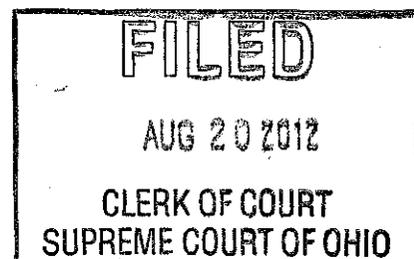


IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel. :
 JOBOHIO :
 Relator :
 :
 v. :
 :
 DAVID GOODMAN, DIRECTOR, :
 OHIO DEPARTMENT OF COMMERCE :
 :
 Respondent. :

Case Number 12-1272
1356



**MOTION TO INTERVENE BY PROGRESS OHIO.ORG,
 SENATOR MICHAEL SKINDELL
 AND REPRESENTATIVE DENNIS MURRAY, JR.**

ProgressOhio.org, Senator Michael Skindell and Representative Dennis Murray hereby move this Court to allow them to intervene as respondents in this action. Relator and respondent have actually colluded to bring this case in equity. Relator and respondent are manufacturing subject matter jurisdiction when none exists. Any judgment arising from such collusion would be tainted, so this case should not remain on this Court’s docket absent the presence of parties in true opposition. Only by allowing intervenors to present this Court with genuine opposition and *bona fide* research will separation of powers and the public interest be served.

MEMORANDUM IN SUPPORT

I. Procedural History

This case of course is not the first case in the JobsOhio litigation, it is the third. Throughout the JobsOhio odyssey, the executive and the legislature have attacked the entire

concept of separation of powers and they are doing it a third time with this purported mandamus action. Initially, the General Assembly attempted to unconstitutionally expand this Court's original jurisdiction in the first version of R.C. 187.09. This Court determined that the General Assembly violated Article IV of the Ohio Constitution by attempting to expand this Court's original jurisdiction just for JobsOhio litigation. *Progress Ohio.org v. Kasich*, 129 Ohio St.3d 449, 2011-Ohio-4101

The intervenors then followed this court's holding and subsequently revised legislation (tucked in to the budget) and filed a declaratory judgment action in Franklin County Common Pleas Court in August, 2011. An appeal and memorandum in support of jurisdiction as an appeal of right was filed with this Court July 27, 2012, case number, 2012-1272. The issue in the appeal is intervenors' standing to bring the action. But as far as the constitutional issues in the underlying claims on the merits, this case is nearly an exact replica of that one.

Any delay with regard to determining the constitutionality of JobsOhio is solely due to the litigation tactics of the state and JobsOhio. The Kasich administration has prevented this case from being determined on the merits raising a standing argument that was not consistent with this Court's determinations on public interest standing. Unfortunately the 10th District Court of Appeals also failed to apply case law from this Court properly.

Now JobsOhio and the administration have determined that their previous strategy to avoid or at least delay a constitutional review of JobsOhio has instead yielded unacceptable disadvantages. They cannot give state property to JobsOhio or sell questionable bonds based on that transfer now, most likely because the bond market has advised that the constitutional questions are substantial and must be addressed before the bonds can be sold. Their solution to this dilemma is to attempt to invoke this Court's jurisdiction by fabricating a mandamus action

which is in fact nothing more than a declaratory judgment action, even though another action addressing these issues is already one pending.

JobsOhio and the state are attempting to fabricate jurisdiction here despite the fact that there has already been a decision regarding the JobsOhio legislation holding that this Court will not allow the General Assembly to violate separation of powers to expand its jurisdiction to serve JobsOhio's agenda. *Progress Ohio.org. Id.* Governor Kasich and Attorney General Dewine are now attempting to achieve the same result through collusion litigation by parties who are not, in fact, adverse but who instead openly seek the same result: a declaration that JobsOhio is constitutional. Both Jobs Ohio and the Governor are defendants in the *ProgressOhio.org.* action. Director Goodman is a subordinate of Governor John Kasich. JobsOhio was John Kasich's signature program and he remains intertwined with all of its workings and decision making. (Ex. 1) They now are coming before this Court in the guise of opposing parties, when in fact this case is nothing more than an attempt to preempt the appeal that was filed ahead of it

II. Intervenors need to participate as full parties in this action in order to ensure that they can protect the public interest and that a just and legitimate adjudication is rendered by this court.

Intervenors move this Court to be made respondents in this action pursuant to Civil Rule 24 (A):

RULE 24. Intervention

(A) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In discussing ability to intervene this Court held in *State ex rel. Merrill v. Ohio Dept. of Natural Resources*, 130 Ohio St.3d 30, 2011-Ohio-4612:

(W) hen the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may * * * impede the applicant's ability to protect that interest." Further, the applicant's interest must be one that is " 'legally protectable,' " *State ex rel. Dispatch Printing Co. v. Columbus* (2000), 90 Ohio St.3d 39, 40, 734 N.E.2d 797, quoting *In re Schmidt* (1986), 25 Ohio St.3d 331, 336, 25 OBR 386, 496 N.E.2d 952, and must not be adequately protected by the existing parties. Civ.R. 24(A)(2); *State ex rel. LTV Steel Co. v. Gwin* (1992), 64 Ohio St.3d 245, 247, 594N.E.2d 616.

Since this case is nothing more or less than a disguised declaratory judgment, movants should be deemed intervenors as of right by statute. R.C. 2721.12, the statute which provides the requirements for declaratory judgment actions, provides that anyone with an interest in the action be made parties. Since movants have an appeal pending and this case is a transparent attempt to preempt that case, movants have an interest worthy of acknowledgement. Further, movants and counsel have spent money and hundreds of hours of work in their properly brought declaratory judgment action. Movants have followed the rules and holdings of this Court, have honored the constitution and should now be heard as a party on these issues.

In this action, relator and respondent are alleging to the Court that public interest demands the case be heard and that it is a matter of great public interest and importance. That is the standard that grants movants standing. After the 10th District rendered its decision in the *ProgressOhio.org* case, this Court rendered a decision regarding taxpayer public standing which supports movants' standing as plaintiffs in 2012-1272 and as intervenors here. This Court has held that a taxpayer case meets the public interest standard if the plaintiff seeks a benefit for the public at large and not for themselves. *State ex rel. Teamsters Local Union No. 436 v. Cuyahoga*

Cty. Bd. of Commrs., (2012) 132 Ohio St.3d 47, 2012-Ohio-1861. When that standard is applied to this case, which involves standing based upon whether the case is of great public interest, there simply is no doubt that Progress Ohio, Skindell and Murray have standing. Movants seek no benefit for themselves in their case beyond fulfilling their civic duty to protect the public and the Ohio Constitution.

The only possible issue is whether the issues raised in *ProgressOhio.org.* are important enough to be heard. Both relator and respondent here urge the Court to hear this case on an expedited basis because it is of such great importance that it should take precedence over this Court's entire docket.¹ This should be accepted by the Court as an admission in *ProgressOhio.org. v. JobsOhio, 2012-1272* that movants' have standing there as plaintiffs and here as intervenors. *ProgressOhio.org* has always been the quintessential public interest case; the state and Jobs Ohio have now conceded as much. If this Court applies the same standard to *ProgressOhio.org, 2012-1272* as it did in *Teamsters*, it will result in a remand for determination on the merits or at a least an acceptance the appeal. It is sufficient to support movants' ability to intervene in this action as well.

Every delay in the *ProgressOhio.org, 2012-1272* has been the sole responsibility of the relator and the governor. They should not be allowed to circumvent their disingenuous actions by filing a bogus equity case. The public interest is at risk here, and only the movants will protect that interest.

Even attorneys for the respondents admit in the attached letter that these movants are the proper individuals to be presenting arguments against JobsOhio. (Exhibit 2) Respondents request

¹ Relator and respondent claim as the basis of their motion that pursuant to R.C. 109.20 that the Attorney General can designate a matter of great public importance to request the case be expedited on the Court's docket. They provide no proof whatsoever that the attorney general has made such a finding pursuant to R.C. 109.20.

that movants file as amicus.² But that does not change the fact that this case should not be heard without actual representatives of the people of the state of Ohio, who developed the arguments which show that JobsOhio is a constitutional violation of the first order. Movants have the expertise in this area and this case cannot be properly adjudicated without them. However, movants should be full parties in any discussion of the issues they developed, not the unpaid researchers for the well paid, in this case with tax dollars, Porter Wright law firm. This case is not the legal, constitutional or ethical method of resolving JobsOhio's lack of constitutionality.

The attached letter also indicates that the respondent's counsel has no intention of filing a motion to dismiss in this case despite the obvious violation of separation of powers that is the essence of this case. The letter, along with the agreed motion to expedite filed with this Court on August 17, are a transparent attempt to conceal the collusion that is occurring here and preventing the Court from taking notice of the fact that it lacks jurisdiction. Notably, JobsOhio and the state would be required to respond to ProgressOhio's memorandum in support of jurisdiction on the day after the due date in the request to expedite. They did nothing to expedite that case by filing their response before the due date in that case. The state has delayed this case for over a year and has no grounds whatsoever to now contend that their delay has caused an emergency which requires this Court to order recklessly rapid briefing on issues of great importance and complexity.

Of course JobsOhio's attempt to manufacture jurisdiction will merely be vain act in the end since this Court has no jurisdiction and the resulting judgment would be void. *Miller v. Nelson-Miller*, Slip Opinion No. 2012-Ohio-2845. It is imperative that jurisdiction be determined here and only movants will present that issue to the Court properly.

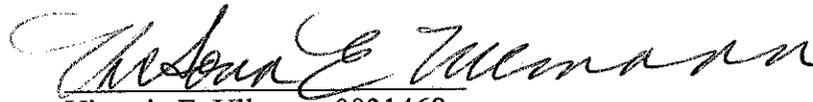
² Working for free to help Porter Wright's attorneys, as part of a conspiracy to violate the constitution funded by tax dollars at the request of the attorney general, is simply not enticing enough for us to abandon our ethical standards.

A. Permissive intervention should be permitted if the Court determines that intervention of right does not apply.

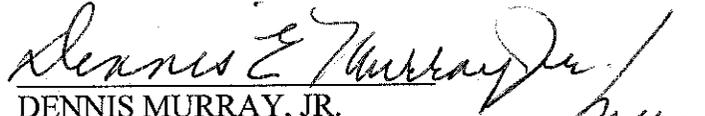
Movants have a right to intervene in this case since they have an interest in this litigation due to their pending case. Since this case is in fact a declaratory judgment action, further support for intervention is found in that section of the code. Even if this is not considered an intervention as of right, allowing movants party status here should be allowed under the permissive intervenor rule which allows intervention when an applicant's claim or defense and the main action have a question of law or fact in common, *State ex rel. Merrill v. Ohio Dept. of Natural Resources*, 130 Ohio St.3d 30, 2011-Ohio-4612. As this action attempts to preempt movants' pending appeal they have questions of law and fact in common—in fact they are largely identical except for the standing issue.

Civil Rule 19 provides for joinder of parties needed for a just adjudication and no proper adjudication can occur in this case with the relator and respondent in control of the case. They are not in fact truly adverse parties and this case is not in fact a mandamus action in any real sense. The entire concept behind this case is disingenuous and this Court should not allow this charade to continue. Only by allowing movants' participation will the flaws in this case be properly addressed.

The Governor, JobsOhio and the Attorney General are working in concert to manufacture non existent original jurisdiction in violation of Article IV of the Ohio Constitution. Movants should be made respondents in this case to protect separation of powers and Article IV because none of the parties will do so.



Victoria E. Ullmann 0031468
ATTORNEY FOR PROGRESSOHIO
1135 Bryden Road
Columbus, Ohio 43205
(614) 253-2692
Victoria_ullmann@hotmail.com



DENNIS MURRAY, JR.
111 East Shoreline Dr.
Sandusky, Ohio 44870
(419) 624-3000
dmj@murrayandmurray.com



MICHAEL SKINDELL
55 Public Sq.
Suite 1055
Cleveland, Ohio 44113
(216) 621-0070
Mskindell@aol.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent to the foregoing by regular U.S. mail on August 2 2012.

JAMES A. KING (0040270)
L. BRADFIELD HUGHES (0070997)
PORTER, WRIGHT, MORRIS & ARTHUR LLP
2900 Huntington Center
41 S. High Street
Columbus, OH 43215
jking@porterwright.com
bhughes@porterwright.com

*Attorney for Respondent David Goodman,
Director, Ohio Department of Commerce*

ANECA LASELY, Counsel of Record
SQUIRES, SANDERS DEMPSEY
41 South High Street, suite 2000
Columbus, Ohio 43215
(614)365-2830
Aneca.lasley@squiressanders.com

DOUGLAS R. COLE
ORGAN, COLE AND STOCK
1335 Dublin Road
Columbus, Ohio 43215
614-481-0902
drcole@ocslawfirm.com

| *Attorneys for Relator JobsOhio*


[About Us \(http://jobs-ohio.com/about/\)](http://jobs-ohio.com/about/)
[Sites & Buildings Tool \(http://jobs-ohio.com/site-selection/\)](http://jobs-ohio.com/site-selection/)
[News & Data Center \(http://jobs-ohio.com/data-center/\)](http://jobs-ohio.com/data-center/)
[\(http://jobs-ohio.com/\)](http://jobs-ohio.com/)
[BioHealth
\(http://jobs-ohio.com/biohealth/\)](http://jobs-ohio.com/biohealth/)
[Energy
\(http://jobs-ohio.com/energy/\)](http://jobs-ohio.com/energy/)
[Automotive
\(http://jobs-ohio.com/automotive/\)](http://jobs-ohio.com/automotive/)
[Polymers
\(http://jobs-ohio.com/polymers/\)](http://jobs-ohio.com/polymers/)
[Aerospace
& Aviation
\(http://jobs-ohio.com/aerospace/\)](http://jobs-ohio.com/aerospace/)
[Food
Processing
\(http://jobs-ohio.com/food/\)](http://jobs-ohio.com/food/)
[Financial
Services
\(http://jobs-ohio.com/financial/\)](http://jobs-ohio.com/financial/)
[Information
Technology
\(http://jobs-ohio.com/software/\)](http://jobs-ohio.com/information/)
[Headquarters
& Consulting
\(http://jobs-ohio.com/consumer/\)](http://jobs-ohio.com/headquarters/)

ABOUT US

WE'RE BUILDING BUSINESS IN A STATE KNOWN FOR IT.

WHAT IS JOBSOHIO?

JobsOhio is a private, nonprofit corporation guided by a business-minded Governor and a highly accomplished board of directors, designed to lead Ohio's job-creation efforts by singularly focusing on attracting and retaining jobs, with an emphasis on strategic industry sectors. Using a private-sector approach, JobsOhio speaks the language of business, enabling Ohio to be more nimble, flexible and competitive in its economic development efforts.

STRATEGIC FRAMEWORK

The JobsOhio Strategic Framework for 2012 is a dynamic tool meant to guide our efforts to grow the state's existing jobs base, attract new jobs, and secure investments in Ohio.

Inside the Strategic Framework is information about Ohio's strengths as a place to do business and key strategies for building upon those strengths. It also highlights the strategies for our nine target industries and four business functions, the predominant sectors that drive Ohio's economy.

As we move through the next several months, we will continually measure ourselves against these strategies and refine our efforts to ensure that Ohio is the first place companies consider for new business investments.

[Download PDF \(http://jobs-ohio.com/images/jobsohio_strategic_framework.pdf\)](http://jobs-ohio.com/images/jobsohio_strategic_framework.pdf) (14MB PDF)

EARLY RESULTS

<http://jobs-ohio.com/images/john-kasich.jpg>

In 2011, the Kasich Administration and JobsOhio worked with businesses of all sizes to secure 245 new investments, expansions and relocations, creating more than 21,000 new jobs and keeping nearly 62,000 existing ones. Overall, that equals nearly \$4.8 billion in new or saved payroll for the state. According to the U.S. Bureau of Labor Statistics, Ohio is 8th in the nation in job creation, and tops in the Midwest [Jan. – Oct. 2011]. [Learn more. \(http://jobs-ohio.com/images/jobsohio_overview.pdf\)](http://jobs-ohio.com/images/jobsohio_overview.pdf)

Business success and job creation benefits everyone. Let's find a way for you to grow right here in Ohio. Contact JobsOhio at (614) 224-6446 to get started.

Governor Kasich made job creation his top priority when he came into office. By establishing JobsOhio and implementing reforms that make state government more efficient and business friendly, he is helping to create a better environment for job growth.

Video: JobsOhio – Moving Ohio Ahead (<http://www.youtube.com/embed/f1k80n4j6rE?autoplay=1>)



JOBSOHIO TEAM

Mark D. Kvamme, President and Interim Chief Investment Officer
Kevin Giangola, Chief Finance Officer
Kip Wahlers, General Counsel

Managing Directors

John Minor (Financial Services, Agribusiness & Food Processing)
David Mustine (Energy, Chemicals & Polymers)
Mark Patton (BioHealth, Information Services, & Logistics)
Kristi Tanner (Advanced Manufacturing, Automotive, Aerospace & Aviation)

Communications Director

Laura Jones

Human Resources Director

Becky Fair

Accounting Policy Director

Bill Severns

Legislative & Community Outreach Director

Daryl Revoldt

Marketing Director

Marlon Cheatham

Project Finance Manager

Tracy Allen

Project Management Directors

Kristi Clouse
Nate Green

Project Managers

Patricia Beard
Matt Cybulski
Thomas Seward

Project Coordinator

Kevin Schneider

Site Selection Manager

Sheena Metzger

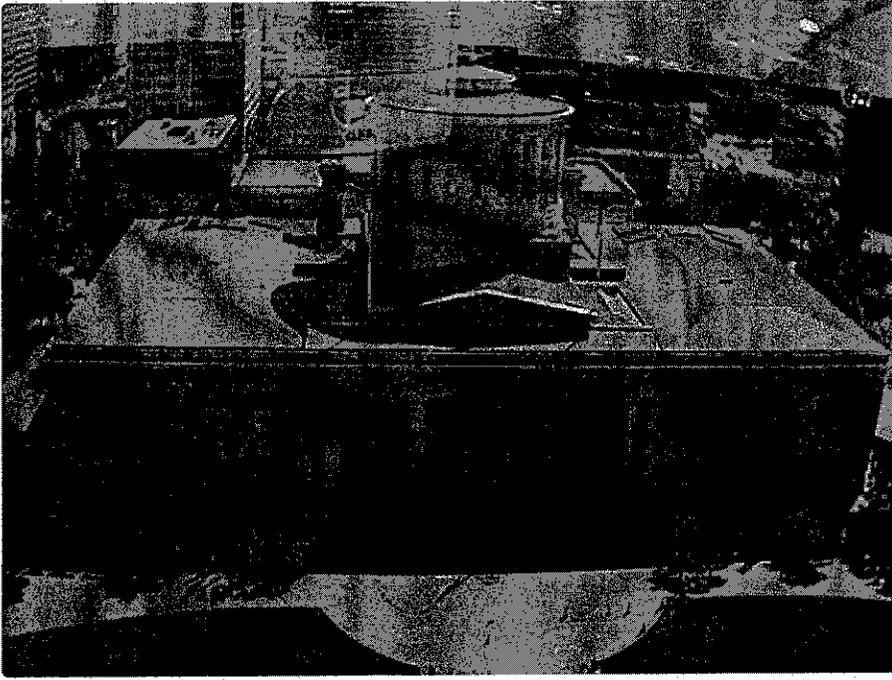
Foreign Direct Investment Manager

Mindy McLaughlin

Executive Assistants

Renee Colangeli
Haley Kothman

Office Manager



Erin Harper

BOARD OF DIRECTORS

BUSINESS DEVELOPMENT, DRIVEN BY BUSINESS LEADERS.

Makes sense, doesn't it? JobsOhio isn't your typical governmental agency. We're a corporate non-profit, run by people who bring proven experience with America's most successful corporations.



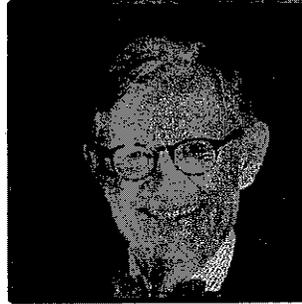
James C. Boland
Board Member

Retired Vice Chairman
Ernst & Young
Former President, CEO & Vice Chairman
Cavaliers Operating Company



Steven A. Davis
Board Member

Chairman of The Board & CEO
Bob Evans Farms Inc.



E. Gordon Gee
Board Member

President
The Ohio State University



C. Martin Harris, M.D.
Board Member

Chief Information Officer
Cleveland Clinic

CONTACT

THE BEST WAY TO LEARN ABOUT OHIO IS TO SEE US IN ACTION.



JobsOhio
41 S. High Street, Suite 1500
Columbus, Ohio 43215
Phone: 614-224-6446

James A. King
jking@porterwright.com

Porter Wright
Morris & Arthur LLP
41 South High Street
Suites 2800-3200
Columbus, Ohio 43215-6194

Direct: 614-227-2051
Fax: 614-227-2100
Toll free: 800-533-2794

www.porterwright.com

porterwright

CINCINNATI
CLEVELAND
COLUMBUS
DAYTON
NAPLES
WASHINGTON, DC

August 17, 2012

VIA E-MAIL (Victoria_ullmann@hotmail.com) & REGULAR
MAIL

Victoria E. Ullmann, Esq.
1135 Bryden Road
Columbus, Ohio 43205

RE: **State of Ohio ex rel. JobsOhio v.
Goodman**
Ohio Supreme Court
Case No. 12-1356

Dear Ms. Ullmann:

As I informed you earlier this week, we have been retained as special counsel to David Goodman, the Director of the Ohio Department of Commerce, in the above-referenced mandamus action that JobsOhio filed in the Ohio Supreme Court.

We wish again to encourage ProgressOhio.org, Inc. ("ProgressOhio") to participate in the proceedings as *amicus curiae*. While we intend to advance thoroughly the constitutional challenges that have been raised in opposition to R.C. 187 and R.C. 4313, we want to ensure that ProgressOhio's arguments, including the views of Mr. Skindell and Mr. Murray, are set out fully and fairly before the Court. Although you indicated in your voicemail message to me that you had not yet decided what you would do but expected that your response would be somewhat more aggressive, should ProgressOhio decide to seek leave to submit a brief with the Court as *amicus curiae*, we would not oppose it.

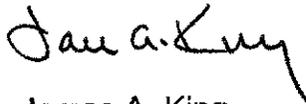
The parties in the mandamus action will be jointly filing a motion to expedite the briefing schedule, which would make our responsive pleading and any motion due on or before August 24, 2012. We ask that any brief that you intend to file on behalf of ProgressOhio is submitted on or before that date. Given that ProgressOhio has twice briefed the relevant constitutional issues with the lower courts, we assume that this accelerated calendar will not pose any undue burden on you or on ProgressOhio.

Ex 2

Victoria E. Ullmann, Esq.
August 17, 2012
Page 2

Thank you in advance for your courtesy and cooperation. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "James A. King". The signature is written in a cursive style with a large, sweeping "J" and "K".

James A. King

JAK

cc: L. Bradfield Hughes, Esq.

IN THE SUPREME COURT OF OHIO

JOBS OHIO,

CASE NUMBER 2012-13~~72~~⁵⁶

Relator

V.

DAVID GOODMAN,

Director Department of Commerce,

Respondent

And

PROGRESSOHIO.ORG. *et al.*

Intervening Respondents

**MOTION TO DISMISS OF INTERVENING RESPONDENTS, PROGRESSOHIO.ORG.
MICHAEL SKINDELL AND DENNIS MURRAY, JR.**

Intervening defendants move this court to dismiss this case for failure to state a claim upon which relief can be granted pursuant to S.Ct. Prac. R. X (5). This complaint is a thinly veiled request for declaratory judgment and must be dismissed for lack of jurisdiction.

MEMORANDUM IN SUPPORT

Under S.Ct.Prac.R. X(5), dismissal of an action is required “ ‘if it appears beyond doubt, after presuming the truth of all material factual allegations and making all reasonable inferences in favor of [relators], that [relators are] not entitled to the requested extraordinary relief in mandamus.’ *State ex rel. Rasul-Bey v. Onunwor* (2002), 94 Ohio St.3d 119, 120, 760 N.E.2d 421, quoting *State exrel. Crobaugh v. White* (2001), 91 Ohio St.3d 470, 471, 746 N.E.2d 1120.

Of course to be entitled to mandamus relief, the complaint must actually be a properly pled mandamus action. Mandamus is a writ, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, which requires first and foremost that a government official be ordered to undertake an affirmative duty. R.C. 2731.01. Mandamus actions are within the original jurisdiction of the Ohio Supreme Court is set forth in Article IV of the Ohio Constitution. The court does not have of original jurisdiction of declaratory judgment actions, and the General Assembly violates the principles of separation of powers if they attempt to expand the jurisdiction of the court over extraordinary writs to include a declaratory judgment action. *ProgressOhio v. Kasich*, (2011) 129 Ohio St. 3d 449, 2016-Ohio-4101.

This Court has decided a number of cases in the past twenty years which have established criteria for determining whether an extraordinary writ is genuine or nothing more than a sham being used by a relator to improperly invoke this Court's original jurisdiction. Although some relators have improperly used the writ form in the past, nothing compares with the collusion between the parties in this case.

This Court has held in *State ex rel. Grendell v. Davidson* (1999), 86 Ohio St.3d 629, 634, 716 N.E.2d 704 that if the real objects sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus and must be dismissed for want of jurisdiction. Further, even if there is some affirmative duty that the relator seeks to enforce, if the essence of relator's claims actually requires the use of a declaratory judgment and prohibitory injunction, it is not a mandamus case but a declaratory judgment action. *State ex rel. Satow v. Gausse-Milliken*, 98 Ohio St.3d 479, 2003-Ohio-2074. Furthermore, if the mandamus "does not provide effective relief unless accompanied by an ancillary [preventive] injunction, it

would appear that injunction rather than mandamus is the appropriate remedy.” *State ex rel. Corron v. Wisner* (1971), 25 Ohio St.2d 160, 163, 54 O.O.2d 281, 267 N.E.2d 308.

In its complaint, JobsOhio requests that this court determine the constitutionality of R.C. 187, the statute that conferred corporate powers on JobsOhio, in its entirety and to approve the transfer agreement. Complaints for a determination of the validity of a statute or a contract are both declaratory judgment actions. R.C. 2721.03. The request for an order requiring Director Goodman to sign the transfer agreement is ancillary to the validity determinations typical of declaratory judgments. Of course Director Goodman has to answer to the Governor who can simply order his cabinet member to sign the document without resort to a court case. If the court determines that R.C. 187.01 et seq. and R.C. 4313 are constitutional, Director Goodman states he will sign the document, no order requiring him to do it will be necessary. This is a declaratory judgment action and nothing more. It needs to be dismissed because it is not within the original jurisdiction of the court to hear it. Ohio Constitution Article IV.

. Since the issue of whether JobsOhio can even exist as a legal entity is subject to another appeal and that presents problems with it being a party requesting a writ here in addition to the basic jurisdictional problems. Of course if the Court determines in this action that the JobsOhio law is unconstitutional, another action will have to be filed to enjoin the not only the department of Commerce, but the Governor, the Office of Budget and Management, the Department of Development, and JobsOhio.

As stated in the Motion to Intervene, this case needs to be dismissed because it is the product of collusion. The relator and the respondent are not really adverse parties and have created this case to manipulate this court and its original jurisdiction improperly. This is not a true mandamus action and cannot be twisted into one by adding a request that the court order

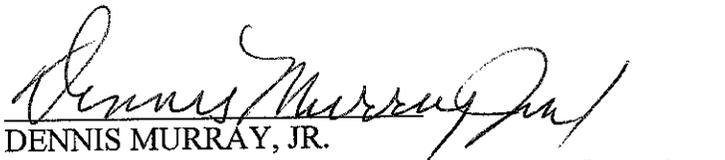
David Goodman to sign the transfer agreement. JobsOhio is not the proper relator on any claims regarding its constitutional ability to exist. JobsOhio and Director Goodman are not adverse parties in any real sense. A proper declaratory judgment and injunction action, which asks the court to do all these things is pending before the court. This collusive filing needs to be dismissed in favor of the properly brought declaratory judgment and injunction action, *ProgressOhio v. JobsOhio* 2012-1272.

This case is so stunningly unethical and collusive if this Court allows it to go forward it has abdicated its authority under Article IV of the Constitution and separation of powers is officially dead in this state.

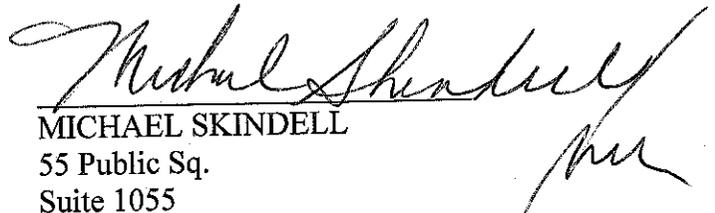
Respectfully submitted,



Victoria E. Ullmann 0031468
ATTORNEY FOR PROGRESSOHIO
1135 Bryden Road
Columbus, Ohio 43205
(614) 253-2692
Victoria_ullmann@hotmail.com



DENNIS MURRAY, JR.
111 East Shoreline Dr.
Sandusky, Ohio 44870
(419) 624-3000
dmj@murrayandmurray.com


MICHAEL SKINDELL
55 Public Sq.
Suite 1055
Cleveland, Ohio 44113
(216) 621-0070
Mskindell@aol.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent to the foregoing by regular U.S. mail on August __, 2012.

JAMES A. KING (0040270)
L. BRADFIELD HUGHES (0070997)
PORTER, WRIGHT, MORRIS & ARTHUR LLP
2900 Huntington Center
41 S. High Street
Columbus, OH 43215
jking@porterwright.com
bhughes@porterwright.com

*Attorney for Respondent David Goodman,
Director, Ohio Department of Commerce*

ANECA LASELY, Counsel of Record
SQUIRES, SANDERS DEMPSEY
41 South High Street, suite 2000
Columbus, Ohio 43215
(614)365-2830
Aneca.lasley@squiressanders.com

DOUGLAS R. COLE
ORGAN, COLE AND STOCK
1335 Dublin Road
Columbus, Ohio 43215
614-481-0902
drcole@ocslawfirm.com

Attorneys for Relator JobsOhio

IN THE SUPREME COURT OF OHIO

JOBS OHIO,

CASE NUMBER 2012-137~~7~~⁵⁶

Relator

V.

DAVID GOODMAN,

Director Department of Commerce,

Respondent

And

PROGRESSOHIO.ORG. *et al.*

Intervening Respondents

MEMORANDUM CONTRA RELATOR AND RESPONDENTS MOTION TO EXPEDITE
DETERMINATION OF THIS CASE

Intervening defendants request this court determine that this case should not be expedited in the event that it is allowed to remain on this court's docket. This motion is so remarkably bad it should be stricken in its entirety.

MEMORANDUM IN SUPPORT

Relator and respondent have filed a joint motion with this court to expedite their case. They rely on no court rule or procedure in making this request. They seem to claim that they have some right to this special treatment because R.C. 109.20 allows the Attorney General to designate a matter to be of such great public interest that it needs to be expedited by this court. However, intervenors cannot find any indication that Attorney General Richard Dewine has made any such determination. This motion was obviously written by counsel for JobsOhio,

which has no authority whatsoever to designate what is or is not in the public interest. Counsel for David Goodman merely agreed to it over the phone. Porter, Wright may be hired to represent David Goodman in this isolated case, but they are not cloaked in the authority of the Attorney General for the purpose of R.C. 109.20. This section does not allow that the decision of the public interest be determined by a designee and assigns this only to the Attorney General, an elected official that is accountable to the public. Porter, Wright is not the Attorney General and they did not even write the motion. They have no right or authority to determine the public interest in anyway.

Furthermore, the actual Attorney General's office has argued for the past year that issues of JobsOhio's unconstitutionality are not matters of great public interest and importance. Of course they really are, and this argument has always been a sham defense used to delay the determination of the constitutional issues. There is a declaratory judgment action pending before this court, *ProgressOhio, org. v. JobsOhio*, 2012-1272. The relator and the state should have filed their memorandum in that case conceding that this matter is one of great interest and importance, not spent the time fabricating this sham litigation. They have filed nothing as yet in the pre-existing case that has been pending before this Court since July 27.

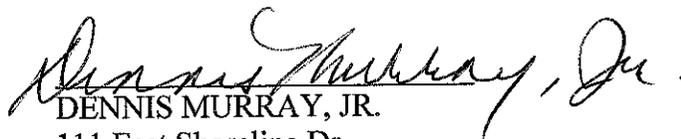
This motion appeared after counsel for ProgressOhio informed Mr. King that she did not consider filing an amicus brief in their case was the appropriate response, and to expect a response that was considerably more aggressive. This motion is a really obvious attempt to prevent this motion to intervene or other reaction to this sham litigation by the intervenors.

The relator and respondent indicate that they can get the briefing done immediately since, in the case of respondent, intervenors have already done most of the work and they just intend to copy it. Intervenors did present significant information to the inferior courts regarding these matters, but the bonding issue is complex that it could not be fully explored since the state refused to respond to the issues raised in that case.

Respectfully submitted,



Victoria E. Ullmann 0031468
ATTORNEY FOR PROGRESSOHIO
1135 Bryden Road
Columbus, Ohio 43205
(614) 253-2692
Victoria_ullmann@hotmail.com



DENNIS MURRAY, JR.
111 East Shoreline Dr.
Sandusky, Ohio 44870
(419) 624-3000
dmj@murrayandmurray.com



MICHAEL SKINDELL
55 Public Sq.
Suite 1055
Cleveland, Ohio 44113
(216) 621-0070
Mskindell@aol.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent to the foregoing by regular U.S. mail on August __, 2012.

JAMES A. KING (0040270)
L. BRADFIELD HUGHES (0070997)
PORTER, WRIGHT, MORRIS & ARTHUR LLP
2900 Huntington Center
41 S. High Street
Columbus, OH 43215
jking@porterwright.com
bhughes@porterwright.com

*Attorney for Respondent David Goodman,
Director, Ohio Department of Commerce*

ANECA LASELY, Counsel of Record
SQUIRES, SANDERS DEMPSEY
41 South High Street, suite 2000
Columbus, Ohio 43215
(614)365-2830
Aneca.lasley@squiressanders.com

DOUGLAS R. COLE
ORGAN, COLE AND STOCK
1335 Dublin Road
Columbus, Ohio 43215
614-481-0902
drcole@ocslawfirm.com

Attorneys for Relator JobsOhio

Transfer Agreement are subordinate and inferior to the Ohio Constitution which acts to prohibit such a long-term transfer of a revenue source away from Ohio's General Fund and beyond the biennial restriction contained in Ohio's Constitution.

3. Admitted, except that the Constitution does not grant to the Governor and his agencies the right or power to file a collusive action to obtain an advisory opinion from this Court, when the administration and agencies agree to a course of action and agree to what they believe is the desired outcome.

4. Admitted, except that the code sections cited are subordinate and inferior to Ohio's Constitution.

5. Intervenors admit that Respondent, David Goodman, acting in his capacity as the Director of the Ohio Department of Commerce, has refused to execute the Franchise and Transfer Agreement but otherwise deny the allegations set forth in paragraph 5.

6. Intervenors admit that Relators seek the relief set forth therein.

7. Intervenors deny the allegations of this paragraph on the basis that a collusive suit among members of the executive branch of government will not, in and of itself, provide a conclusive resolution to any and all questions regarding the constitutionality of the defined Legislation.

8. Intervenors admit that Relator JobsOhio purports to be a non-profit corporation duly registered to do business in the State of Ohio but deny that that is so. Intervenors admit the balance of the allegations set forth in paragraph 8.

9. Admitted.

10. Admitted.

11. Intervenor state that the sections of Ohio Code speak for themselves and that no further answer is required but to the extent that that is not the case, Intervenor deny the allegations of paragraph 11. Intervenor otherwise deny the allegations in paragraph 11 including the allegation that JobsOhio's existence actually began on the date of the filing of the Articles of Incorporation because JobsOhio is void *ab initio* because its formation and existence violate the Ohio Constitution.

12. Intervenor admit that JobsOhio is excepted from a substantial number of provisions of Ohio's non-profit corporation law and otherwise deny the allegations of paragraph 12.

13. Intervenor state that the uncodified section of Am.Sub.H.B. 153 speaks for itself and that no further response is required but to the extent that that is not the case, Intervenor deny the allegations of paragraph 13.

14. Intervenor state that the section of code quoted and referenced speaks for itself and that no further response is required but to the extent that that is not the case, Intervenor deny the allegations of paragraph 14.

16. Intervenor state that the sections of the Ohio code referenced speak for themselves and that no further response is required but to the extent that that is not the case, Intervenor deny the allegations of paragraph 16.

17. Intervenor state that the sections of the Ohio code quoted and referenced speak for themselves and that no further response is required but to the extent that that is not the case, Intervenor deny the allegations of paragraph 17.

18. The section of the Ohio code quoted speaks for itself and Intervenors state that no further response is required but to the extent that that is not the case, Intervenors deny the allegations of paragraph 18.

19. Admitted.

20. Intervenors state that the section of the Ohio code quoted and referenced speaks for itself and that no other response is required but to the extent that that is not the case, Intervenors deny the allegations of paragraph 20.

21. Intervenors state that the section of the Ohio code quoted and referenced speaks for itself and that no other response is required but to the extent that that is not the case, Intervenors deny the allegations of paragraph 21.

22. Admitted.

23. Admitted.

24. Intervenors are without a sufficient basis to admit or deny the allegations contained in paragraph 24.

25. Intervenors are without a sufficient basis to admit or deny the allegations of paragraph 25.

26. Admitted.

27. Admitted.

28. Admitted.

29. Intervenors are without a sufficient basis to admit or deny the allegations regarding the manner in which the contract to provide for the continuing operation of the Liquor Enterprise was negotiated and when the Agreement was finalized.

30. Admitted.

31. Admitted.

32. Admitted.

33. Intervenors are without a sufficient basis to admit or deny the allegations contained in paragraph 33.

34. Intervenors are without a sufficient basis to admit or deny the allegations contained in paragraph 34 regarding the consultation of Respondent Goodman and otherwise state that the section of the Ohio code referenced speaks for itself and that no further response is required but to the extent that that is not the case, Intervenors deny the allegations of paragraph 34.

35. Admitted.

36. Intervenors admit that the Franchise and Transfer Agreement complies with the requirements imposed by Ohio Revised Code Chapter 4313 but specifically deny that Agreement complies with all applicable legal requirements given its multiple violations of the Ohio Constitution to which the Ohio code is subordinate and inferior.

37. Admitted.

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted.

44. Intervenors admit that the seven specific constitutional challenges listed regarding the Legislation had been made by, among others, themselves, but deny that there are only seven

primary constitutional challenges, and specifically note that the Intervenors have further challenged the statutory scheme on the basis that the interplay between the 90 day statute of limitations, which is part of the statutory scheme and the actions of the Relator, Respondent and other members of the Executive have combined to violate the Constitution by improperly denying the judicial branch the opportunity to exercise its constitutional obligation to evaluate the constitutionality of the Legislation.

46. Intervenors admit that Respondent Goodman has taken an oath to uphold the Ohio Constitution and further admit that he has purported to make a statement that is quoted in paragraph 46 but otherwise deny the allegations contained in this paragraph.

47. Admitted.

48. Intervenors are unable to state whether the anticipated future actions of JobsOhio will occur and otherwise state that the sections of the Ohio code quoted and referenced speak for themselves and that no further response is required but to the extent that that is not the case, Intervenors deny the allegations of paragraph 48.

49. Intervenors repeat and reallaege each and every one of the foregoing responses to the allegations of the Complaint.

50. Intervenors deny that Relator has a clear legal right to have Respondent execute the Franchise and Transfer Agreement and that to do so would violate the Ohio Constitution in multiple ways. Intervenors admit the balance of the allegations contained in paragraph 50.

51. Intervenors state that the sections of the Ohio code quoted and referenced speak for themselves and that no further response is required but to the extent that that is not the case, Intervenors deny the allegations of paragraph 51.

52. Intervenor's are without a sufficient basis to know all of Respondent Goodman's reasons for refusing to execute the Franchise and Transfer Agreement but admit that the sole basis which he has publicly stated is that there have been constitutional challenges made to this Legislation and that no court has had an opportunity to address the merits of these challenges. Intervenor's otherwise deny the allegations of paragraph 52.

53. Denied.

54. Denied.

55. Denied.

AFFIRMATIVE DEFENSES

1. Relator fails to state a claim upon which relief can be granted.
2. Relator has failed to name a necessary and indispensable party.
3. Relator's claims are barred by the Doctrines of Laches, Waiver and Estoppel.
4. There is no actual claim in controversy. The Relator and Respondent are in accord regarding the desired outcome of the litigation which therefore lacks the true opposition and advocacy which is necessary to litigation.
5. The Legislation violates Article XIII, Section 1 of the Ohio Constitution because it is a special act conferring corporate powers.
6. The Legislation violates Article XIII, Section 2 of the Ohio Constitution by purporting to create JobsOhio which is not formed under the general laws of the state.
7. The Legislation violates Article VIII, Sections 1 and 3 of the Ohio Constitution because it purports to authorize the issuance of bonds prohibited by Sections 1 and 3 and does not authorize special "fund" bonds consistent with that exception recognized by the Ohio Supreme Court.

8. The Legislation and the associated bonding scheme violate Article II, Section 22 of the Ohio Constitution by taking these revenues, which have long been part of the General Fund, out of the control of the General Assembly and beyond the biennium.

9. The Legislation violates Article I, Section 16 of the Ohio Constitution by closing Ohio's courts to citizens of this state and denying them due process and an opportunity to enforce the provisions of their constitution.

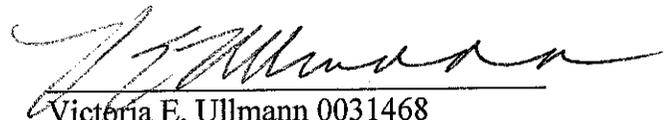
10. The Legislation violates Article XIII, Section 4 of the Ohio Constitution by impermissibly lending credit to a private corporation.

11. The Legislation violates the principle of separate of powers among the coordinate branches of Ohio government created by the Ohio Constitution.

12. The Legislation, specifically Am.Sub.H.B. 153 violates the "one-subject rule" of Article II, Section 15.

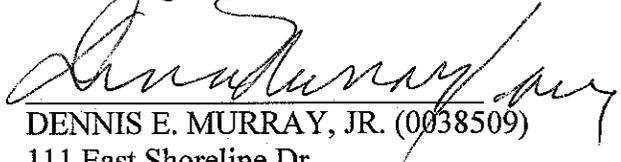
WHEREFORE, Intervenors respectfully request that the Relator's Complaint be dismissed with prejudice at Relator's cost.

Respectfully submitted,



Victoria E. Ullmann 0031468
ATTORNEY FOR PROGRESSOHIO.ORG
1135 Bryden Road
Columbus, Ohio 43205
614-253-2692


MICHAEL J. SKINDELL (0039041)
55 Public Square, Suite 1055
Cleveland, OH 44113
(216)-621-0070
mkindell@aol.com


DENNIS E. MURRAY, JR. (0038509)
111 East Shoreline Dr.
Sandusky, Ohio 44870
(419) 624-3000
dmj@murrayandmurray.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent to the foregoing by regular U.S. mail on August 20, 2012.

JAMES A. KING (0040270)
L. BRADFELD HUGHES (0070997)
PORTER, WRIGHT, MORRIS & ARTHUR LLP
2900 Huntington Center
41 S. High Street
Columbus, OH 43215
jkking@porterwright.com
bhughes@porterwright.com

*Attorney for Respondent David Goodman,
Director, Ohio Department of Commerce*

ANECA LASELY, Counsel of Record
SQUIRES, SANDERS DEMPSEY
41 South High Street, suite 2000
Columbus, Ohio 43215
(614)365-2830
Aneca.lasley@squiressanders.com

DOUGLAS R. COLE
ORGAN, COLE AND STOCK
1335 Dublin Road
Columbus, Ohio 43215
614-481-0902
drcole@ocslawfirm.com