

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.	:	Case No. 12-1356
JOB SOHIO,	:	
41 South High Street, Suite 1500	:	ORIGINAL ACTION
Columbus, OH 43215,	:	IN MANDAMUS
	:	
Relator,	:	
v.	:	
	:	
DAVID GOODMAN,	:	
DIRECTOR, OHIO DEPARTMENT	:	
OF COMMERCE,	:	
77 South High Street, 23rd Floor	:	
Columbus, OH 43215,	:	
	:	
Respondent.	:	

**ANSWER OF RESPONDENT DAVID GOODMAN, DIRECTOR,
OHIO DEPARTMENT OF COMMERCE**

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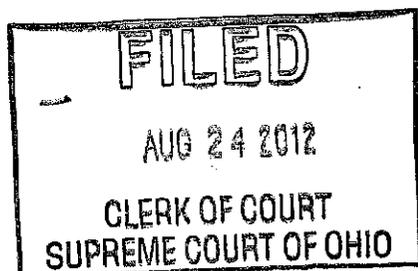
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**ANSWER OF RESPONDENT DAVID GOODMAN, DIRECTOR,
OHIO DEPARTMENT OF COMMERCE**

For his Answer to the Complaint in Mandamus of Relator, State of Ohio *ex rel.* JobsOhio, Respondent David Goodman, Director of the Ohio Department of Commerce, states as follows:

FIRST DEFENSE

1. Respondent admits the allegations contained in Paragraph 1 of the Complaint.
2. Respondent admits the allegations contained in Paragraph 2 of the Complaint.
3. Respondent admits the allegations contained in Paragraph 3 of the Complaint.
4. Respondent admits the allegation contained in Paragraph 4 of the Complaint that R.C. 4313.02(C) provides that Respondent, along with the Director of the Office of Budget and Management, “shall execute the transfer agreement on behalf of the state.” Respondent further admits that Section 229.10 of Am. Sub. H.B. No. 153 provides that the Franchise and Transfer Agreement “shall be executed by

[Respondent] upon its completion.” Further answering, Respondent denies the remaining allegations contained in Paragraph 4 of the Complaint.

5. Respondent admits the allegations contained in Paragraph 5 of the Complaint.
6. Respondent admits the allegations contained in Paragraph 6 of the Complaint.
7. Respondent admits the allegations contained in Paragraph 7 of the Complaint.
8. Respondent admits the allegations contained in Paragraph 8 of the Complaint.
9. Respondent admits the allegations contained in Paragraph 9 of the Complaint.
10. Respondent admits the allegations contained in Paragraph 10 of the Complaint.
11. Respondent admits the allegation contained in Paragraph 11 of the Complaint that R.C. 187.01 authorizes the governor “to form a nonprofit corporation, to be named ‘JobsOhio,’ with the purposes of promoting economic development, job creation, job retention, job training, and the recruitment of business to this state.” Respondent also admits that R.C. 187.01 provides that the governor shall sign and file articles of incorporation for JobsOhio with the Secretary of State, and that the existence of JobsOhio shall begin upon the filing of the articles.
Further answering, Respondent denies the remaining allegations contained in Paragraph 11 of the Complaint.
12. Respondent admits the allegations contained in Paragraph 12 of the Complaint.
13. Respondent admits the allegations contained in Paragraph 13 of the Complaint.
14. Respondent admits the allegations contained in Paragraph 14 of the Complaint.
15. Respondent admits the allegations contained in Paragraph 15 of the Complaint.
16. Respondent admits the allegations contained in Paragraph 16 of the Complaint.
17. Respondent admits the allegations contained in Paragraph 17 of the Complaint.
18. Respondent admits the allegations contained in Paragraph 18 of the Complaint.

19. Respondent admits the allegations contained in Paragraph 19 of the Complaint.
20. Respondent admits the allegations contained in Paragraph 20 of the Complaint.
21. Respondent admits the allegations contained in Paragraph 21 of the Complaint.
22. Respondent admits the allegations contained in Paragraph 22 of the Complaint.
23. Respondent admits the allegations contained in Paragraph 23 of the Complaint.
24. Respondent admits the allegations contained in Paragraph 24 of the Complaint.
25. Respondent admits the allegations contained in Paragraph 25 of the Complaint.
26. Respondent admits the allegations contained in Paragraph 26 of the Complaint.
27. Respondent admits the allegations contained in Paragraph 27 of the Complaint.
28. Respondent admits the allegations contained in Paragraph 28 of the Complaint.
29. Respondent admits the allegations contained in Paragraph 29 of the Complaint.
30. Respondent admits the allegations contained in Paragraph 30 of the Complaint.
31. Respondent admits the allegations contained in Paragraph 31 of the Complaint.
32. Respondent admits the allegations contained in Paragraph 32 of the Complaint.
33. Respondent admits the allegations contained in Paragraph 33 of the Complaint.
34. Respondent admits the allegations contained in Paragraph 34 of the Complaint.
35. Respondent admits the allegations contained in Paragraph 35 of the Complaint.
36. Respondent admits the allegation contained in Paragraph 36 of the Complaint that the terms of the proposed Franchise and Transfer Agreement comply with R.C. Chapter 4313. Further answering, Respondent denies the remaining allegations contained in Paragraph 36 of the Complaint.
37. Respondent admits the allegations contained in Paragraph 37 of the Complaint.
38. Respondent admits the allegations contained in Paragraph 38 of the Complaint.
39. Respondent admits the allegations contained in Paragraph 39 of the Complaint.

40. Respondent admits the allegations contained in Paragraph 40 of the Complaint.
41. Respondent admits the allegations contained in Paragraph 41 of the Complaint.
42. Respondent admits the allegations contained in Paragraph 42 of the Complaint.
43. Respondent admits the allegations contained in Paragraph 43 of the Complaint.
44. Respondent admits the allegations contained in Paragraph 44 of the Complaint.
45. Respondent denies the allegations contained in Paragraph 45 of the Complaint.
46. Respondent admits the allegation contained in Paragraph 46 of the Complaint that the terms of the proposed Franchise and Transfer Agreement comply with R.C. 4312.02(G). Respondent also admits that, citing his oath of office to uphold the Ohio Constitution, his August 9, 2012 letter, attached to the Kvamme affidavit as Exhibit 7, states that he declined to execute the proposed Franchise and Transfer Agreement “until the Supreme Court is given an opportunity to address the merits of these [constitutional] claims.” Further answering, Respondent denies the remaining allegations contained in Paragraph 46 of the Complaint.
47. Respondent admits the allegations contained in Paragraph 47 of the Complaint.
48. Respondent is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 48 of the Complaint.
49. For his response to Paragraph 49 of the Complaint, Respondent hereby incorporates Paragraphs 1 through 48, inclusive, of this Answer as if fully set forth herein.
50. Respondent admits the allegations contained in Paragraph 50 of the Complaint that the Franchise and Transfer Agreement has been negotiated, approved, and signed in accordance with R.C. 4313.02(C)(2) by all necessary parties except

Respondent. Further answering, Respondent denies the remaining allegations contained in Paragraph 50 of the Complaint.

51. Respondent admits the allegation contained in Paragraph 51 of the Complaint that R.C. 4313.02(C) provides that Respondent, along with the Director of the Office of Budget and Management, shall execute the Franchise and Transfer Agreement on behalf of the State. Respondent admits that Section 229.10 of Am. Sub. H.B. No. 153 provides that the agreement “shall be executed by [Respondent] upon its completion.” Respondent also admits that Relator and Respondent have satisfied all factual prerequisites and all legal prerequisites under R.C. Chapter 4313 to executing the Franchise and Transfer Agreement. Further answering, Respondent denies the remaining allegations contained in Paragraph 51 of the Complaint.

52. Respondent admits the allegation contained in Paragraph 52 of the Complaint that the sole reason he refused to execute the Franchise and Transfer Agreement is because there have been constitutional challenges made to the Legislation, the merits of which no court has addressed. Further answering, Respondent denies the remaining allegations contained in Paragraph 52 of the Complaint.

53. Respondent admits the allegations contained in Paragraph 53 of the Complaint.

54. Respondent admits the allegation contained in Paragraph 54 of the Complaint.

55. Respondent denies the allegations contained in Paragraph 55 of the Complaint.

SECOND DEFENSE

56. Respondent cannot, consistent with his oath to uphold the Constitution, execute the Franchise and Transfer Agreement until the Supreme Court of Ohio has an

opportunity to decide the merits of the constitutional challenges that have been raised against R.C. Chapter 187 and R.C. Chapter 4313.

57. Article XIII, Section 1 of the Ohio Constitution provides that the General Assembly shall pass no special act conferring corporate powers. R.C. Chapter 187 violates Article XIII, Section 1 to the extent that, in authorizing the establishment of JobsOhio, it constitutes a special act conferring corporate powers.

THIRD DEFENSE

58. Article XIII, Section 2 of the Ohio Constitution requires that corporations be formed under the general laws. R.C. 187.01 violates Article XIII, Section 2 to the extent that it forms JobsOhio outside the general laws of this State.

FOURTH DEFENSE

59. Article 1, Section 16 of the Ohio Constitution requires that the courts be open so that injured parties may obtain a remedy by due process. R.C. 187.09(C) violates Article 1, Section 16 to the extent that the sixty-day limitations period prescribed therein closes precludes parties injured by JobsOhio from obtaining a remedy by due process in court.

FIFTH DEFENSE

60. Article VIII, Section 4 of the Ohio Constitution prohibits the credit of the State from being given or loaned to, or in aid of, a corporation. Section 4 further prohibits the State from becoming a joint owner or stockholder in any company. R.C. Chapter 187 and R.C. Chapter 4313 violate Article VIII, Section 4 to the extent that they permit the credit of the State to be given or loaned to, or in aid of, JobsOhio, or authorize the State to become a joint owner or stockholder in JobsOhio.

SIXTH DEFENSE

61. Article II, Section 22 of the Ohio Constitution provides that no appropriation shall be made for a longer period than two years. R.C. Chapter 4313 violates Article II, Section 22 to the extent that the transfer to JobsOhio of all liquor revenues for the next twenty-five years results in an appropriation being made for a period longer than two years.

SEVENTH DEFENSE

62. Article VIII of the Ohio Constitution places specific limits on debts that may be incurred on behalf of the State. R.C. Chapter 4313 violates Article VIII to the extent that it authorizes the State to incur debt outside these limits.

EIGHTH DEFENSE

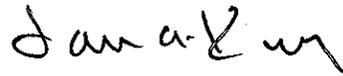
63. Article II, Section 15(D) of the Ohio Constitution provides that no bill shall contain more than one subject. Am.Sub.H.B. No. 153, the enacted bill of which R.C. Chapter 4313 was a part, violates the "one-subject" rule prescribed by Article II, Section 15(D) to the extent that it contains more than one subject.

64. For each of the foregoing reasons, Relator has failed to state a claim against Respondent upon which relief may be granted.

WHEREFORE Respondent David Goodman, Director, Ohio Department of Commerce, having fully answered the allegations contained in Relator's Complaint, prays that the Complaint be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Answer was served via ordinary U.S. mail, postage, prepaid, upon the following Counsel for Relator on this 24th day of August 2012:

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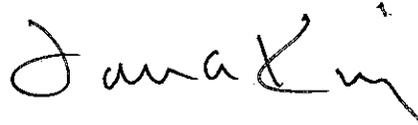
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