

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio, ex rel.
William D. Mason, Cuyahoga
County Prosecuting Attorney,

Relator,

Case No. 2012-1128

vs.

Nancy Margaret Russo,
Judge, Cuyahoga County Court
of Common Pleas,

Respondent.

**MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO
DISMISS RELATOR'S PETITION FOR IMMEDIATE ALTERNATIVE WRIT**

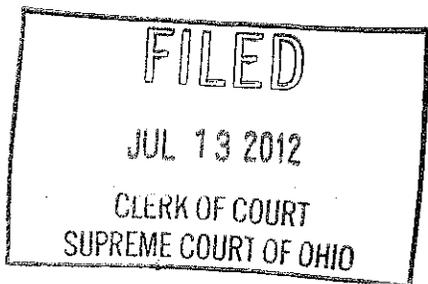
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MEMORANDUM IN OPPOSITION

Respondent has sought to dismiss Relator's Petition for Immediate Alternative Writ on the suggestion of mootness, arguing that "a stay has been entered in the cases at issue[.]" (July 12, 2012 Motion to Dismiss at 1). While it is true that Respondent has temporarily stayed her discovery deadline pending a decision by this Honorable Court, Relator nevertheless maintains that an alternative writ should issue because (1) Respondent's decision granting a TRO enjoining the prosecutor from enforcing Ohio's gambling laws still exists and remains in effect, and (2) Relator's discovery obligation, while stayed, remains outstanding.

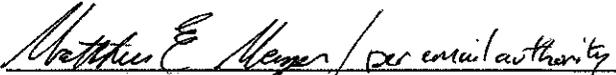
By pre-adjudicating disputed factual issues of guilt or innocence *vis-à-vis* Ohio's gambling laws in a declaratory civil action, Respondent's TRO actively undermines and interferes with Relator's independent, executive authority as the duly elected prosecutor for Cuyahoga County. Absent a clear showing of abuse of an independent executive officer's sound discretion, the judicial branch of government must refrain from interfering in that exercise. *State ex rel. Gilligan v. Hoddinott*, 36 Ohio St.2d 127, 132, 304 N.E.2d 382 (1973). Since Respondent's TRO remains in effect and continues to unconstitutionally undermine and interfere with Relator's independent prosecutorial discretion, an immediate alternative writ should issue in to completely stay the proceedings below.

Further, an immediate alternative writ should issue simply as a scheduling order for submission of the case on the merits pursuant to S.Ct. R. P. 10.6.

Accordingly, Relator respectfully opposes Respondent's Motion to Dismiss Relator's Petition for Immediate Alternative Writ.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned has caused copy of the foregoing Memorandum in Opposition to Respondent's Motion to Dismiss Relator's Petition for Immediate Alternative Writ to be served electronically and by U.S. Mail this 13th day of July, 2012 to counsel for Respondent, Robert P. Ducatman, Esq., North Point, 901 Lakeside Ave., Cleveland, Ohio 44114-1190.

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