

**IN THE SUPREME COURT OF OHIO**

CHARLES E. WILSON, et al.,	:	
	:	Case No. 2012-0019
Relators,	:	
	:	
v.	:	Original Action
	:	
GOVERNOR JOHN KASICH, et al.,	:	
	:	
Respondents.	:	

**MEMORANDUM OF RESPONDENTS GOVERNOR JOHN KASICH,  
 SENATE PRESIDENT THOMAS E. NIEHAUS, AND AUDITOR DAVID  
 YOST IN OPPOSITION TO RELATORS' MOTION FOR LEAVE TO  
 FILE AMENDED COMPLAINT**

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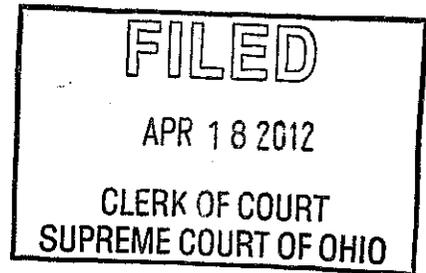
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**MEMORANDUM OF RESPONDENTS GOVERNOR JOHN KASICH,  
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Respondents Governor John Kasich, Senate President Thomas E. Niehaus and Auditor David Yost oppose Relators' motion for leave to file an amended complaint. Relators seek leave to amend their complaint to add Representative Armond Budish as a Relator in this action. Relators also ask the Court to join the Apportionment Board *if* the Court concludes that the Apportionment Board must also be named as a party. Relators' conditional motion should be denied.

Relators' motion comes at the 11th hour after all evidence has been submitted and all briefing, including supplemental briefing on the questions posed by the Court, have been completed. As Relators admit, Representative Budish and the Apportionment Board are not necessary parties and their absence does not divest this Court of jurisdiction. Relators, however, seek to amend their complaint to add Representative Budish as a Relator out of an "abundance of caution" and "to erase any doubt the Court may have about its jurisdiction."

Respondents agree that Representative Budish's and the Apportionment Board's absence do not divest this Court of jurisdiction. Thus, Respondents see no need to add them at this time. Moreover, if Relators had such a concern, they could have moved to amend their complaint immediately after the Supreme Court issued its order requesting supplemental briefing on March 2, 2012. Instead, Relators delayed over a month in filing their motion for leave without explanation. "Where a motion for leave to amend is not timely tendered and no reason is apparent to justify the delay, a trial court does not abuse its discretion in refusing to allow the amendment." *Meadors v. Zaring Co.*, 38 Ohio App.3d 97, 99, 526 N.E.2d 107 (1st Dist. 1987);

*see also National/Rs, Inc. v. Huff*, 10th Dist. No. 10AP-306, 2010-Ohio-6530, ¶ 36 (motion to amend untimely when filed the same day a motion for summary judgment was filed and only three months prior to trial date); *Wallner v. Thorne*, 189 Ohio App. 3d 161, 2010-Ohio-2146, 937 N.E.2d 1047, ¶ 12-13 (9th Dist.) (motion to amend untimely when filed after discovery closed and motions for summary judgment fully briefed). Relators' motion was not timely and therefore it should be denied.

Additionally, Relators claim that their motion will not prejudice Respondents or the public. But, both Respondents and the public have an interest in a timely resolution of this matter. Respondents are unaware of whether Representative Budish will seek to submit additional evidence or briefing, which could delay a resolution and prejudice Respondents, as this matter has been fully briefed and is set for oral argument in less than a week. Relators have offered no viable justification for adding Representative Budish or the Apportionment Board, especially when, as Relators' agree, neither is a necessary party to this litigation. Thus, Relators' motion for leave to file an amended complaint should be denied.

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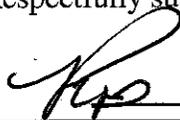
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *Memorandum of Respondents Governor John Kasich, Senate President Thomas E. Niehaus, and Auditor David Yost in Opposition to Relators' Motion for Leave to File Amended Complaint* was served on this 18th day of April 2012, by electronic mail and U.S. mail, postage prepaid, to:

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