

IN THE SUPREME COURT OF OHIO

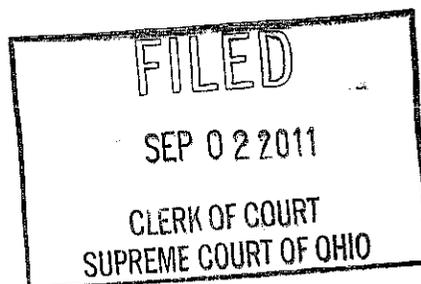
MATTHEW E. MOORE, et al. : Case No. 2010- 1363
: :
Appellants : On Appeal from the Butler County Court of
v. : Appeals, Twelfth Appellate District
: :
CITY OF MIDDLETOWN, OHIO : Court of Appeals Case
: No. CA 2009-08-205
Appellee :

MOTION TO RESCHEDULE ORAL ARGUMENT

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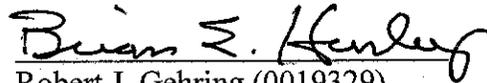
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Defendant-Appellee City of Middletown, Ohio respectfully requests that this Court reschedule oral argument. This motion is necessitated by the imminent death of lead counsel's father-in-law who is in hospice care. Counsel for Defendant-Appellee City of Middletown, Ohio has contacted counsel for Plaintiffs-Appellants and is authorized to state that they do not oppose this motion, but consent is contingent upon oral argument in the case of *Clifton v. City of Blanchester*, Case No. 2010-1196, also set for September 6, also being continued as oral argument in both cases are heard on the same day.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

The issues presented by this appeal (including the briefing and arguments before this Court) are being handled on behalf of Defendant-Appellee, City of Middletown, Ohio, by Attorney Brian E. Hurley. Attorney Hurley's father-in-law is in hospice care, and his family has been advised by the medical personnel overseeing his father-in-law's care that Attorney Hurley's father-in-law's death is imminent. Attorney Hurley's family is making arrangements for his father-in-law's passing.

Funeral arrangements and services are expected to take place on Tuesday, September 6. Consequently, Attorney Hurley cannot attend the oral argument scheduled for next Tuesday, September 6. In addition, Attorney Robert Gehring, counsel for record for Defendant-Appellee, City of Middletown, Ohio, is currently in Colorado and was not intending to return to Ohio prior to September 6 nor participate in oral arguments. Attorney Gehring has attempted to make arrangements to return to Ohio prior to September 6 but has been unable to do so.

On Friday, September 2, counsel for Defendant-Appellee, City of Middletown, Ohio, contacted Jay Bennett, counsel for Plaintiffs-Appellants, and explained the situation. Attorney Bennett stated that Plaintiffs-Appellants Matthew E. Moore and Lori A. Moore would only consent to rescheduling oral arguments if oral arguments are also continued in the *Clifton v. City of Blanchester*, Case No. 2010-1196, also scheduled for September 6. This case and the *Clifton* case concern similar issues and similar propositions of law for this Court's determination.

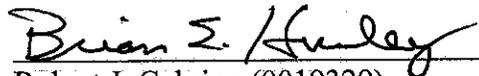
Based upon this representation by Attorney Bennett, also on Friday, September 2, counsel for Defendant-Appellee, City of Middletown, Ohio contacted Larry Barbieri, counsel for Defendant-Appellee Village of Blanchester in the *Clifton* case and explained the situation. Counsel for Defendant-Appellee, City of Middletown, Ohio is authorized to state that Defendant-Appellee Village of Blanchester does not oppose a continuation of oral arguments the *Clifton* case. Further, Attorney Barbieri, counsel for Defendant-Appellee Village of Blanchester, has attempted to obtain the consent of William G. Fowler, counsel for Plaintiff-Appellant Richard Clifton, to continue oral arguments in the *Clifton* case. As of the filing of this motion, Attorney Barbieri has not been able to speak with Attorney Fowler regarding a continuance of oral arguments in the *Clifton* case in conjunction with continuing oral arguments in this case.

has not been able to speak to

Counsel for Defendant-Appellee, City of Middletown, Ohio has spoken to counsel for *Amicus Curiae* The Ohio Municipal League who graciously stated that they would not oppose this motion to reschedule oral arguments. Counsel for Defendant-Appellee, City of Middletown, Ohio has attempted to discuss this motion with counsel for *Amicus Curiae* State of Ohio and 1851 Center for Constitutional Law but has not received return calls from counsel as of the filing of this motion. However, no *Amicus Curiae* have sought leave to present oral argument in this case pursuant to S.Ct. Prac. R. 9.6.

The undersigned notes that the online oral argument calendar reflects that arguments in other cases are scheduled for argument in early October. Defendant-Appellee, City of Middletown, Ohio respectfully requests that this matter be reset for oral argument at that time.

Respectfully submitted:


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CERTIFICATE OF SERVICE

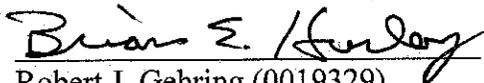
A copy of the foregoing was served by regular U.S. mail, first class postage prepaid, and facsimile, this 2nd day of September, 2011, upon:

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