

ORIGINAL

IN THE SUPREME COURT OF OHIO

PROGRESSOHIO.ORG, INC., ET AL.
Appellants

v.

JOBSSOHIO, ET AL.

Appellees

On Appeal from the
Franklin County Court of
Appeals, Tenth Appellate
District
Court of Appeals
Case Number 11AP 1136

12-1272

NOTICE OF PENDING MOTION TO CERTIFY A CONFLICT

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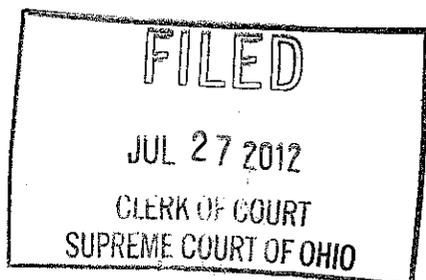
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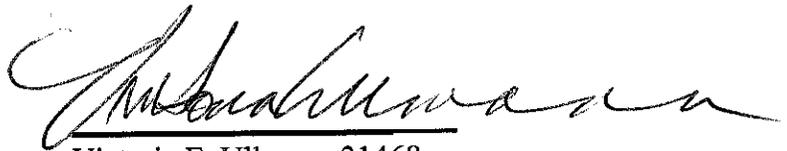
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Appellants filed a motion requesting that the 10th District certify an issue to this court. The state argued in this case that no plaintiff has standing to bring an action in the public interest except by way of extraordinary writ. They have made this argument for years, resulting in a number of poorly reasoned appellate decisions. The Tenth District's rejection of this argument has created a conflict not only with previous decisions of the Tenth District but with at least 2 other districts.

Respectfully submitted,

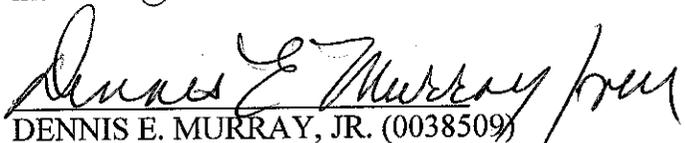


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CERTIFICATE OF SERVICE

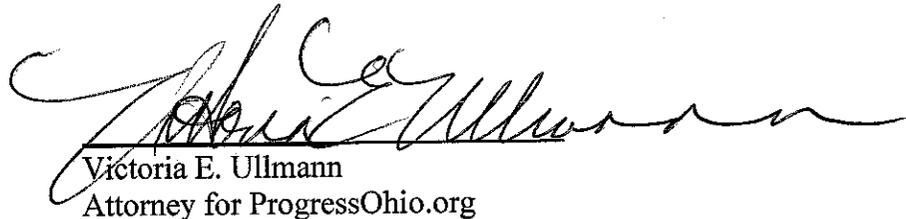
I certify that a copy of this notice was sent by e mail 7/27/2012 to the following:

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IN THE COURT OF APPEALS FOR THE TENTH DISTRICT
FRANKLIN COUNTY, OHIO

PROGRESS OHIO.org, Inc., *et al*

Case number 11 AP 1136

Appellants

vs.

JOBSOHIO, *et al*

Appellees

MOTION TO CERTIFY A CONFLICT BETWEEN APPELLATE DISTRICTS

Plaintiffs move this court to certify a conflict between this court's decision in this case and cases in the 12th and 9th District Court of Appeals.

MEMORANDUM IN SUPPORT

State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St.3d 451 (1999), is one of the most controversial and one of the most misunderstood cases in Ohio jurisprudence. The primary issue in *Trial Lawyers, id.* was whether the Ohio Supreme Court should have accepted the case pursuant to its original jurisdiction. It has been misread for years to be a limitation on public right standing when the case itself specifically says it did not change the rules of standing. *Id.* at p. 62. This problem arose in part due to how the case summary was written in the case itself. However, the Ohio Attorney General is responsible for reading an entire case when he or his assistants cite it. And the Ohio Attorney General's office has misrepresented the holding of this case for years. In this case, they have gone so far as to fabricate the term "Sheward standing" when no such thing has ever existed.

The decision rendered by this court in this case has clarified the previous incorrect impression that public rights cases can only be brought as extraordinary writs. *ProgressOhio.org, Inc. v. JobsOhio*, 2012-Ohio-2655, at 7-8. But because this unsupported argument has been used by the Attorney General's office for many years, there is now a conflict between districts. This court specifically discusses the conflict with the 12th District at pages 7-8 of the decision: "The court in *Brinkman* disagreed with the trial court finding standing in *Ohio Roundtable*, stating that only the Supreme Court of Ohio has the discretion to find public-rights standing. *Brinkman v. Miami University*, 2007 Ohio 4372. (citation added)... In our view, whether appellants have sought a writ of mandamus or a declaratory judgment is ultimately irrelevant." Of course original jurisdiction of the Supreme Court is confined to extraordinary writs so the conflict exists here.

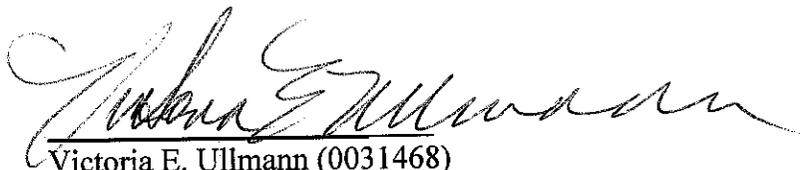
The Ninth District also accepted the writ argument in *Kuhar v. Medina Cty. Bd. Of Elections*, 2006-Ohio-5427: "The Public Action Exception, however, does not apply to declaratory judgment actions. As set forth in *Sheward*, parties may avail themselves of the exception to the concrete injury rule where they are seeking a writ of mandamus, prohibition, or other extraordinary writs. *Sheward*, at 467-471." *Id.* at 5.

The plaintiffs here had to spend a significant part of their time, appellate brief pages and minutes of oral argument to correct a misunderstanding that has been going on for years and which has been actively created by the Ohio Attorney General's office. The Attorney General's office is very likely to continue to use this argument to distract courts from the real issues in these public rights cases until there is a definitive decision from the Ohio Supreme Court,

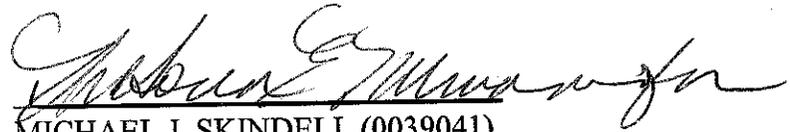
JobsOhio is an attack on the Ohio Constitution. This attack is so intentional and so blatant, that should be the only issue in this case. This matter demands early resolution as the state intends to sell bonds that may in fact be illegal given the constitutional violation that exists.

If the issue of the correct form of action for these cases is not addressed definitively, these sorts of violations will increase. Plaintiffs and their counsel have spent their time and money bringing this case only to protect the constitution of state of Ohio. No other public spirited litigants should be stuck in the morass created by the state's efforts twist *Trial Lawyers, id.* beyond recognition. This can only be accomplished if the Ohio Supreme Court hears the issue. Because this court has interpreted *Trial Lawyers* correctly in this regard and as plaintiffs presented it here, it will not be an issue for appeal unless this court certifies it as a conflict. This is such a serious misapplication of *Trial Lawyers, id.* that a definite determination by the Supreme Court on this issue will benefit all the district appellate courts as well as litigants.

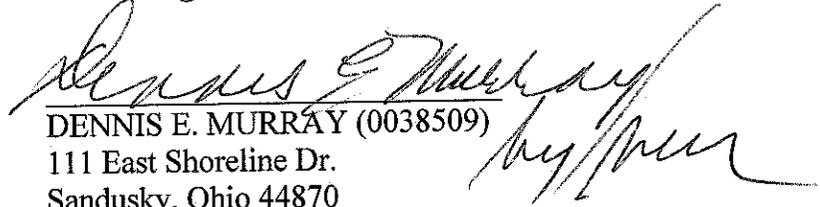
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I certify that a copy of this Motion was sent by email on date of filing, June 25, 2012, to the following:

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