If the legislative or executive branch has violated the Ohio Constitution, this Court has the solemn duty to support the Constitution. As the Court recognized in *Galatis*, "a supreme court not only has the right, but is entrusted with the duty to examine its former decisions and, when reconciliation is impossible, to discard its former errors." *Id.*, 100 Ohio St.3d at 226, 2003-Ohio-5849, ¶ 43. That is exactly what the Court must do here.

II. DISCUSSION

A. Reconsideration Is Warranted.

This Court has "invoked the reconsideration procedures set forth in S.Ct. Prac. R. XI to correct decisions which, upon reflection, are deemed to have been made in error." *State ex rel. Huebner v. West Jefferson Village Council* (1996), 75 Ohio St. 3d 381, 383 (citing *State ex rel. Mirlisena v. Hamilton Cty. Bd. of Elections* (1993), 67 Ohio St. 3d 597). Courts reconsider decisions where the motion calls to the court's attention an "obvious error" or where it "raises an issue for consideration that was either not considered at all or was not fully considered by the

court when it should have been.” See *Columbus v. Hodge* (Franklin Cty. 1987), 37 Ohio App. 3d 68, 68. The Court should reconsider its decision here because its Opinion, if left unmodified, both conflicts with R.C. § 5717.04 and improperly limits the Court’s duty and authority to consider questions of constitutionality, which deserve the Court’s serious and unfettered attention.

B. The *Galatis* Test Should Not Be Used to Circumvent the Court’s Standard of Review Under R.C. § 5717.04.

Appellants’ appeal was taken from an Ohio Board of Tax Appeals (“BTA”) decision as authorized by R.C. § 5717.04. The Court’s review of direct appeals from the BTA is defined by statute: “If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.” Appellants have argued that the decision below is unlawful as it allows the Rules to be enforced by the Appellee although they violate the Uniformity Clause. Under R.C. § 5717.04, the Court shall reverse that decision if it agrees with Appellants.

The *Galatis* test requires application of factors that are beyond the scope of the Court’s review mandated by R.C. § 5717.04 and, thus, the Court erred by finding that Appellants failed to address *Galatis*. Appellants addressed the standard required by law: whether the Rules are lawful. The Court should grant rehearing so that it also may apply the standard of review required by law.

C. The Opinion Imposes A Standard That Is Not, And Should Not Be, Exclusive As To Questions Of Constitutionality, Such As Appellants' Uniformity Clause Argument.

The Court's Opinion abstained from consideration of Appellants' Uniformity Clause argument because it concluded that the argument "hinges on" Appellants' "request" that the Court overrule *State ex rel. Swetland v. Kinney* (1980), 62 Ohio St.2d 23, and it concluded that "Appellants, apparently conceded[ed] that *Swetland* is dispositive of their Uniformity Clause challenge." Opinion, ¶¶ 28-29. It is important to note that nowhere in Appellants' briefing did Appellants assert either position. Instead, Appellants' arguments focused on the only questions that should be considered by this Court: (1) Do the Rules violate the Ohio Constitution's Uniformity Clause?; and (2) Is *Swetland's* analysis that tax rates in the context of a homestead reduction may be non-uniform also erroneous? And, the answers: (1) yes and (2) yes. It is simply the erroneous analysis of *Swetland* that Appellants asked the Court to reconsider because, while the *Swetland* decision purported to authorize non-uniform tax rates, it did so in the context of a different statute than that which enabled the Rules at issue here. Compare *Swetland*, 62 Ohio St.2d 23 (upholding constitutionality of R.C. § 323.152(B), establishing reduction of taxes for homesteads) with Appellants' Merit Br. at p. 2 (asserting unconstitutionality of the Rules, which stem from R.C. § 319.302, eliminating the Rollback from properties defined as "commercial"). Accordingly, it is not incumbent on the Court to overturn *Swetland* in order to find that the Rules are unconstitutional. See *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, ¶ 147 (stating that the Court need not overturn a prior decision where the statutes at issue in the prior decision were "sufficiently different" than those before the Court).

However, after concluding that *Swetland* was dispositive of Appellants' Uniformity Clause argument, the Court disclaimed any ability to reach the merits of the argument because Appellants did not establish that the "requirements" of *Galatis* were met in order to overturn

Swetland. Opinion, 2010-Ohio-4414, ¶ 31. The Court held that, in the context of Appellants' Uniformity Clause argument, "*Galatis* . . . contains three requirements that must be satisfied" to overrule a prior decision, and "[A]ppellants do not contend that the other two requirements have been met." *Id.* at ¶ 31 (emphases added). As a result, the Court found that "[b]ecause Appellants' Uniformity Clause challenge rests entirely on overruling *Swetland*, we reject this proposition of law based on Appellants' failure to address all three prongs of the *Galatis* test." *Id.* (citing *State ex rel. Grimes Aerospace Co., Inc. v. Indus. Comm'n*, 112 Ohio St.3d 85, 2006-Ohio-6504 (reaching same holding in a matter involving interpretation of common law)). This holding conflicts with previous statements by a majority of the Court and is obvious error. The *Galatis* test cannot be used, as was done here, to limit the Court's review of the constitutionality of legislative or executive action. Appellants respectfully urge the Court to reconsider its decision in this regard for numerous reasons, not the least of which is its ultimate duty to enforce the Constitution.

1. **The *Galatis* test is not exclusive for determinations of constitutionality, which are properly governed by the Court's analysis in *Rocky River*.**

A review of the *Galatis* decision provides an important illustration of the limited scope of its proper application, which scope does not encompass Appellants' Uniformity Clause arguments and other issues of constitutionality. In *Galatis*, the Court was asked, via a certified conflict, to address the interpretation of an insurance contract term. *See Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶¶ 8, 15-17. The cases forming the certified conflict in *Galatis* were only a few of many cases that had resulted from the Court's previous decision in *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660. In order to resolve the conflict, the Court had to determine the meaning of "insureds" under a standard insurance form, and it eventually concluded that the insureds covered under a policy held by a corporation did not include family

members of corporate employees. *Id.*, syllabus paras. 2, 3. In doing so, the Court overturned *Scott-Pontzer*, which had previously held that the policy's language was ambiguous and that the scope of coverage was significantly broader, including employee family members in situations unrelated to the employee's employment. *Id.* at ¶¶ 32-39.

The Court agreed to overturn its previous interpretation of such a contract as set forth in *Scott-Pontzer* after developing and applying a three-part test:

- (1) The prior decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision;
- (2) The decision defies practical workability; and
- (3) Abandoning the precedent would not create an undue hardship for those who have relied upon it.

Id. at ¶ 48. While the *Galatis* test was developed to promote stare decisis in the context of judicial interpretation of contracts, the Court's imposition of the test here so as to preclude consideration of a prior decision on an issue of constitutional interpretation appears to be its first. Appellants respectfully submit that the Court has overlooked its obligations in this regard, and its Opinion expanding the test's application to matters of constitutionality is in error.

That *Galatis* is not and should not be binding on the Court in addressing issues of the constitutionality of legislative or executive branch actions is affirmed by the Court's unique and ultimate role in the system of checks and balances and as the enforcer of the Constitution. The Court, indeed, has long recognized its unique role in this regard.

[W]e do not feel bound by previous decisions of this court when they do not commend themselves to us by essential soundness; and this is especially so when constitutional limitations are involved. No amount of wrong adjudication can justify a practical abrogation of the constitution. We may well pause and consider carefully when we find our views to be in conflict with those entertained by our predecessors; but, if it be found that the conflict is honestly

irreconcilable, there is but one course to take, and that is to follow our own convictions. **The obligation of a judge is that he will support the constitution, and that he will faithfully and impartially discharge and perform all the duties incumbent on him as such judge, according to the best of his ability and understanding, and not according to the authority and understanding of some other person or persons, however great or however numerous.**

State ex rel. Guilbert v. Yates (1902), 66 Ohio St. 546, 548-49 (emphasis added). See also *Carter-Jones Lumber Co. v. Eblen* (1958), 167 Ohio St. 189, 207 (quoting *Yates* and overruling precedent conflicting with a constitutional right because “this court would be doing less than its duty, even giving due and careful consideration to the rule of *stare decisis*, to perpetuate it or add yet another ramification or exception”); *State ex rel. Guilbert v. Lewis* (1903), 69 Ohio St. 202, syllabus para. 1 (“The doctrine *stare decisis* will not be allowed to interfere with the overruling of a former decision upon a constitutional question, when such former decision is clearly erroneous, and it does not appear that such decision has been acted upon as a rule of property, or that rights have vested under it, so that more injury would follow if it were overruled than if it were allowed to stand.”).

The Court expanded on the unique obligations associated with issues of constitutionality in *Rocky River v. State Emp. Rel. Bd.* (1989), 43 Ohio St.3d 1, in a well-reasoned analysis that applies here. In *Rocky River*, the Court did not apply the doctrine of *stare decisis* to the arguments before it because the arguments raised issues of constitutionality. “The doctrine does not apply with the same force and effect when constitutional interpretation is at issue.” *Rocky River*, 43 Ohio St.3d at 5. The Court concluded that “*stare decisis* d[id] not apply to the case at bar” for three reasons. *Id.* (emphasis in original). First, it noted that “[i]f *stare decisis* has any efficacy at all in this case, it is that the majority in *Rocky I* should have followed this court’s prior holdings” in a number of earlier cases. *Id.* As discussed below, Appellants similarly

established that the *Swetland* Court's holding, although portrayed as in harmony with earlier rulings, erroneously conflicted with earlier decisions. See Appellants' Br. at pp. 6-10. The *Rocky River* Court's second rationale was that it was considering a previous decision issued in the same pending matter – a rationale that does not apply here.

However, “[m]ore important than any of the above is the fact that in *Rocky River*, we are dealing with constitutional issues. . . . While it is true that *stare decisis* is a rule that judges should observe with some reverence, it is also true that when constitutional issues are at stake, the rule is less compelling.” *Id.* at 6. The *Rocky River* Court's analysis merits recitation here:

The doctrine of judicial supremacy in constitutional interpretation is widely and generally conceded. Given the inability of the legislature to override judge-made law in this area, it is clear that when an earlier decision is demonstrably wrong . . . , it is incumbent on the court to make the necessary changes and yield to the force of better reasoning. . . .

[E]ach judge remembers above all that she or he has sworn to support and defend the Constitution – not as someone else has interpreted it but as the judge deciding the case at bar interprets it. Section 7, Article XV of the Ohio Constitution states: ‘Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of this state, and also an oath of office.’

We concede we have no greater constitutional authority than those who follow us. But conversely, prior justices had no greater constitutional authority than do we.

What we do today, in reconsidering *Rocky I*, is not some forbidden aberration. It is, in fact, the fulfillment of our constitutional responsibilities

Rocky River, 43 Ohio St.3d at 6-7. The Court also referenced several decisions by the U.S. Supreme Court overruling previous decisions and, without taking a position on the issue, noted that such decisions “have led thoughtful commentators to suggest that constitutional law would

be better off absent any formal legal concept of *stare decisis*.” *Id.* at 9 (citing James C. Rehnquist, *The Power That Shall Be Vested In a Precedent: Stare Decisis, the Constitution and the Supreme Court*, 66 B.U.L.Rev. 345, 371-375 (1986)).

The *Yates*, *Lewis*, and *Rocky River* decisions direct that a prior decision that is inconsistent with the Ohio Constitution must be reversed unless the prior decision has established rules of property that should not be altered. *Galatis*, in contrast, applies to non-constitutional questions.

Indeed, after *Galatis*, a majority of the Justices of this Court have, as recently as within the last eight months, correctly recognized in dicta the unique position of constitutional issues under the doctrine of stare decisis and *Galatis*. In March of this year, the Court “recognize[d] a considerable degree of merit in [the appellant’s] arguments concerning the *Galatis* test’s application in constitutional adjudication,” in response to the appellant’s argument that “the doctrine of stare decisis should be applied with greater flexibility in cases of constitutional adjudication, which cannot be corrected by the legislature as can cases involving statutory interpretation.” *Kaminski v. Metal Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027, ¶¶ 90-91 (Justices Cupp, Lundberg Stratton and O’Donnell, concurring, but declining to reach the issue as unnecessary to the Court’s decision).¹ In June, the Court’s plurality opinion noted that “more importantly for our purposes here, we believe that there is a more vital and compelling limitation on the doctrine [of stare decisis] as it has developed in Ohio: its inapplicability to

¹ The Court also has limited the application of the *Galatis* test and stated that it is inapplicable to issues of evidence and procedure that lack any reliance issue, “and so stare decisis plays a reduced role.” *State v. Silverman*, 121 Ohio St.3d 581, 2009-Ohio-1576, ¶ 33. If stare decisis plays a reduced role in issues of procedure and evidence, surely its role should be reduced even more in matters of the Ohio Constitution.

constitutional claims.” *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, ¶ 34 (Justices O’Connor, Lundberg Stratton and Lanzinger, concurring).

It is not difficult to see that the consistency and stability furthered by the doctrine of stare decisis and effected through the *Galatis* test are important in the Court’s interpretation of contracts, common law, and statutes and regulations. In those realms, courts are less constricted in their rulings and each court’s decisions can more easily fluctuate, leading to reliance issues and increased litigation. Further, the General Assembly has additional authority to “correct” or steer common law via statute and/or regulation and private parties can revise contracts to be consistent with existing interpretations.

On the other hand, in matters of the Ohio Constitution, the Court must be guided by the language of the Constitution itself. The Court – particularly in matters of the constitutionality of a statute – is the ultimate authority. The Court is the sole body that can ensure that the ultimate law of the State is enforced and is adhered to by the General Assembly and the Executive. Given the significance of the Constitution in the rule of law and the importance of the Court’s role in enforcing the rule of law, the Court must be able to police itself. It must be allowed to consider and re-consider issues of constitutionality without the strictures of a self-imposed test. The system of checks and balances demands it.

Accordingly, the Court should reconsider its improper imposition of the *Galatis* test as the measure of whether a previous decision on an issue of constitutional interpretation must be revisited.

2. The second and third requirements of the *Galatis* test would improperly limit the scope of the Court’s duty and authority to review Constitution-based challenges, as illustrated by their application to Appellants’ Uniformity Clause argument.

The first requirement of *Galatis* appropriately requires that a prior decision have been wrongly decided at the time, or be no longer justified due to a change in circumstances, before it can be overturned. *Galatis*, 100 Ohio St.3d 216, 203-Ohio-5849, ¶ 48-49. However, it is the second and third requirements – the lack of proof of which the Court held as dispositive of Appellants’ Uniformity Clause challenge – that illustrate the danger of applying *Galatis* to constitutional challenges. Indeed, the imposition of *Galatis*’s second and third requirements on constitutional issues would improperly and unlawfully limit the Court’s duty to support and enforce the Constitution.

The second requirement of *Galatis* is that the prior decision defy practical workability. *Id.* at ¶¶ 48, 50. The Court described this requirement as incorporating “chaos in the courts” in the form of increased litigation on the issue, receipt of criticism from other jurisdictions, “numerous conflicts emanating from the lower courts,” and the prior decision’s propensity to lead to a patchwork of exceptions. *Id.* at ¶ 50. The second factor’s link to a required showing that the previous decision has spurred litigation and clogged the courts was seen again in *State ex rel. Intl. Paper v. Trucinski*, 106 Ohio St.3d 203, 2005-Ohio-4557. There, the Court found that the second requirement of *Galatis* was not met where, “since [the prior, challenged decision] was announced, only four cases invoking it have been decided by this [C]ourt,” in contrast to the number of cases seen in the “staggering” chaos post-*Scott-Pontzer*. *Id.* at ¶ 10.

Imposing this second requirement before the Court may overturn a previous decision on constitutionality would improperly limit the scope of issues that the Court could decide. Unless the constitutional issue triggers a flood of litigation and chaos in the courts, the Court’s

application of the “requirements” of *Galatis* would preclude the Court from overruling a prior decision that incorrectly enforced the Constitution. Decisions regarding provisions of the Constitution that infrequently form the basis of litigation would be untouchable, bedrock Ohio law – even if, as here, the precedent was incorrect. This cannot be the rule. As discussed above, this Court is the ultimate authority and serves as the tribunal of last resort to protect the Ohio Constitution against incursion by the legislative and executive branches. Further, criticism from other jurisdictions is not likely to arise given that Ohio’s Constitution is its own. No other jurisdiction is likely to have the opportunity or need to comment on how Ohio’s courts have enforced Ohio’s Constitution – and, even if they did, any such criticism or comment would be of little import to this Court given the particularly local nature of a state’s constitution. To limit the Court’s authority to only overrule previous decisions that defy practical workability and cause chaos in the courts is improper and violative of the Court’s duty.

No one could seriously argue that the Court’s decision in *Swetland* has caused “chaos,” or flooded the courts with litigation. Indeed, given that a constitutional amendment was subsequently enacted to more firmly authorize the exemption upheld in *Swetland*, that chaos should never arise. Nor are Appellants aware of any criticism of *Swetland* from other jurisdictions. However, that cannot mean that the *Swetland* decision (and its potential impact on related uniformity issues) was correct or that it does not deserve reconsideration. Appellants presented significant law and argument that establishes that the *Swetland* decision was erroneous and in conflict with the clear language of the Uniformity Clause’s requirements that all real property be taxed uniformly (as Appellants’ properties under the Rules are not²), in addition to

² As Appellants established in their Reply Brief, Appellee essentially has admitted that the Rules are non-uniform in their taxation of real property. See Appellants’ Reply Br. at 3-5. Justice Pfeiffer, dissenting from the Opinion, similarly recognized the lack of uniformity. Opinion, ¶ 59.

several earlier decisions of the Court. See Appellants' Merit Br. at pp. 5-12, citing *State ex rel. The Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410; *Koblentz v. Bd. of Revision* (1966), 5 Ohio St.2d 214, 218-219; *Goldberg v. Bd. of Revision* (1966), 7 Ohio St.2d 139, 141; *The Frederick Bldg. Co. v. Bd. of Revision of Cuyahoga Cty.* (1968), 13 Ohio St.2d 59, syllabus; *State ex rel. The Park Investment Co. v. Bd. of Tax Appeals* (1972), 32 Ohio St. 2d 28. It would indeed be ironic should the Court refuse to assess the constitutionality of the Rules for failure to satisfy the *Galatis* test's requirements to overturn *Swetland* when *Swetland* itself represents an outlier and aberration among the Court's Uniformity Clause analyses. Without the chaos, criticism, or rampant litigation, and given the Court's Opinion that requires a showing that a previous decision on constitutionality defies practical workability under the second requirement of *Galatis*, such errors could never be reconsidered. The Court would be precluded from reconsidering previous decisions on constitutional issues of "limited" impact – and its duty and obligation to uphold the Constitution would be improperly nullified.

Similar improper and unlawful constraints are imposed on the Court by virtue of *Galatis*'s third requirement before overturning previous decisions on constitutionality. The third requirement is that abandonment of the prior decision would not create an undue hardship for those who relied on it. *Galatis*, 100 Ohio St.3d 216, 203-Ohio-5849, ¶ 48, 58. The *Galatis* Court quoted a Michigan Supreme Court decision from which the test was developed to describe this requirement: "[T]he Court must ask whether the previous decision has become so embedded, so accepted, so fundamental, to everyone's expectations that to change it would produce not just readjustments, but practical real-world dislocations.' If overruling a precedent would cause chaos, it should be upheld even if wrongly decided." *Id.* at ¶ 58 (quoting *Robinson v. Detroit* (2000), 462 Mich. 439, 466, 613 N.W.2d 307). The Court has also recently recognized

that “considerations in favor of stare decisis are at their acme . . . where reliance interests are involved.” *State v. Silverman*, 121 Ohio St.3d 581, 2009-Ohio-1576, ¶ 31 (2009) (quoting *Payne v. Tennessee* (1991), 501 U.S. 808, 828, 111 S.Ct. 2597).

Appellants submit that, given the unique position of the Constitution in the scheme of law, an error of constitutionality must be remedied regardless of reliance. Here, of course, no one could have relied on *Swetland*, other than the General Assembly. To the extent its reliance is considered, the Court’s deference to the General Assembly’s reliance would eviscerate any and all checks and balances on the General Assembly’s compliance with the Constitution. But, regardless, to the extent a citizen or citizens relied on a decision of this Court that incorrectly applied the Constitution, the Court cannot thereby be prohibited from enforcing the Constitution correctly.³ Indeed, the *Galatis* Court itself recognized that, despite the policy goals of stare decisis, “a supreme court not only has the right, but is entrusted with the duty to examine its former decisions and, when reconciliation is impossible, to discard its former errors.” *Galatis*, 100 Ohio St.3d 216, 203-Ohio-5849, ¶ 43. The Court should reconsider and vacate its Opinion, to allow the Court to re-examine the analysis of *Swetland* and consider the merits of Appellants’ Uniformity Clause arguments without requiring Appellants to satisfy the requirements of *Galatis*.

III. CONCLUSION

For the foregoing reasons, Appellants’ Motion for Reconsideration should be granted, The Court should vacate its September 23, 2010 Slip Opinion and consider the merits of Appellants’ claim that the Rules violate the Uniformity Clause of the Ohio Constitution.

³ This argument was also raised by the appellant in *Kaminski v. Metal Wire Prods. Co.*, 125 Ohio St.3d 250, 210-Ohio-1027. This Court “recognize[d] a considerable degree of merit” in appellant’s arguments regarding *Galatis*’s application to constitutional issues. *Id.* at ¶ 91.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Appellants' Motion for Reconsideration* and the *Memorandum in Support* thereof were served this 4th day of October, 2010, by First Class U.S. Mail, postage pre-paid, upon:

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