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PROGRESSOHIO.ORG,
SENATOR MICHAEL SKINDELL, AND
REPRESENTATIVE DENNIS MURRAY, JR.*

**MOTION FOR JUDGMENT ON THE PLEADINGS OF RESPONDENT
DAVID GOODMAN, DIRECTOR, OHIO DEPARTMENT OF COMMERCE,
PURSUANT TO S.CT.PRAC.R. 10.5(B)**

Now comes Respondent, David Goodman, Director of the Ohio Department of Commerce (the "Director"), and moves the Court for judgment on the pleadings pursuant to Rule 10.5(B) of the Court's Rules of Practice. In light of the Director's Answer, filed contemporaneously herewith, in which the Director admits all material facts alleged in Relator's Complaint, the Director submits that the Court may resolve the purely legal questions presented in this original action. In accordance with Rule 14.4(A) of the Rules of Practice, this Motion is supported by the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF
RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

I. INTRODUCTION

Relator JobsOhio seeks a writ of mandamus compelling Respondent David Goodman, Director of the Ohio Department of Commerce (“ODC”), to execute a Franchise and Transfer Agreement through which ODC would transfer the State Liquor Enterprise (the “Liquor Enterprise”) to JobsOhio Beverage System, a wholly-owned subsidiary of JobsOhio, for a term of twenty-five years. The Director of the Office of Budget and Management (“OBM”), JobsOhio, and ODC have negotiated the terms and conditions that govern the transfer of the Liquor Enterprise to JobsOhio. On August 8, 2012, JobsOhio and OBM’s Director executed the Franchise and Transfer Agreement and then forwarded it to the Director for signature.

R.C. 4313.02(C)(2) provides that the Director “shall” execute the Franchise and Transfer Agreement upon its presentment. The Director has respectfully declined, however, due to several constitutional challenges that have been made in the lower courts in opposition to the legislation establishing JobsOhio, R.C. Chapter 187 (the “JobsOhio Act”), and authorizing the transfer of the Liquor Enterprise to JobsOhio, R.C. Chapter 4313 (the “Transfer Act”). Although no Ohio court has addressed the merits of these constitutional challenges, two lower courts in a separate civil action have characterized these challenges as “understandable” and “significant.” In light of these concerns, the Director concluded that he could not sign the Franchise and Transfer Agreement consistent with his oath of office unless and until the Ohio Supreme Court was afforded an opportunity to address the merits of these constitutional challenges.

The Director, therefore, respectfully submits that he does not have a clear legal duty to sign the Franchise and Transfer Agreement unless and until this Court decides whether the JobsOhio Act and the Franchise Act violate the provisions of the Ohio Constitution that are set forth below. Judicial review would remove any cloud of uncertainty, allow JobsOhio to proceed with its \$1.4 billion bond offering to fund the twenty-five-year transfer of the Liquor Enterprise, and enable JobsOhio to maximize the resources available for job creation and economic development in the State of Ohio.

II. BACKGROUND AND STATEMENT OF THE CASE

The Director does not dispute the assertions in the Background section of Relator's Memorandum in Support of its Complaint. Nor does the Director challenge the averments contained in the supporting Affidavit of Mark Kvamme or the attachments to Mr. Kvamme's Affidavit. As required under this Court's Rules of Practice, the Director has filed an Answer contemporaneously herewith, admitting all material facts alleged in Relator's Complaint. The Director now moves for judgment on the pleadings.¹

III. REQUIREMENTS FOR ISSUANCE OF A WRIT OF MANDAMUS

In order for this Court to issue a writ of mandamus compelling the Director to execute the Franchise and Transfer Agreement, the Court must conclude that: (1) Relator has a clear legal right to the requested relief; (2) the Director has a clear legal duty to execute the Transfer Agreement; and (3) Relator lacks an adequate remedy in

¹ The Rules of Practice contemplate that this Court may issue an alternative writ and schedule for presentation of evidence and briefs, but Respondent submits that an alternative writ is unnecessary here. In light of Respondent's Answer, there is no factual dispute requiring the presentation of evidence. Through Relator's Memorandum in Support of its Complaint, this Motion, and any opposition that Relator may file in response, the parties will have adequately briefed the legal issues presented.

the ordinary course of law. *State ex rel. Lane v. Pickerington*, 130 Ohio St.3d 225, 226, 2011-Ohio-5454, 957 N.E.2d 29. The Director does not dispute that Relator has established the first and third elements necessary for issuing a writ of mandamus. But the Director disagrees with Relator's claim under the second element. The Director does not believe that he has a clear legal duty to execute the Franchise and Transfer Agreement pursuant to R.C. 4313.02(C) given the constitutional challenges that have been raised in opposition to the JobsOhio Act and the Transfer Act. If the Court agrees with Relator that these challenges have no merit, then the Director must concede that he has such a clear legal duty. In that event, the Court should issue a writ compelling the Director to execute the Franchise and Transfer Agreement.

The Director submits that this mandamus action is properly before the Court. The Court has previously issued a writ of mandamus to compel a state officer to comply with a statutory duty to issue bonds, after that state officer expressed concerns over the constitutionality of the action sought to be compelled. *E.g., State ex rel. Duerk v. Donahey*, 67 Ohio St.2d 216, 423 N.E.2d 429 (1981). Indeed, mandamus actions like this one are often brought directly before this Court to address the constitutionality of legislation. *See, e.g., State ex rel. Petroleum Underground Storage Tank Release Comp. Bd. v. Withrow*, 62 Ohio St.3d 111, 579 N.E.2d 705 (1991) (writ of mandamus allowed in case challenging constitutionality of statute authorizing issuance of revenue bonds); *State ex rel. Ohio Funds Mgt. Bd. v. Walker*, 55 Ohio St.3d 1, 561 N.E.2d 927 (1990) (writ of mandamus denied when Court found statute creating Ohio Funds Management Board was unconstitutional); *State ex rel. Shkurti v. Withrow*, 32 Ohio St.3d 424, 513 N.E.2d 1332 (1987) (writ of mandamus to compel issuance of bonds to repay advances denied when Article VIII, Sections 1 and 3 were violated); *State ex rel.*

Bd. of Cty. Commrs. v. Mong, 12 Ohio St.3d 66, 465 N.E.2d 428 (1984) (writ of mandamus allowed in case testing constitutionality of county resolution authorizing issuance of bonds). Consistent with *Duerk* and this other precedent, the Director respectfully urges the Court to address the merits of the constitutional challenges that have been made against the JobsOhio Act and the Transfer Act.

IV. CONSTITUTIONAL CHALLENGES TO THE JOBSOHIO ACT AND THE TRANSFER ACT

As stated in Relator's Complaint and Memorandum in Support, as well as in the Director's August 9, 2012 letter to Mark Kvamme, JobsOhio's Interim President and Chief Investment Officer (attached as Exhibit 7 to Mr. Kvamme's Affidavit in support of Relator's Complaint), the Director believes that his oath of office to uphold the Ohio Constitution precludes him from executing the Franchise and Transfer Agreement until this Court has the opportunity to address the merits of the following seven constitutional challenges to the JobsOhio Act and the Transfer Act:

- 1) Whether the JobsOhio Act violates Article XIII, Section 1 of the Ohio Constitution, which forbids the General Assembly from conferring corporate powers through a special act;
- 2) Whether the JobsOhio Act violates Article XIII, Section 2, which requires that all corporations be formed under the general laws;
- 3) Whether the JobsOhio Act violates Article I, Section 16, which requires that courts be open so that injured parties may obtain a remedy by due process;
- 4) Whether the JobsOhio Act or the Transfer Act violates Article VIII, Section 4, which prohibits the State from lending credit to a private corporation;
- 5) Whether the Transfer Act violates Article II, Section 22 by requiring legislative appropriations extending past a biennium;

- 6) Whether the Transfer Act results in the State's issuance of debt in excess of the limits set in Article VIII; and
- 7) Whether the Transfer Act violates the "one-subject" rule of Article II, Section 15.

As noted above, two lower courts – the Franklin County Common Pleas Court and the Tenth District Court of Appeals – in separate litigation characterized these constitutional questions as “understandable” and “significant,” respectively. See *ProgressOhio.org, Inc. et al. v. JobsOhio*, Franklin C. P. No. 11 CVHo8 10807, Decision and Entry at 30 (Dec. 2, 2011); *ProgressOhio.org, Inc. et al. v. JobsOhio*, 10th Dist. No. 11AP-1136, 2012-Ohio-2655, ¶ 31.² Neither court, however, reached the merits of the constitutional claims because both agreed that the claimants in that litigation, ProgressOhio.org and two state legislators, lacked standing.³ *Id.*

If the Court accepts the merits of the constitutional challenges advanced in this Motion, then the writ of mandamus should be denied and this original action should be dismissed. In the alternative, however, if the Court rejects the merits of these constitutional challenges, then, under Rule 10.5(C), the Court should issue a peremptory writ of mandamus compelling the Director to execute the Transfer Agreement pursuant to R.C. 4313.02(C)(2).

² Each of these seven constitutional challenges originated with the plaintiffs/appellants in this separate litigation. Those constitutional challenges, as first articulated by these plaintiffs/appellants, are set out in greater detail in this Motion.

³ On August 20, 2012, the plaintiffs/appellants in this separate litigation – ProgressOhio.org, Senator Michael J. Skindell, and Representative Dennis E. Murray – moved to intervene as parties in this proceeding. For the reasons that will be expressed in Respondent's response to that motion, Respondent can adequately represent any interest that proposed-intervenors may claim regarding the subject matter of this action. While there is no valid reason for them to intervene as parties, Respondent has no objection to proposed intervenors' participation in this case as *amici curiae*.

A. The JobsOhio Act Violates Article XIII, Section 1 Of The Ohio Constitution, Which Forbids The General Assembly From Conferring Corporate Powers Via Special Act.

Article XIII, Section 1 of the Ohio Constitution provides that “[t]he General Assembly shall pass no special act conferring corporate powers.” Adopted at the 1851 Constitutional Convention, this Section was designed to prevent the State’s involvement “in the subsidization of private companies and the granting of special privileges in corporate charters.” *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 464, 1999-Ohio-123, 715 N.E.2d 1062. In particular, the General Assembly’s passage of “a number of Acts * * * designed to loan credit or give financial aid to private canal, bridge, turnpike, and railroad companies” caused the total state debt to increase dramatically between 1825 and 1840. *Id.* Some of the state-subsidized canal, bridge, turnpike, and railroad companies misused eminent domain powers and engaged in other financial abuses. *See II Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio, 1850-51*, 176–178 (J.V. Smith reporter, 1851) (hereinafter “*Debates*”). “The public began to bemoan the taxes imposed on them for the benefit of private companies and the losses incurred by the state when subsidized corporations failed.” *Sheward*, 86 Ohio St.3d at 464.

Article XIII, Section 1 was proposed to curb these abuses and bar the grant of corporate powers through a special act by requiring that all corporations be subject equally to the general law. *See I Debates* at 340-363. As one delegate explained during the debates:

It is well known that special charters are always ‘got through’ our Legislature at will, and it must be evident that it always will be so, in the absence of a constitutional prohibition. When was there ever an instance within the recollection of the oldest legislator on this floor, where a single special act of

incorporation was defeated—I mean an act applying to any subject matter embraced in this report. * * * It is but too generally known, that these ‘special acts’ are ‘got through’ by a log-rolling system as it is called, the friends of one ‘bill’ voting for the bills of others, in consideration of their aid, when the final vote is taken upon his own. These acts will always pass a legislative body—the ‘dignity’ and ‘purity’ of your General Assembly to the contrary, notwithstanding. Any association of capitalists, who ask for a right of way, through any part of the country, will always get it, and ten thousand remonstrances might be sent up in vain. A single member could carry it through the Legislature, if each other member had had a bill of his own for similar acts of [incorporation].

Sheward, 86 Ohio St.3d at 495, quoting I *Debates* at 351.

Not long after the Constitutional Convention, this Court was given an opportunity to apply the proscription contained in Article XIII, Section 1. In *Atkinson v. Marietta & C.R. Co.*, 15 Ohio St. 21 (1864), the Court held that an act giving effect to the sale of a railroad company and authorizing its purchasers to reorganize, create new stock, and elect another board of directors was unconstitutional. Subsequently, the Court confirmed that, in all cases, “[t]he general assembly cannot, by a special act, create a corporation.” *State ex rel. Atty. Gen. v. Cincinnati*, 20 Ohio St. 18, 36 (1870). In the words of this Court:

Nor does it make any difference, within the meaning of the constitutional inhibition, whether the effect of the special act is to confer additional corporate power on an existing corporation or to create a new one. The power is explicitly denied to the legislature of accomplishing such a result by special act.

State ex rel. Atty. Gen. v. Cincinnati, 23 Ohio St. 445, 466-467 (1872). A “special act,” according to the Court, “is one that is local and temporary in its operation.” *State ex rel. Ohio Tpk. Comm. v. Allen*, 158 Ohio St. 168, 172, 107 N.E.2d 345 (1952).

The Court has interpreted Article XIII, Section 1 as applying to “such powers as are usually conferred upon corporations.” *State ex rel. Knisely v. Jones*, 66 Ohio St. 453, 488, 64 N.E. 424 (1902). In *Knisely*, for example, the Court held that an act providing for the organization and support of a police force for the city of Toledo, to be funded by a tax levied on all taxable property within the city, conferred corporate powers in contravention of Article XIII, Section 1. *Id.* Likewise, in *Cincinnati v. Trustees of Cincinnati Hosp.*, 66 Ohio St. 440, 64 N.E. 420 (1902), the Court held that an act authorizing a hospital board of trustees to issue bonds to raise funds required for a contemplated hospital extension and to levy a tax on all taxable city property for the bonds’ redemption conferred corporate powers by special act in violation of Article XIII, Section 1. And, in *Platt v. Craig*, 66 Ohio St. 75, 63 N.E. 594 (1902), the Court held that an act authorizing “any city of the third grade of the first class” to “construct, reconstruct, enlarge or repair a bridge or bridges across any navigable river or rivers, passing into or through such city” conferred corporate powers on a municipality by special act in violation of Article XIII, Section 1.⁴

The JobsOhio Act at issue here is a “special act” that violates Article XIII, Section 1. The JobsOhio Act authorizes the creation of a private, non-profit corporation by the State. R.C. 187.01 (authorizing the governor “to form a nonprofit corporation”). The statute prescribes comprehensive requirements for the establishment of this new corporation, including, among other things, the filing of articles of incorporation, *id.*; the designation of the corporation’s name, 187.01(A); the creation of and appointments

⁴See also *State ex rel. Drake v. Roosa*, 11 Ohio St. 16, 22 (1860) (“This law provided for the formation of a corporation under a special law; the constitution provides that they may be formed under general laws.”).

to a board of directors, 187.01(B) & (C); the appointment of a chief investment officer, 187.01(E); the powers of the board, 187.01(F); the qualifications of board members, 187.02; restrictions on director compensation, 187.01(G); and procedures for dissolution, 187.01(I). While the JobsOhio Act does state that “the corporation shall be operated in accordance” with Ohio’s nonprofit corporation law, the statute goes on to specifically *exclude* JobsOhio from more than thirty separate provisions of R.C. Chapter 1702. See 187.03(A).⁵ The JobsOhio Act is, therefore, a special act. As such, it is prohibited by Article XIII, Section 1.

B. The JobsOhio Act Violates Article XIII, Section 2 Of The Ohio Constitution, Which Requires All Corporations To Be Formed Under The General Laws.

The JobsOhio Act also violates Article XIII, Section 2 of the Ohio Constitution because it authorizes the formation of an entirely new corporate entity outside of the “general laws” of the State. Article XIII, Section 2 provides:

Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stocks and securities, and over the business and sale of the stocks and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law. Laws may be passed regulating the sale and conveyance of other personal property, whether owned by a corporation, joint stock company or individual.

This Court has explained that “[t]he 2nd section of article 13 defines the rule by which corporations may be formed; and upon the principle of the maxim, ‘*expressio unius est*

⁵ The sections of R.C. Chapter 1701 that are exempted are R.C. 1702.03, 1702.08, 1702.09, 1702.21, 1702.24, 1702.26, 1702.27, 1702.28, 1702.29, 1702.301, 1702.33, 1702.34, 1702.37, 1702.38, 1702.40 to 1702.52, 1702.521, 1702.54, 1702.57, 1702.58, 1702.59, 1702.60, 1702.80, and 1702.99.

exclusio alterius,’ they can be formed in no other way.” *Roosa, supra*, 11 Ohio St. at 21. *See also Atkinson, supra*, 15 Ohio St. 21 (striking down under Article XIII an act that gave effect to the sale of a railroad company and authorized its purchasers to reorganize, create new stock, and elect another board of directors).

In this case, R.C. Chapter 187 authorizes the governor’s formation of a new corporation under a specific statute, not under the general laws that apply to all other Ohio corporations. *See* R.C. 187.01. Though the JobsOhio Act provides that JobsOhio “shall be organized and operated in accordance with Chapter 1702,” it is nevertheless “formed under” the JobsOhio Act rather than under the State’s general corporate laws found in R.C. Chapter 1701 *et seq.* *See id.* (Emphasis added). JobsOhio is not even “formed under” *all* of the general laws applying to Ohio nonprofit corporations because the JobsOhio Act exempts JobsOhio from over thirty separate sections of R.C. Chapter 1702. *See* R.C. 187.03(A).

In sum, the JobsOhio Act does not conform with Article XIII, Section 2. Through the statute, the General Assembly has attempted to form a specific corporation outside of the general laws applicable to all Ohio nonprofit corporations, even though this Court has confirmed that corporations “can be formed in no other way.” *Roosa, supra*, 11 Ohio St. at 21. In doing so, the General Assembly has exceeded its authority under Article XIII, Section 2.

C. The JobsOhio Act Violates Article I, Section 16 Of The Ohio Constitution, Which Requires The Courts To Be Open So That Injured Parties May Obtain A Remedy By Due Process.

The third constitutional challenge to the JobsOhio Act is that it violates the open-courts requirement of the Ohio Constitution. R.C. 187.09(C) states that “any claim asserting that any action taken by JobsOhio violates any provision of the Ohio

Constitution shall be brought in the court of common pleas of Franklin county within sixty days after the action is taken.” R.C. 187.09(C). This extremely limited time period for bringing constitutional claims against JobsOhio is inconsistent with Article I, Section 16 of the Constitution, which provides:

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Nearly a century ago, this Court confirmed that “[i]t is the primary duty of courts to sustain this declaration of right and remedy, wherever the same has been wrongfully invaded.” *Kintz v. Harriger*, 99 Ohio St. 240, 124 N.E. 168 (1919), paragraph two of the syllabus, *overruled on other grounds*, *Stephenson v. McCurdy*, 124 Ohio St. 117, 177 N.E. 204 (1931). More recently, this Court has held that “[t]he right-to-remedy clause protects against laws that *completely foreclose a cause of action* for injured plaintiffs or *otherwise eliminate their ability to receive a meaningful remedy*.” (Emphasis added.) *Flagstar Bank, F.S.B. v. Airline Union’s Mtge. Co.*, 128 Ohio St.3d 529, 2011-Ohio-1961, 947 N.E.2d 672, ¶ 29. According to the Court:

When the Constitution speaks of remedy and injury to person, property, or reputation, *it requires an opportunity granted at a meaningful time and in a meaningful manner*.

(Emphasis sic.) *Hardy v. VerMeulen*, 32 Ohio St.3d 45, 47, 512 N.E.2d 626 (1987) (invalidating four-year statute of repose on medical malpractice claims). *See also Primes v. Tyler*, 43 Ohio St.2d 195, 205, 331 N.E.2d 723 (1975) (finding the Ohio Guest Statute to be in violation of Article I, Section 16 “in that it closes the courts and denies a remedy by due course of law to some but not all the people of this state”). *See also*

Gaines v. Preterm-Cleveland, Inc., 33 Ohio St.3d 54, 57, 514 N.E.2d 709 (1987)
(invalidating a statute of repose as applied to medical malpractice claims).

This Court more recently observed that statutes providing injured parties “too little time to file suit” may indeed violate the right-to-remedy clause. *See, e.g., Groch v. General Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, ¶ 153. In *Groch*, this Court rejected a facial challenge to a statute of repose for products liability actions, but in doing so distinguished that statute from others that “took away an existing, actionable negligence claim before the injured person discovered the injury (when the injury had already occurred) *or gave the injured person too little time to file suit, and therefore denied the injured party’s right to a remedy for those reasons.*” (Emphasis added.) *Id.*

Here, the JobsOhio Act fails to grant injured parties the opportunity to seek a judicial remedy “at a meaningful time and in a meaningful manner” as the Constitution and this Court’s precedent require. *Hardy, supra*, 32 Ohio St.3d at 47. The sixty-day limitation period contained in R.C. 187.09(C) is an extremely short period of time – so short that it simply does not provide adequate time for injured plaintiffs to assert their claims. This is a real possibility given that R.C. 187.03(F) permits Jobs Ohio to delay publicly reporting on its activities for a given year until March of the following year – more than sixty days after the activities occurred. The result is that any actions challenging the constitutionality of JobsOhio’s activities likely will be time-barred before an injured party even becomes aware of them. Under these circumstances, potential litigants simply are not afforded a meaningful remedy within the meaning of Article I, Section 16.

In its Memorandum in Support of the Complaint for writ of mandamus, JobsOhio relies on this Court's *Pratte* and *Collins* decisions for the proposition that some yet-to-be codified "discovery rule" will be judicially inserted into R.C. 187.09 and thereby "eviscerate any argument based on the loss of undiscovered claims." (JobsOhio Mem. in Supp. at 23, citing *Pratte v. Stewart*, 125 Ohio St.3d 473 (2010) and *Collins v. Sotka*, 81 Ohio St.3d 506 (1998).) But *Pratte* is hardly reassuring on that point because, in that case, this Court declined to toll a statutory limitations period. *Pratte*, 125 Ohio St.3d 473, at paragraph 3 of the syllabus. And the older *Collins* decision has been distinguished in subsequent opinions declining to recognize discovery rules that are not legislatively enacted. *E.g.*, *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, 849 N.E.2d 268, ¶ 26 (distinguishing *Collins*, and holding that no discovery rule tolled the statute of limitations applicable to child sex-abuse claims against Catholic archdiocese, its archbishop, and priest).⁶ JobsOhio can provide no assurance that undiscovered claims will not be time-barred under R.C. 187.09(C).

In its brief, JobsOhio also finds comfort in other Ohio statutes that include "similarly short limitations periods, in some cases even shorter than the one at issue here." (JobsOhio Mem. in Support at 22.) JobsOhio argues that "[n]o court has ever suggested that any of these statutory periods violates the open-courts provision of the Ohio Constitution." (*Id.*) But JobsOhio is comparing apples and oranges. Some of the statutes cited by JobsOhio are not properly characterized as statutes of limitation. At

⁶ See also *Marok v. Ohio State Univ.*, Ohio Ct. Claims No. 2006-06736, 2011-Ohio-4837 at ¶ 12 (noting that application of the discovery rule "has been limited to applications for medical and legal malpractice and actions for bodily injury or injury to personal property, and courts have declined to extend the rule unless it is specifically incorporated into a statute"; citing *Investors REIT One v. Jacobs*, 46 Ohio St.3d 176, 181, 546 N.E.2d 206 (1989) and *Creaturo v. Duko*, Columbiana App. No. 04 CO 1, 2005-Ohio-1342, ¶ 47.)

least one of the cited statutes, for example, imposes a thirty-day window for *administrative appeals* from a board decision. R.C. 1515.24(D)(3). Another sets a sixty-day period for an administrative reassessment of a decision that has already been made by the tax commissioner. R.C. 5739.13(C). These are not statutes of limitation in the same sense as R.C. 187.09(C).

Other than these two (inapplicable) statutes, the rest of JobsOhio's examples contain limitations periods notably longer than the sixty days established in the JobsOhio Act. R.C. 4123.90, for example,⁷ allows injured workers who have been retaliated against by their employers *180 days* – not just sixty – to assert their claims in common pleas court. It also allows them to bring their claims in whatever county they are employed, unlike R.C. 187.09, which relegates all potential plaintiffs asserting constitutional claims against JobsOhio to Franklin County, no matter where they happen to reside or where the alleged injury took place.

In addition, JobsOhio's cited statutes all concern very specific causes of action (such as challenges to tax assessments, corporate conveyances, injured workers' retaliatory discharge claims, etc.). By contrast, R.C. 187.09(C) imposes an unreasonably short limitations period for a wide swath of potential claims that could be asserted by injured parties against JobsOhio, namely "*any* claim asserting that *any* action taken by JobsOhio violates *any* provision of the Ohio Constitution." R.C. 187.09(C) (Emphasis added.) Clearly, R.C. 187.09(C) differs markedly, and meaningfully, from the other statutes on which JobsOhio relies.

⁷ JobsOhio's brief references R.C. 4723.90, which appears to be a typographical error.

D. The JobsOhio Act and The Transfer Act Violate Article VIII, Section 4 Of The Ohio Constitution, Which Prohibits The State From Lending Credit To A Private Corporation.

Both the JobsOhio Act and the Transfer Act violate Article VIII, Section 4 of the Ohio Constitution. Article VIII, Section 4 states as follows:

The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

This Section was adopted during the 1851 Constitutional Convention to put a halt to an earlier practice of state and municipal involvement in risky business schemes. See *Cincinnati v. Harth*, 101 Ohio St. 344, 346, 128 N.E. 263 (1920). The Section forbids “the union of public and private capital or credit in any enterprise whatsoever.” *Alter v. Cincinnati*, 56 Ohio St. 47, 63, 46 N.E. 69 (1897), quoting *Walker v. Cincinnati*, 21 Ohio St. 15 (1871). The Court has defined “credit” under Section 4 broadly as either “(1) a loan of money or (2) the ability to borrow or borrowing power (*i.e.*, the ability to acquire something tangible in exchange for a promise to pay for it.)” *State ex rel. Saxbe v. Brand*, 176 Ohio St. 44, 47, 197 N.E.2d 328 (1964).

Indeed, “[i]t has uniformly been held that a financial transaction, entered into by [the government] whereby it either directly or indirectly attempts to raise money for, or loan its credit to, or in aid of, any company, is constitutionally invalid.” *Village of Brewster v. Hill*, 128 Ohio St. 343, 349–50, 190 N.E. 766 (1934).⁸ See also *Alter*, 56 Ohio St. 47 (holding that the “close connection and dependence one upon the other”

⁸ In *Hill*, as in several other cases cited herein and in JobsOhio’s Memorandum in Support, this Court interprets Article VIII, Section 6, which applies to municipalities in substantially the same manner as Section 4 applies to the State.

caused by ownership of the state in one portion of a waterworks and ownership of a private entity in another part of the waterworks was unconstitutional); *Saxbe*, 176 Ohio St. 44 (finding that the Ohio Development Financing Commission, formed as a body corporate and politic to stabilize the economy and promote the welfare of the state, could not issue state revenue bonds to private corporations); *Taylor v. Ross Cty. Commrs.*, 23 Ohio St. 22 (1872), paragraph three of the syllabus (“Where public credit or money is furnished, to be used in part construction of a work which, under the statute authorizing its construction, must be completed * * * by other parties out of their own means, who are to * * * have beneficial control * * * of the work to be completed, the public money or credit thus used can only be regarded * * * as furnished for or in aid of such parties.”).

In the present case, the Transfer Act authorizes the State to transfer the Liquor Enterprise to JobsOhio or its subsidiary. R.C. 4313.02(A); see R.C. 4313.01(B) (defining JobsOhio to include any of its subsidiaries). Under the statute and the Franchise and Transfer Agreement attached to Relator’s Complaint, the Liquor Enterprise will be transferred to JobsOhio’s subsidiary, JobsOhio Beverage System. JobsOhio, through its subsidiary, will pay the State a closing payment of approximately \$1.4 billion for the transfer of the Liquor Enterprise. (See Franchise and Transfer Agreement, Art. 3.2.) The closing payment will be made from bonds that JobsOhio intends to issue. (*Id.*, Art. 3.2(b).) During each year of the franchise thereafter, JobsOhio will pay to the OBM a deferred payment equal to 75% of the Liquor Enterprise’s profits above a given amount for that fiscal year. (*Id.*, Art. 3.5.) The State retains the ability to have the Liquor Enterprise transferred back to it at any time during the twenty-five-year duration of the franchise if JobsOhio fails to comply with the Franchise and Transfer Agreement in any

material respect, or if JobsOhio admits that it is unable to pay its debts as they become due. (R.C. 4312.02(A); Transfer Agreement, Art. 17.1–17.2(a).)

The level of involvement that the State maintains with the Liquor Enterprise creates what amounts to a joint business venture⁹ that unconstitutionally entangles the State with private enterprise. In addition to retaining a reversionary interest in the Liquor Enterprise (R.C. 4313.02(A)), the Franchise Act, along with the Franchise and Transfer Agreement, requires the State to “covenant, pledge, and agree * * * that it shall maintain statutory authority for the enterprise acquisition project and the revenues of the enterprise acquisition project” (R.C. 4313.02(C)(1); Transfer Agreement, Art. 14.5(a)); gives the State the option of curing any default by JobsOhio (*id.*, Art. 17.2(c)); and pledges the State to assist JobsOhio with the preparation of offering circulars related to the issuance of bonds. (*Id.*, Art. 16.2(b).) The State retains legal title and interest in the Liquor Enterprise for the purpose of regulatory activities and any obligations of JobsOhio under “accounting, taxation or securities regulations or any other reason whatsoever.” R.C. 4313.02(A). Further, any state officer or employee may serve as a member, officer, or on the staff of JobsOhio or any of JobsOhio’s subsidiaries. *Id.* This union of the State and an allegedly private enterprise runs directly afoul of the prohibitions contained in Article VIII, Section 4.

⁹ This Court has defined a joint venture as “an association of persons with intent, by way of contract *** to engage in and carry out a single business adventure for joint profit, for which purpose they combine their efforts, property, money, skill and knowledge, without creating a partnership, and agree that there shall be a community of interest among them as to the purpose of the undertaking, and that each coadventurer shall stand in the relation of principal as well as agent, as to each of the other coadventurers *** [.]” *Ford v. McCue*, 163 Ohio St. 498, 127 N.E.2d 209 (1955), paragraph one of the syllabus.

Not only does the Transfer Act impermissibly commingle financial aspects of the State and JobsOhio, but the Franchise and Transfer Agreement goes so far as to explicitly provide that the State will aid the credit of JobsOhio in contravention of Article VIII. This is accomplished by requiring the State to “cause to be charged wholesale and retail prices” for liquor so that the “Minimum Debt Service Coverage Ratio” – that is, the ratio of liquor sales profits to the amount that JobsOhio must pay to its bondholders – is achieved. (*Id.*, Art. 14.5(a).) This provision, which obligates the State to support JobsOhio in obtaining credit, violates Article VIII, Section 4 and the way in which this Court has interpreted its requirements.

JobsOhio defends the constitutionality of the Transfer Act by citing *Grendell v. Ohio EPA*, 146 Ohio App.3d 1, 764 N.E.2d 1067 (9th Dist. 2001). In *Grendell*, the court of appeals held that that the State’s contracting with a private corporation to run an automobile “E-check” testing program did not violate Article VIII, Article 4. As the court explained, because the property interests of the parties were not commingled – “OEPA received a portion of the inspection fees, not profits” – neither party was dependent upon the other. *Id.* at 10, 12.

While *Grendell* is obviously not binding on this Court, that case is far different than the one here. For one, the *Grendell* court noted that the “objectives differ[ed]” as between the State and the private contractor: “the state’s objective is the control of air pollution and lawful administration of the E-check program, while [the contractor’s] objective is the administration of a for-profit business.” *Grendell*, 146 Ohio App.3d at 11. Here, by comparison, both the State and JobsOhio share the purpose of promoting job creation and economic development in the State of Ohio. Moreover, whereas OEPA received a portion of inspection fees, “not profits,” in *Grendell*, *id.* at 10, the deferred

payment that JobsOhio will pay to the State under the Franchise and Transfer Agreement is equal to 75% of the Liquor Enterprise's *profits* above a given amount for each fiscal year. (Franchise and Transfer Agreement, Art. 3.5.) For this and the other reasons described above, the terms of the transfer of the Liquor Enterprise unconstitutionally commingle the finances of the State and JobsOhio.

Finally, the JobsOhio Act and the Transfer Act violate Article VIII, Section 4 because the State and JobsOhio will likely accomplish their joint objectives, at least in part, by investing liquor revenues in private, for-profit businesses. Section 4 makes clear that such an investment is prohibited. JobsOhio contends that this issue is not ripe for review since JobsOhio has not yet used any funds to invest in any business. (JobsOhio Mem. in Supp. at 24, n.1.) This issue nevertheless merits consideration. If the State is barred from making a private investment, then JobsOhio should likewise be barred. Otherwise, the State would be accomplishing indirectly under the JobsOhio Act and the Transfer Act what it cannot do directly under Article VIII.¹⁰

¹⁰ JobsOhio contends that the State may lend its credit to nonprofit corporations, so long as those corporations operate for a public purpose. (JobsOhio Mem. in Supp. at 25.) The majority of the cases on which JobsOhio relies in support of this proposition either deal with: State appropriations, rather than the lending of the State's credit, *see State ex rel. Dickman v. Defenbacher*, 85 Ohio App. 398, 402, 88 N.E.2d 65 (1948) ("Article VIII, Section 4 of the Ohio Constitution . . . has no application to the facts presented in the instant case."); or with public institutions operating for a public purpose, *see Leaverton v. Kerns*, 104 Ohio St. 550 (1922) and *State ex rel. Kauer v. Defenbacher*, 153 Ohio St. 268, 91 N.E.2d 512 (1950). Here, however, the State is giving credit to JobsOhio – or at least aiding in JobsOhio's obtaining credit – so that JobsOhio can then invest those funds in private, for-profit corporations. In essence, the State is doing indirectly what Article VIII, Section 4 says it cannot do directly. "The fact that * * * there may be a public purpose for making the loan (*i.e.*, to increase employment) does not affect the fact that in each instance credit is being given either to or in aid of a private corporation for profit." *Saxbe*, 176 Ohio St. at 48.

E. The Transfer Act Violates Article II, Section 22 Of The Ohio Constitution By Requiring Legislative Appropriations Extending Past A Biennium.

Section 22 of Article II provides that “no appropriation shall be made for a longer period than two years.” The Transfer Act, in conjunction with the Franchise and Transfer Agreement, violates this provision of the Constitution by imposing contractual obligations on, and limiting the financial resources available to, future General Assemblies.

According to a 1996 Opinion of the Ohio Attorney General, this Court’s decision in *State v. Medbery*, 7 Ohio St. 522 (1857), “remains the court’s most definitive and eloquent statement upon the scope and application” of Article II, Section 22. 1996 Ohio Atty.Gen.Ops. No. 96-060, 1996 WL 708356, at *5. *Medbery* concerned legislation that was enacted by the General Assembly in 1845 to reestablish a Board of Public Works for the State and to grant the Board authority to award contracts for the repair of various public works throughout the State, for any term not exceeding five years. This Court concluded that the contracts at issue created debt on the part of the State in violation of the biennial appropriation limit in Article II, Section 22. *Medbery*, 7 Ohio St. at 539. As the Court explained:

If the State can be thus bound [to award five-year contracts], and the General Assembly thus divested of the power and discretion to control the amount of appropriations for five years, it may be done for fifty years; and if it can be done in respect of the canals, all the other branches of the government can be farmed out for a like period and with like effect, upon the discretion, power and responsibility of the General Assembly, in respect of making provision for revenue to meet expenses and determining the amount of appropriations. If all this can be done, the provision of the constitution which prohibits appropriations being made for a period beyond two years, is practically and for all the purposes intended by the constitution annulled * * * *

Id. at 541-42.

In his 1996 Opinion, the Attorney General concluded that, based on *Medbery*, “a debt is created for purposes of this prohibition whenever the state incurs a financial obligation for which the General Assembly has not already provided an appropriation within the current biennium pursuant to § 22 of article II. [And] a debt is created for purposes of this prohibition whenever the state incurs a financial obligation that continues beyond the current biennium and thus attempts to bind successive General Assemblies to that obligation.” 1996 Ohio Atty.Gen.Ops. No. 96-060, 1996 WL 708356, at *7. The Attorney General, thus, advised the Treasurer that he could enter into contracts containing hold harmless or indemnification clauses, but with the caveat that “the clause may obligate the state only for the duration of the biennium in which the contract is executed; it may not bind the state for any length of time beyond that biennium.” *Id.* at *9.

In the present case, the Transfer Act and Franchise and Transfer Agreement operate together to unconstitutionally bind successive General Assemblies to multiple obligations over the term of the twenty-five-year liquor franchise. Just as the five-year contracts for the repair of public works at issue in *Medbery* violated Article II, Section 22, the Transfer Act and far longer twenty-five year Franchise and Transfer Agreement suffer from the same fundamental infirmities in at least two related ways. The Transfer Act ties the hands of future General Assemblies by providing that the State may covenant, pledge, or agree in the transfer agreement not to materially impair any obligations supported by a pledge of revenues of the liquor franchise. R.C. 4313.02(C)(1). Moreover, in the Franchise and Transfer Agreement itself, the State even

promises to maintain wholesale and retail liquor prices at levels that would allow JobsOhio to repay its debt. (Transfer Agreement, Art. 14.5(a).) These pledges bind future General Assemblies to obligations made by the current Assembly, whether or not future Assemblies (or their constituents) agree with those obligations.

The only precedent cited by JobsOhio on Article II, Section 22 is this Court's decision in *Sorrentino v. Ohio National Guard*, 53 Ohio St.3d 214, 560 N.E.2d 186 (1990). (JobsOhio Mem. in Supp. at 28.) But there, the Ohio National Guard successfully invoked Article II, Section 22 to avoid its contractual promise to pay 100% tuition grants to servicemen who sued after the grants were later reduced to 60%. In *Sorrentino*, this Court followed and applied *Medbery* and concluded that the statute enacting the Ohio National Guard Tuition Grant Program could not constitutionally bind future General Assemblies to a specific tuition grant level. *Sorrentino*, 53 Ohio St.3d at 217-18, citing *Medbery*, 7 Ohio St. 522. Thus, the *Sorrentino* case does not support JobsOhio's position that the Transfer Act is constitutional.

F. The Transfer Act Results In The State's Issuance Of Debt In Excess Of The Limits Provided In Article VIII Of The Ohio Constitution.

Article VIII of the Ohio Constitution limits the amount of debt that the State of Ohio is permitted to incur. Section 1 of Article VIII provides that the State "may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for," provided that the aggregate of such debts does not exceed \$750,000. Section 2 then lists seventeen specific circumstances under which the State may incur additional debt. Section 3, in turn, limits the State's permissible debt to that specifically designated, providing that "[e]xcept the debts above specified in sections

one and two of this article, no debt whatever shall hereafter be created by or on behalf of the state.”

An exception to the limits in Article VIII exists when the debt involves a “special fund.” A “special fund” exists when the State incurs indebtedness in the procurement of property or erection of buildings and the indebtedness is to be paid solely out of income from the use or operation of the new property. *Kasch v. Miller*, 104 Ohio St. 281, 288, 135 N.E. 813 (1922). See also *State ex rel. Pub. Inst. Bldg. Auth. v. Griffith*, 135 Ohio St. 604, 22 N.E.2d 200, at paragraph one of syllabus (1939).

In this case, the Transfer Act violates the debt limits contained in Article VIII. JobsOhio contends that Article VIII is not implicated because JobsOhio is really a private entity, not a state one. (JobsOhio Mem. in Supp. at 30.) But JobsOhio ignores the close financial nexus between the State and JobsOhio. As shown above, the Transfer Act allows the State to lend its credit to JobsOhio such that JobsOhio and the State are closely engaged in an ongoing joint venture or business partnership. The State retains a reversionary and residual interest in the Liquor Enterprise and has the option of having the enterprise transferred back to it at any time. R.C. 4313.02(A).

In fact, the State runs headlong into Article VIII by assuming significant obligations in the servicing of JobsOhio’s debts. While the State professes in the Franchise and Transfer Agreement not to be liable for any financial obligations of JobsOhio (*id.*, Art. 17.9), the Agreement clearly provides that the State shall “cause to be charged wholesale and retail prices” for liquor so that JobsOhio may achieve the necessary ratio of liquor sales profits to the amount that JobsOhio must pay to its bondholders. (Transfer Agreement, Art. 14.5(a).) More significantly, the State has the option of curing any default by JobsOhio. (*Id.*, Art. 17.2(c).) This would include curing

any default attributable to JobsOhio's not paying its debts, which presumably means that the State would pay them. (*Id.*, Art. 17.1(b).)

Given the intimate financial relationship between the State and JobsOhio, including the right that the State has to cure a default by JobsOhio by paying its debts, JobsOhio should more properly be viewed *not* as a stand-alone private entity. Its debts create debts on the part of the State. The mere fact that the State may ultimately not be called upon to pay JobsOhio's indebtedness is of no consequence for purposes of Article VIII. As this Court explained in holding that a similar financing scheme involving the State was unconstitutional:

A default on the bonds of the authority * * * may never occur. But in determining the validity or constitutionality of any legislation, the court must consider what may or might happen under the legislative grant of power.

Griffith, 135 Ohio St. at 619. Here, JobsOhio *may* default under its bonds and, under the Franchise and Transfer Agreement, the State *may* service the debt on those bonds. Certainly, "a default is not beyond the realm of possibility." *See id.* Bonds issued by JobsOhio should be viewed as indebtedness of the State that is subject to the debt limitations of Article VIII.

JobsOhio also argues that any debts incurred in the transfer of the Liquor Enterprise would fall within the scope of Article VIII, Section 13 and thus be exempt from the State's constitutional debt limits. (JobsOhio Mem. in Supp. at 31.) Section 13 authorizes State borrowing to acquire property that is used to create or preserve jobs. Section 13, however, states that bonds may only be issued under that section "provided that moneys raised by taxation shall not be obligated or pledged for the payment of

bonds or other obligations issued or guarantees made pursuant to laws enacted under this section.”

Section 13 does not exempt the Transfer Act from the constitutional debt limits. First, it is not at all clear that the Liquor Enterprise, while it is a substantial revenue source for the State, constitutes “property,” or “structures, equipment, and facilities” within the meaning of Article VIII, Section 13. *But see* 1998 Ohio Atty. Gen. Ops No. 1998-034, at 12-14 (defining “property” under Article VIII, Section 13). Additionally, while liquor profits may not constitute “moneys raised by taxation” under Section 13, the reality is that Ohio taxpayers ultimately will foot the bill for JobsOhio’s debts because liquor revenues that otherwise would come into the State treasury will now be used to pay JobsOhio’s bondholders.

The Transfer Act also does not satisfy the “special fund” exception to the debt limits of Article VIII. In *State ex rel. Public Institutional Building Authority v. Neffner*, 137 Ohio St. 390, 30 N.E.2d 705 (1940), the Court considered a transaction whereby one state agency issued bonds to build a new hospital and repaid those bonds with rental revenue paid by a second state agency operating the hospital. Because the second state agency had to divert agency funds from their prior usage to indirectly pay the first agency’s debt, the Court found that “[w]here substantial funds which have heretofore gone into the general funds of the state treasury are pledged to liquidate such bonds, thereby requiring the state to seek and secure revenues otherwise in order to meet its obligations * * * then the obligation of those bonds does become the ultimate obligation of the state.” *Id.* at 399.

Like the impermissible bonding arrangement in *Neffner*, the Transfer Act here contemplates that a major revenue stream in the form of liquor sales, which otherwise

would have been deposited into the State treasury, will be pledged to service the \$1.4 billion debt of another entity, JobsOhio. Because these revenues will be diverted to JobsOhio, the State – and Ohio’s taxpayers – will now have to seek and secure other funds to meet the State’s obligations. As in *Neffner*, the obligation of JobsOhio’s bonds thus becomes the ultimate obligation of the State. Furthermore, the fact that JobsOhio plans to use liquor sales revenues to fund its activities even after paying the State for the Liquor Enterprise suggests that the State is not receiving full and fair compensation for the transfer. After the transfer, the State will have to make up the shortfall from the loss of liquor sales revenues with other revenue sources. Under *Neffner*, such an arrangement violates the debt limits contained in Article VIII.

G. The Transfer Act Violates The “One-Subject Rule” Of Article II, Section 15 Of The Ohio Constitution.

Article II, Section 15(D) of the Ohio Constitution provides that “[n]o bill shall contain more than one subject, which shall be clearly expressed in its title.” Am. Sub. H.B. No. 153, the very lengthy appropriations bill that amended certain provisions of Chapter 187 and included the Transfer Act, violates this constitutional limitation on the General Assembly’s lawmaking power.

The one-subject rule “generated no debate” when it was proposed to the 1851 Constitutional Convention. John J. Kulewicz, *The History of the One-Subject Rule of the Ohio Constitution*, 45 Clev.St.L.Rev. 591, 593 (1997). Five years after it was adopted, however, the Ohio Supreme Court shed light on its meaning in the case of *Pim v. Nicholson*, 6 Ohio St. 176 (1856). In *Pim*, the Court explained that “[t]he provision that a bill shall contain but one subject was *to prevent combinations*, by which various and distinct matters of legislation should gain a support which they could not if presented

separately.” (Emphasis added.) *Id.* at 179. The common term for the practice sought to be prevented by the one-subject rule is “logrolling.”

The one-subject provision attacks logrolling by disallowing unnatural combinations of provisions in acts, *i.e.*, those dealing with more than one subject, on the theory that the best explanation for the unnatural combination is a tactical one – logrolling. By limiting each bill to a single subject, the bill will have unity and thus the purpose of the provision will be satisfied.

The one-subject provision also has the related benefit of operating to prevent “riders” from being attached to bills that are “ * * * so certain of adoption that the rider will secure adoption not on its own merits, but on the measure to which it is attached.”

State ex rel. Dix v. Celeste, 11 Ohio St.3d 141, 155-56, 464 N.E.2d 153 (1984). Whether the one-subject rule has been violated depends on the language of the bill itself. *Id.* at 145. No extrinsic evidence of logrolling is required. *Id.*

In the many years since *Pim* was decided, the Court has not hesitated to invoke the one-subject rule to invalidate legislation. Illustrative is *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 711 N.E.2d 203 (1999), in which the Court struck down a controversial school voucher program that was included in a lengthy appropriations bill. The Court ascertained a “blatant disunity” between the voucher program and “most other items” contained in the bill, and noted that the Court was provided no rational reason for their combination, which strongly suggested that the inclusion of the voucher program was for “tactical reasons.” *Id.* at 16-17. The Court concluded that “creation of a substantive program in a general appropriations bill violates the one-subject rule.” *Id.* at 17.

Similarly, in 2004, the late Chief Justice Moyer squarely rejected argument that any provision impacting the state budget “may lawfully be included in an appropriations bill merely because other provisions in the bill also impact the budget.” *Ohio Civ. Serv.*

Emps. Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd., 104 Ohio St.3d 122, 130, 818 N.E.2d 688 (2004). As the former Chief Justice explained, “[s]uch a notion * * * renders the one-subject rule meaningless in the context of appropriations bills because virtually any statute arguably impacts the state budget * * * [.]” *Id.* See also *In re Nowak*, 104 Ohio St.3d 466, 478, 820 N.E.2d 335 (2004) (invalidating statute addressing constructive notice of a mortgage as violative of one-subject rule – the mortgage recordation language was just a small part of a “sizeable” bill, situated “cryptically between provisions covering aviation and construction certificates * * * on one side and regulations for the Department of Transportation on the other.”).

In the case at bar, Am. Sub. H.B. No. 153 violates the one-subject rule. The statute covers a myriad of subjects, including the Transfer Act. The Legislative Service Commission (“LSC”)’s Final Analysis of the bill – just a summary – spans more than 700 pages. See Ohio LSC, Final Analysis, Am. Sub. H.B. 153.¹¹ The Table of Contents alone of LSC’s Final Analysis of the bill is twenty-six pages long, containing hundreds of headings and sub-headings addressing a multitude of unrelated topics. Simply scanning it suggests that Am. Sub. H.B. No. 153 lacks any rational unity of subject matter. Among other things, according to the Table of Contents, the bill not only authorizes the transfer of the Liquor Enterprise to JobsOhio, but it also clarifies the meaning of “tuition” in the Ohio National Guard Scholarship Program (*id.* at 30); addresses health care benefits for political subdivisions (*id.* at 35); reforms public construction projects and the qualification of subcontractors (*id.* at 48); provides authority for the Joint Legislative Ethics Committee to contract for services relating to state agency buildings (*id.* at 66);

¹¹Available at: <http://www.lsc.state.oh.us/analyses129/11-hb153-129.pdf> (Accessed Aug. 23, 2012.)

and creates an “Advisory Workgroup” relating to long-term care (*id.* at 76). And that is only a sample of the topics appearing on the first three pages of the LSC’s twenty-six page Table of Contents.

All that is evident just from LSC’s summary of Am. Sub. H.B. No. 153. The Bill itself is so lengthy (3,264 pages) that it is divided into four large pieces on the General Assembly’s website.¹² The sum total of the language amending the JobsOhio Act (R.C. Chapter 187) and enacting the Transfer Act (R.C. Chapter 4313) is but a tiny (yet significant) needle in this legislative haystack. The amendments to Chapter 187 comprise only eight of these 3,264 pages; the Transfer Act consists of five pages. These thirteen pages out of more than 3,000 clearly satisfy even the most restrictive definition of “logrolling” for purposes of the one-subject rule.

JobsOhio relies on the Tenth District Court of Appeals’ decision in *State ex rel. Ohio Roundtable v. Taft*, 10th Dist. No. 02AP-911, 2003-Ohio-3340, 2003 WL 21470307, to contend that no violation of the one-subject rule has occurred here with respect to Am. Sub. H.B. No. 153. (JobsOhio Mem. in Supp. at 35.) In *Ohio Roundtable*, the Tenth District upheld the General Assembly’s inclusion of the Mega Millions lottery authorization in an appropriations bill.

Ohio Roundtable is, obviously, not binding on this Court. Nonetheless, the appropriations bill at issue there is distinguishable from the one challenged here. In *Ohio Roundtable*, the court of appeals noted that the appropriations bill at issue, as it was first introduced, “undertook to correct the distribution of funds for community

¹² Available at: http://www.legislature.state.oh.us/BillText129/129_HB_153_EN_N.pdf. (Accessed Aug. 23, 2012.)

services, support services, and subsidies to mental health services from the General Revenue Fund.” *Ohio Roundtable*, 2003-Ohio-3340, ¶ 48. All of the topics in the bill at issue in *Ohio Roundtable* revolved around what the court described as the “common thread of appropriation and revenue, particularly enhancements to revenue.” *Id.* By comparison, here the provisions of Am. Sub. H.B. No. 153 relating to JobsOhio are unrelated to any “central appropriations core” of the appropriations bill, to the extent any such “appropriations core” even exists in the 3,264-page bill. In fact, JobsOhio states that the legislation makes no new appropriation relating to JobsOhio beyond the \$1 million appropriation made previously in Section 5 of Am. Sub. H.B. No. 1 – H.B. 153 simply appropriates any unexpended and unencumbered balance from that \$1 million appropriation remaining at the end of fiscal year 2011 to JobsOhio for fiscal year 2012. (JobsOhio Mem. in Supp. at 28-29.)

If the intent of the one-subject rule is to prevent logrolling, and to discourage the General Assembly from sneaking “significant, substantive,” and “politically-charged” content into larger pieces of unrelated legislation, as JobsOhio is forced to concede, (JobsOhio Mem. in Supp. at 34, quoting *Simmons-Harris*), then this is a fitting scenario in which to invoke the constitutional prohibition. In the space of just thirteen pages within a 3,264-page appropriations bill, the General Assembly seeks to accomplish multiple, significant, and substantive goals that have engendered controversy statewide – even prompting certain minority members of the legislature to challenge the legislation in court and to seek to intervene in this very proceeding. If a majority of the General Assembly wishes to amend Chapter 187 and enact Chapter 4313 as it did within the massive appropriations bill, then it should enact legislation in separate bills that are

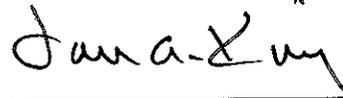
compliant with the simple Constitutional command that “no bill shall contain more than one subject, which shall be clearly expressed in its title.”

V. CONCLUSION

For each of the foregoing reasons, this Court should address the merits of the constitutional issues presented by the Director and rule on the constitutional challenges to the JobsOhio Act and the Transfer Act. If the Court concludes that the constitutional claims advanced by the Director lack merit, then it should issue a writ of mandamus compelling the Director to execute the Franchise and Transfer Agreement as required by R.C. 4313.02(C)(2). If the Court concludes that one or more of the Director’s constitutional concerns has merit, and that one or more provisions of the JobsOhio Act or the Transfer Act is facially unconstitutional, then the Court should next consider whether any offending statute should be severed from the JobsOhio Act or the Transfer Act, and, if so, whether Relator would still be entitled to a writ of mandamus compelling the Director to sign the Franchise and Transfer Agreement as required by R.C. 4313.02(C)(2).

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CERTIFICATE OF SERVICE

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

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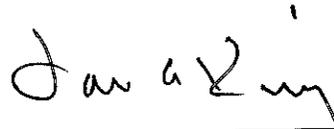
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