

IN THE SUPREME COURT OF OHIO

OHIO TRUCKING ASSOCIATION, et al.,

Plaintiffs-Appellees,

-v.-

**DIRECTOR THOMAS CHARLES
[THOMAS STICKRATH],
OHIO DEPARTMENT OF PUBLIC
SAFETY, et al.,**

Defendants-Appellants.

) **Case No. 2011-1757**
)
) **On Appeal from the**
) **Franklin County**
) **Court of Appeals,**
) **Tenth Appellate District**
)
) **Court of Appeals Case**
) **No. 10AP-673**

**BRIEF OF AMICUS CURIAE 1851 CENTER FOR CONSTITUTIONAL LAW
IN SUPPORT OF APPELLEES OHIO TRUCKING ASSOCIATION, et al.**

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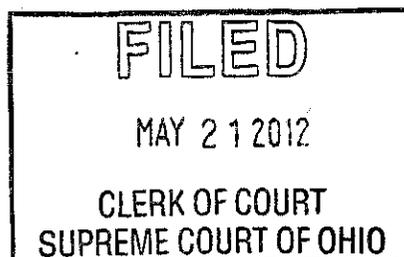


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INTEREST OF AMICUS CURIAE

Formed to support public policies that advance liberty, individual rights, and a strong economy in Ohio, the **1851 Center for Constitutional Law** is dedicated to protecting Ohioans' control over their lives, their families, their property, and thus, ultimately, their destinies. In doing so, the 1851 Center has developed particular expertise in Ohio constitutional law, has authored numerous publications on this topic, and has achieved favorable results for Ohioans in numerous state constitutional law cases.

More pointedly, the 1851 Center has an interest in ensuring that the rights enshrined in the Ohio Constitution are robustly enforced and carefully protected by courts. Among these constitutional rights is the right of Ohio's citizens to be free from unconstitutional taxes and fees. The Center also demands that bodies of constitutionally-limited and delegated powers, such as the Ohio Legislature, not exceed the scope of their authority under the Ohio Constitution.

The 1851 Center for Constitutional Law thus has a strong interest in this Court's decision in this matter, as this case presents the Court with the opportunity to: (1) confirm the proposition that Ohioans are constitutionally entitled to be free from the extraction of highway fees for non-highway purposes, and (2) restore the proper relationship between the legislature and the Ohio Constitution – the exclusive source of the legislature's limited authority – by emphasizing that constitutional challenges to legislative acts are entitled to careful and vigorous review by Ohio courts.

STATEMENT OF THE CASE AND FACTS

Amicus hereby incorporates the statement of the case and facts rendered by Counsel of Record, the trial court, and the Court of Appeals. However, *Amicus* believes that the following additional facts and background will be helpful to the Court.

Facts Regarding Fees, Taxes, and Ohio's Business Climate

The effects of hefty monetary impositions upon Ohio's citizens and businesses, such as the large increase in fees to obtain certified driving abstracts, enacted into law in R.C. 4905.09, are considerable for Ohio's entire economy. Ohio's cumulative state and local tax burdens are amongst the highest in the nation, and this is widely acknowledged to suppress economic growth and opportunity. The Tax Foundation's 2012 State Business Tax Climate Index ranks Ohio 39th in the nation.¹ This is the result of a state economic climate wherein Ohio's state and local governments impose income, corporate, property, sale and estate tax burdens that are all amongst the nation's worst², as well as hefty fees for conducting business. "At the heart of Ohio's fiscal problems is a business climate that has been driving businesses out of the state for more than 15 years, resulting in a shrinking economy and a smaller tax base. * * * Ohio taxpayers now have one of the highest tax burdens in the nation."³

This is more than quaint theory: as the cumulative fees and taxes imposed by state and local governments have risen, Ohio has ranked near the bottom in all economic measures. In a recent analysis, the state's population grew by 0.2 percent, for a rank of 46; total personal

¹ Tax Foundation, *2012 State Business Tax Climate Index*, January 25, 2012 (available at <http://www.taxfoundation.org/research/show/22658.html>).

² See Arthur B. Laffer, Stephen Moore & Jonathan Williams, *Rich States, Poor States, ALEC-Laffer State Economic Competitiveness Index* (5th Ed. 2012).

³ Tax Foundation, *Ohio's Poor Tax Climate at the Heart of the State's Economic and Fiscal Woes*, January 7, 2010 (available at <http://www.taxfoundation.org/research/show/25674.html>).

income grew by 2.8 percent, for a rank of 50; per capita personal income grew by 2.6 percent, for a rank of 49; earnings by place of work grew by 2.3 percent, for a rank of 50; total full- and part-time employment grew by 0.3 percent, for a rank of 50; and earnings per job grew by 2.9 percent, for a rank of 49.⁴ Because heavy fees on ordinary costs of doing business, such as those imposed by R.C. 4905.09, create incentives for businesses to depart Ohio, stifle economic growth, and create conditions for high unemployment, an adjudication of their constitutionality is of paramount importance to all Ohioans.

ARGUMENT

Proposition of Law No. I: The legislature's diversion of highway fees to non-highway purposes violates the plain meaning of the Ohio Constitution.

The plain meaning of the Ohio Constitution is clear: no money derived from fees relating to registration, operation, or use of vehicles on public highways shall be expended other than for specifically enumerated purposes. Each of the enumerated purposes relates directly to the public highways. Section 5(A), Article XII, of the Ohio Constitution states as follows:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.⁵

As the provision plainly notes, moneys derived from fees relating to registration, operation, or use of vehicles “on public highways” are subject to limitations. Such fees may only be expended for specifically demarcated purposes. The permissible purposes are (1) the costs of

⁴ Lucy May, *Ohio, Kentucky lag nation in economic performance*, Cincinnati Business Journal (August 26, 2010) available at <http://cincinnati.bizjournals.com/cincinnati/stories/2010/08/23/daily37.html>

⁵ Ohio Constitution, Article XII, Section 5(A).

administering “such laws;” (2) the construction, maintenance and repair of highways; (3) the enforcement of traffic laws; and (4) the hospital expenses of indigent persons injured in motor vehicle accidents.⁶ Each permissible purpose is highway-related.⁷

Nevertheless, in 2009, the legislature, facing a general budget deficit, enacted the present version of R.C. 4905.09. R.C. 4905.09 states that deputy registrars shall collect a five-dollar fee for the provision of a “certified abstract.” Further:

Of each five-dollar fee the registrar collects under this division, the registrar shall pay two dollars into the state treasury to the credit of the state bureau of motor vehicles fund established in section 4501.25 of the Revised Code, sixty cents into the state treasury to the credit of the trauma and emergency medical services fund established in section 4513.263 of the Revised Code, sixty cents into the state treasury to the credit of the homeland security fund established in section 5502.03 of the Revised Code, thirty cents into the state treasury to the credit of the investigations fund established in section 5502.131 of the Revised Code, one dollar and twenty-five cents into the state treasury to the credit of the emergency management agency service and reimbursement fund established in section 5502.39 of the Revised Code, and twenty-five cents into the state treasury to the credit of the justice program services fund established in section 5502.67 of the Revised Code.⁸

The Department of Public Safety concedes that under R.C. 4905.09 they collect certified abstract fees which are then used for non-highway purposes.⁹

This violates the plain meaning of Section 5(A), Article XII. The fees collected by the registrar of motor vehicles for obtaining certified driving abstracts – records of Ohio drivers’ conduct in operating and using their vehicles – directly “relat[e] to” the operation or use of

⁶ *Id.*

⁷ *Ohio Trucking Association v. Stickrath*, 10th Dist. No. 10AP-673, 2011-Ohio-4361, ¶ 34.

⁸ R.C. 4905.09.

⁹ *Ohio Trucking Association v. Stickrath*, 10th Dist. No. 10AP-673, 2011-Ohio-4361, ¶ 39.

vehicles. As such, “[n]o moneys” derived from their assessment shall be expended other than for an enumerated “highway purpose.”¹⁰

The objective of Ohio voters who approved this constitutional amendment is equally clear: “to prevent taxes and fees collected from the motoring public from being diverted to non-highway purposes.”¹¹ In accordance with this objective, each one of the permissible purposes for the funds enumerated in Section 5(A) is highway-related.

In fact, Section 5(A) is a specific response to legislative abuses.¹² Ohioans’ ballots described the purpose of this guarantee at the time they voted to enact it:

Ohio originally promised that automobile license and gas tax funds would go for roads, streets, and related purposes. But temptation was too great and millions of these special tax dollars have been and are being spent for other purposes. This is your chance to correct these conditions.¹³

Thus, the voters responded to legislative abuses of trust by amending the Ohio Constitution to require that money derived from fees relating to registration, operation, or use of vehicles be restricted solely to highway-based purposes: construction, maintenance and repair of highways, enforcement of traffic laws, and hospital expenses of indigent persons injured in motor vehicle accidents.¹⁴ In 2009, the Ohio legislature instructed instead that such fees would be diverted to the homeland security fund, the justice program services fund, and the investigations fund, among other beneficiaries. In so doing, no matter how otherwise worthy these causes may be, the legislature starkly violated the text of the Ohio Constitution and thwarted the expressed will of Ohio voters. Both the trial court and Tenth District recognized the unconstitutional nature of

¹⁰ See Ohio Constitution, Article XII, Section 5(A).

¹¹ *Ohio Trucking Association v. Stickrath*, 10th Dist. No. 10AP-673, 2011-Ohio-4361, ¶ 34.

¹² See *Id.*, ¶ 31 (discussing Ohio Atty. Gen. Ops. 82-084).

¹³ *Id.*, ¶ 31. (quoting Ohio Atty. Gen. Ops. 82-084).

¹⁴ Article XII, Section 5(A)

this provision. This Court should find that R.C. 4905.09 violates the plain meaning of Section 5(A), Article XII, and is unconstitutional.

Proposition of Law No. II: The “presumption of constitutionality” may not to override the plain meaning of the Ohio Constitution’s express restriction on the use of highway funds for non-highway purposes

When the meaning of a constitutional provision is plain, its meaning must be given effect. Because the enactment of a provision into the Ohio Constitution represents the highest expression of Ohio citizens’ political values, any limitation on the applicability of that provision should be undertaken with great care.

A. Recent extensions of “the presumption of constitutionality” impermissibly risk mandating a constitutional analysis where undue deference trumps plain meaning analysis.

In a recent case adjudicating a monetary imposition upon Ohioans, *Ohio Grocers Association v. Levin*,¹⁵ this Court articulated a standard for constitutional construction that pushed the balance of power too far in favor of the legislator, and too strictly circumscribed the application of the Ohio Constitution’s safeguards in the process. There, the Court outlined an implicitly “revised” mode of constitutional construction.

First, it provided it repeated the mantra that “the party challenging the constitutionality of a law ‘bears the burden of proving that the law is unconstitutional beyond a reasonable doubt.’”¹⁶ Going further, however, the *Ohio Grocers* Court asserted that “the constitutional provisions that the Grocers rely on... must be strictly construed,” whereas the statute under review was entitled

¹⁵ *Ohio Grocers Assn. v. Levin*, 123 Ohio St.3d 303, 2009-Ohio-4872, ¶ 11. Hereinafter *Ohio Grocers*.

¹⁶ *Ohio Grocers*, 2009-Ohio-4872, ¶ 11.

to a “strong presumption of constitutionality.”¹⁷ Finally, the Court concluded that the statute under review was “required” to be upheld if it “may plausibly be interpreted as permissible.”¹⁸

While this Court may be sensitive towards the risk of creating an environment of insufficient deference to the legislature, the expansive *Ohio Grocers* rules of construction (“may plausibly be interpreted as permissible” and the Constitution “must be strictly construed”) in favor of legislative enactments, as against constitutional safeguards, turns the Ohio Constitution on its head. This case presents an appropriate opportunity to throttle these dangerous rules of construction, and the Court should seize that opportunity to better refine these issues.

A. Legislative enactments cannot be elevated to a status co-equal to constitutional safeguards.

First, “constitutional provisions are not the kin of statutes; they are the paramount law of Ohio. Constitutional provisions are superior to statutes because they derive from the people, the fount of all political power, whereas statutes derive from the General Assembly, which has only the authority delegated to it by the people.”¹⁹ Constitutions are written so as to constitute the most fundamental law of their jurisdiction.²⁰

As Chief Justice Marshall wrote in *Marbury v. Madison*, “[t]he Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.”²¹

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Cincinnati, Wilmington & Zanesville RR. Co. v. Clinton Cty. Commrs.* (1852), 1 Ohio St. 77, 85, 1852 WL 11 (“all political power resides with the people”); Federalist No. 78; See *Marbury v. Madison* (1803), 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (“Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void”).

²⁰ See *Marbury v. Madison*, 5 U.S. 137 (1803).

²¹ *Id.*, at 177.

Concluding that the U.S. Constitution is indeed superior to acts of the legislature, Chief Justice Marshall noted that “all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the Constitution is void.”²² Because the Ohio Constitution forms the fundamental and paramount law of Ohio, decisions construing the language of the Ohio Constitution – constitutional law – are unique in their significance.

In contrast to constitutional law, the presumption of constitutionality is a canon of statutory construction.²³ As a canon of construction, it is valuable as a guide and a general principle. However, the plain language of the Constitution must be given full effect, and any canon of construction can only be employed when the plain language cannot provide an answer. Canons of statutory construction are inferior to constitutional law.

However, a presumption of constitutionality taken too far treats a safeguard enshrined by the people in the Ohio Constitution as though *it were just another statute*. As Justice Pfeifer has recently observed, the presumption of constitutionality is suspect because it originates from a fallacy: that a conflict between a constitutional provision and a statute is the same as a conflict between two statutes.²⁴ This problem is not resolved by the legislature’s enactment of R.C. 1.49,

²² *Id.*

²³ See R.C. 1.47.

²⁴ Every case since 1853 that has relied on the presumption of constitutionality relates back to two cases comparing conflicting statutes, and therefore relies on the faulty premise that a constitutional provision is the same as a statute for purposes of determining which governs a particular issue. In *State ex rel. Evans v. Dudley* (1853), 1 Ohio St. 437, 441, 1853 WL 50, this court stated, “As repeals by implication are not favored, the repugnancy between the provisions of two statutes must be clear, and so contrary to each other that they cannot be reconciled, in order to make the latter operate a repeal of the former. This rule is the result of a long course of decisions, and we know of no reason why it does not equally apply, when the repugnancy is alleged to exist, between a constitutional provision and a legislative enactment.” See also *Cass v. Dillon* (1853), 2 Ohio St. 607, 611, 1853 WL 129, quoting *Dodge v. Gridley* (1840), 10 Ohio 173, 178, 1840 WL 34 (“it was held, that ‘when two affirmative statutes exist, one

in which the legislature advises the Court to presume its work to be constitutional: to elevate the presumption to a level whereby it would determine the outcome of a case would still be to elevate a statute above a constitutional safeguard.

As Justice Pfeifer has recently acknowledged, “[g]iven the obvious supremacy of the Constitution, a better rule of construction would be to resolve all doubts in favor of the applicability of the Constitution.”²⁵ And ignoring this “better rule of construction” carries significant risks: a statute may “plausibly” be permissible, even when there is clear and convincing evidence that it is not permissible under the Constitution.

Under the standard stated in *Ohio Grocers*, the plain meaning of the Ohio Constitution risks being crowded out by an overly broad and overly deferential application of the presumption of constitutionality. Meanwhile, too narrow a reading of the meaning of Section 5(A), Article XII “could thwart the intention of the citizens of Ohio when they voted for the constitutional guarantee.”²⁶ This Court must allow the pendulum to swing back to a reasonable equilibrium, and discontinue application of the “plausibly permissible” rule of construction.

B. The presumption of constitutionality is based on the premise that the legislature independently evaluated the constitutionality of the challenged law.

Second, the “presumption of constitutionality” upon a premise that is often, at best, highly questionable in our modern era. Fidelity to the oath of office and the content of the oath taken by legislators originally supported the presumption of constitutionality.²⁷ Ohio’s rationale for the presumption in favor of constitutionality was initially expressed in 1852, just

is not to be construed to repeal the other by implication, *unless they can be reconciled by no mode of interpretation.* In the light of this rule, then, let us examine the provisions of the constitution that are said to be repugnant to the continued existence of the law in question” [emphasis sic]).

²⁵ *Ohio Grocers*, 123 Ohio St.3d 303, 2009-Ohio-4872, ¶ 72 (Pfeifer, J., dissenting).

²⁶ *Ohio Trucking Association v. Stickrath*, 10th Dist. No. 10AP-673, 2011-Ohio-4361, ¶ 29.

²⁷ *Comm’rs of Clinton County* 1 Ohio St at 83; COOLEY, *supra* note at 183.

after the 1851 constitution was passed. It is as follows: “The Legislature is, of necessity, in the first instance, to be the judge of its own constitutional powers. Its members act under an oath to support the constitution, and in every way, are under responsibilities as great as judicial officers.

* * * This being their duty, we are bound, in all cases, to presume they have regarded it; and that they are clearly convinced of their power to pass a law before they put it in the statute book.”²⁸

Thus, the rationale for the presumption in favor of an enactment’s constitutionality, and any “plausibility” rules of construction flowing therefrom, only apply to legislators who have taken an oath to support the constitution, *and* taken that oath into account in enacting the measure in question.

Further, 1870, this Court recognized that the assumption that legislators evaluated a proposed law for its constitutionality does not always correspond to reality.²⁹ In *Attorney General v. Cincinnati*, this Court explained that the presumption of constitutionality is based on “the presumption that the legislative majority which enacted the statute in question, did so after full and careful investigation, and in the full conviction that what they were doing was within the constitutional grant of legislative power.”³⁰

This rationale is, at minimum, questionable in our modern era. As Justice Pfeifer, a former legislator himself, has observed as follows:

[E]ven the most casual observer of the General Assembly is aware that members do not always carefully consider the constitutionality of the legislation they vote for or against. They do not thereby abuse their trust or duty, but most members are not lawyers, are not steeped in constitutional law, and are not capable of discerning the often fine lines that separate the unconstitutional from the constitutional. Frequently members state that they don’t have to consider whether a given law to be enacted is constitutional because this court will ultimately make

²⁸ *Cincinnati W. & Z. R. Co. v. Comm’rs of Clinton County*, (1852), 1 Ohio St. 77, 83.

²⁹ See *State ex rel. Atty. Gen. v. Cincinnati*, 20 Ohio St. 18, 33-34, 1870 WL 2 (1870).

³⁰ *Id.*

that determination. It has and it will; to do otherwise is an abdication of our duty.³¹

This Honorable Court has long acknowledged the same, explaining that “this presumption may not be a very satisfactory one: and, *perhaps, sometimes members of the legislative department of the government, instead of examining for themselves whether proposed enactments are warranted by the constitution which they are sworn to support, ignore this duty, with a view to throw it over upon the judiciary in the first instance.*”³²

As Thomas Cooley, arguing in favor of a presumption of constitutionality in 1868, expressed it: “If it were understood that legislators refrained from exercising their judgment [on the constitutionality of an act], or that, in cases of doubt, they allowed themselves to lean in favor of the action they desired to accomplish, the foundation for [the presumption of constitutionality] would be altogether taken away.”³³ Cooley thus identifies careful legislative consideration of a proposed law’s constitutionality as a necessary prerequisite to the application of the presumption. And where legislators have not taken an oath and then taken it into account when weighing the constitutionality of an enactment, no presumption of constitutionality or burden of proof exists.³⁴ Accordingly the presumption must should, if anything, be properly-confined rather than used to justify a “may plausibly be interpreted as permissible” standard of review.

Moreover, the Constitution is an inherently anti-majoritarian device. Its role is to restrain the ability of political majorities to effect large-scale changes quickly. Invariably, this role

³¹ *Ohio Grocers*, 123 Ohio St.3d 303, 2009-Ohio-4872, ¶ 72 (Pfeifer, J., dissenting).

³² *State ex rel. Weinberger v. Miller* (1912), 87 Ohio St. 12, 52, 99 N.E. 1078 (Davis, C.J., dissenting). See *State ex rel. Atty. Gen. v. Cincinnati* (1870), 20 Ohio St. 18, 33–34, 1870 WL 2.

³³ Thomas Cooley, *Constitutional Limitations*, at 184 (1868) (available at http://books.google.com/books?id=vOI9AAAAIAAJ&printsec=frontcover&dq=cooley+on+constitutional+limitations&hl=en&ei=WctFTc23DsnVgOex3b3BAQ&sa=X&oi=book_result&ct=book-preview-link&resnum=1&ved=0CCoQuwUwAA#v=onepage&q&f=false).

³⁴ Thomas Cooley, *Constitutional Limitations* 184 (1868).

sometimes places the Constitution as an obstacle to legislation supported by temporary political majorities. As legislators rely upon the support of political majorities for reelection, it is politically more preferable to support momentarily popular (though unconstitutional) legislation while relying on a court to invalidate it, than it is to oppose the legislation oneself and place oneself in opposition to current popular sentiment.³⁵

To that end, it “is not to be inferred * * * whenever a momentary inclination happens to lay hold of a majority of [the legislature], incompatible with the provisions of the existing Constitution, [the legislature] would on that account, be justified in a violation of those provisions.”³⁶ Thus, this Court must consider whether the legislature actually carefully considered the constitutionality of an enactment prior to deferring to it with the presumption of constitutionality, much less the even more deferential standards articulated in *Ohio Grocers*.

C. The rationale for applying a presumption of constitutionality, much less a “plausibly permissible” test, does not apply to the instance case.

Third, in any event, like any other “presumption,” it must be remembered that the “presumption of constitutionality” is only a *presumption*, and is therefore rebutted when not true.

This is such a case.

This Honorable Court has previously recognized a lack of legislative attention to the question of a law’s constitutionality as key determinant of the extent of deference due:

[The presumption of constitutionality] is based on another presumption, namely, that the legislature acted with due respect to the constitution and enacted the law in the belief that it was within legislative power. There is nothing, however, in the history of the seventy-ninth general assembly, which passed the act now under

³⁵ See e.g. David Mayhew, *Congress: The Electoral Connection* 16 (2d. Ed.2004) (discussing election pressures in the context of federal legislators).

³⁶ *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 715 N.E.2d 1062, at 502, citing Hamilton, *The Federalist No. 78*.

consideration, nor in its attitude toward the judiciary, that would justify any such presumption.³⁷

Here, likewise, there is neither any evidence in the record nor in the recent history of the General Assembly that would indicate that legislators carefully weighed this enactment against the limitations of Section 5(A), Article XII. Indeed, the Ohio Department of Public Safety has nowhere asserted that the legislature undertook any evaluation of the constitutionality of R.C. 4905.09 before enacting it. Instead, Ohio General Assembly was under well-documented considerable *political* pressure to find new funding so as to balance the state's budget.

Thus, the presumption of constitutionality, much less the new "plausibly permissible" rule of construction the Court has erected on top of it, would rest upon the false premise that the legislature carefully considered the constitutionality of R.C. 4905.09. Because this premise is not true of the statute *in the instant case*, it must not influence this Court's adjudication of the constitutionality of R.C. 4905.09. Put another way, the presumption is rebutted, and the Court must not rely on it in a manner that shades its inquiry into the plain meaning of Section 5(A), Article XII, as against R.C. 4905.09: the plain meaning of Section 5(A), Article XII must begin and end this analysis.

In conclusion, this case represents the opportunity to restore the balance of power between constitutional safeguards and legislative authority that was implicitly called into question through the impermissibly deferential rules of construction devised in *Ohio Grocers*. And the case itself is opportune because the rationale underlying the presumption of constitutionality does not apply here. Meanwhile, Section 5(A), Article XII of the Ohio Constitution plainly precludes highway fees from being diverted to non-highway purposes, that expression represents "the fundamental and paramount law" of Ohio. This Court should apply

³⁷ *State ex rel. Weinberger v. Miller*, 87 Ohio St. 12, 99 N.E. 1078, 1079 (1912) (Davis, J., dissenting).

constitutional law to the questions presented in this case, and should not permit a canon of statutory construction to modify the answer to the constitutional inquiry. When constitutional law is applied, the unconstitutionality of R.C. 4905.09 becomes apparent.

CONCLUSION

When the defenders of a legislative enactment under constitutional review are utterly unable to identify any legislative consideration of the enactment's constitutionality, conducted reasonably and undertaken in good faith, these same defenders can hardly claim an entitlement to overriding deference in their favor. Instead, this Court must analyze the plain language of the constitution against the plainly conflicting provision of R.C. 4905.09

Based on the foregoing analysis, R.C. 4905.09 violates Article XII, Section 5(A) of the Ohio Constitution. This Court should affirm the Tenth District.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the following this 21st day of May, 2012.

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