

**IN THE SUPREME COURT OF OHIO**

PROGRESSOHIO.ORG, INC., et al.,	:	Case No. 2012-1272
	:	
Appellants,	:	
	:	On Appeal from the
v.	:	Franklin County Court of
	:	Appeals, Tenth Appellate
JOBSONHIO, et al.,	:	District,
	:	Case No. 11-AP-1136
Appellees.	:	

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**APPELLEE JOBSONHIO'S MEMORANDUM IN RESPONSE  
TO APPELLANTS' MEMORANDUM IN SUPPORT OF  
JURISDICTION**

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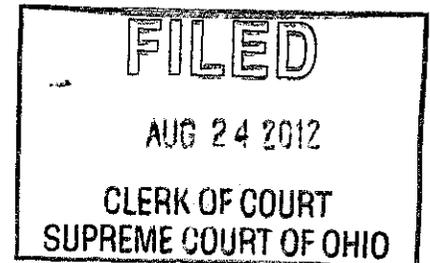
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**THIS CASE DOES NOT PRESENT A  
SUBSTANTIAL CONSTITUTIONAL QUESTION**

Plaintiffs-Appellants ProgressOhio, Michael Skindell, and Dennis Murray seek to invoke this Court's jurisdiction as a matter of right by claiming that this case raises substantial constitutional questions. *See* Ohio Constitution Article IV, Section 2(B)(2)(a)(iii); S.Ct. P. R. 2.1(A)(2). While Appellants cite numerous constitutional provisions throughout their memorandum, the simple fact is that none of those constitutional provisions are at issue here. Indeed, neither the trial court nor the Court of Appeals has ever reached the merits of *any* of Appellants' constitutional challenges to Am. Sub. H.B. 1 (129th General Assembly), Am. Sub. H.B. 153 (129th General Assembly), R.C. Chapter 187, and R.C. Chapter 4313 (collectively the "Legislation"). Rather, the *sole* issue decided by the trial court and the Court of Appeals was that Appellants lacked standing to pursue their constitutional attacks on the Legislation. That lack of standing does not present any substantial constitutional questions.

Because the lower courts have declined to reach the merits of Appellants' claims, those claims do not—and cannot—present any substantial constitutional questions for this Court's review. Indeed, this Court has consistently refused to hear issues that were not addressed by the appellate court. *See, e.g., State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, ¶24 (2004) (Court declined to hear additional arguments made to Court of Appeals but not decided because it "generally does not consider issues that the court of appeals did not reach"); *Winslow v. Ohio Bus Line Co.*, 148 Ohio St. 101 (1947) (Court may not pass upon any question unless the record certified to it by Court of Appeals discloses that such question was presented to and passed upon by that court); *Wheeling & L.E.R. Co. v. Richter*, 131 Ohio St. 433 (1936) (Court will not pass on questions which have not had consideration of Court of Appeals).

Of Appellants' seven propositions of law, the only one that actually relates to standing is Proposition 3, and it presents no constitutional issues. The lower courts in this case have addressed three specific standing issues: (1) whether the Legislation confers statutory standing; (2) whether the individual Appellants possess standing as legislators; and (3) whether Appellants have standing under the public right doctrine. None of those issues involves a substantial constitutional question. The first is a simple matter of statutory construction, and the latter two only involve common law principles of standing.

Because the standing issues here do not present a substantial constitutional question, Appellants cannot invoke this Court's jurisdiction as a matter of right. This Court should therefore dismiss the appeal pursuant to Supreme Court Rule of Practice 3.6(B)(1)(a).

**THIS CASE DOES NOT PRESENT A  
QUESTION OF PUBLIC OR GREAT GENERAL INTEREST**

Appellants also attempt to invoke this Court's discretionary jurisdiction over cases presenting a question of public or great general interest. *See* Ohio Constitution Article IV, Section 2(B)(2)(e); S. Ct. P. R. 2.1(A)(3). This alternative argument suffers from the same flaw described above, in that Appellants resort to arguing that the *merits* of their constitutional attacks raise questions of public or great general interest. But the lower courts have never addressed the merits of Appellants' claims, and thus those issues are not properly before this Court. *Kincaid v. Erie Ins. Co.*, 128 Ohio St.3d 322, 325 (2010) (where insured lacked standing, Court refused to issue advisory opinion on the scope of coverage). The only issue here is whether the standing issues in this case present a question of public or great general interest, and they clearly do not.

The first standing issue is whether R.C. § 187.09 is a legislative grant of standing that abrogates common law standing rules. (*See* Proposition 3, Appellants' Mem. at 8-9.) This is a straightforward matter of statutory construction. The Court of Appeals correctly stated that,

“[u]nder normal rules of statutory construction, a statute will not be deemed to abrogate common-law standing requirements unless the legislature has stated so.” (June 24, 2012 Decision at 8, citing *Bresnik v. Beulah Park Ltd. Partnership, Inc.*, 67 Ohio St.3d 302, 304 (1993).) Here, R.C. § 187.09 simply designates the venue and statute of limitations for “any action” or “any claim” challenging the Legislation, and says nothing about who may bring such a claim. This task of statutory interpretation does not implicate any widespread issues affecting all Ohioans that warrant this Court’s review.

The second standing issue is whether the individual Appellants have standing as legislators. The Court of Appeals correctly observed that legislative standing has only been recognized for legislators who voted *in favor of* a bill that the executive branch then refuses to enforce as duly enacted law. (*Id.* at 10, citing *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007-Ohio-3780, ¶ 17, 20.) Here, the individual legislator Appellants voted *against* the Legislation and thus clearly do not have legislative standing. This second standing issue thus concerns a straightforward application of this Court’s precedent on a highly specific rule of standing that only applies to a defined and limited portion of the State’s legislators—certainly not an issue of public or great general interest.

The final standing issue is whether Appellants have standing under the public right doctrine this Court described in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451 (1999). The Court of Appeals correctly applied this Court’s precedent and concluded that this doctrine of standing was inapplicable because “appellants cannot find the kind of rare and extraordinary circumstances necessary to invoke public-interest standing.” (June 24, 2012 Decision at 8.) This straightforward application of settled law once again fails to present any issues of public or great general interest.

Although Appellants and the amicus attempt to inflate the importance and implications of the underlying issues to manufacture a basis for invoking the public right doctrine, the fact remains that the application of the public right doctrine is necessarily a case-specific inquiry that depends on the particular constitutional arguments and issues being raised. As this Court stated in *Sheward*:

[T]his court will entertain a public action only “*in the rare and extraordinary case*” where the challenged statute operates, “*directly and broadly, to divest the courts of judicial power.*” (Emphasis added.) We will not entertain a public action to review the constitutionality of a legislative enactment unless it is of a magnitude and scope comparable to that of Am. Sub. H.B. No. 350.

*Sheward*, 86 Ohio St.3d at 504. Thus, the question here is whether the specific constitutional challenges made by Appellants to the Legislation are “of a magnitude and scope comparable to” the laws addressed in *Sheward*. They are not. A decision by this Court on that issue will only affect other potential plaintiffs that wish to raise those same constitutional issues regarding the Legislation—and at this point no other such plaintiffs have been identified.

This is not an issue of public and great general interest. The Court of Appeals properly applied this Court’s precedent on an issue that appears to only implicate the specific Plaintiffs in this lawsuit. The Court should therefore decline jurisdiction over this case pursuant to Supreme Court Practice Rule 3.6(B)(3)(a).

#### **STATEMENT OF THE CASE AND FACTS**

There are only a few facts relevant to this attempted appeal. Appellants filed a Complaint on August 29, 2011, asserting that the Legislation violated numerous provisions of the Ohio Constitution. JobsOhio and the State moved to dismiss the Complaint on the grounds that Appellants lacked standing to challenge the Legislation. In response, Appellants asserted numerous theories to try to establish standing, including: (1) statutory standing; (2) legislative standing for the two legislator Appellants; (3) common law standing as taxpayers; and (4) public

right standing under *Sheward, supra*. The trial court rejected each and every one of Appellants' theories, and dismissed the Complaint for lack of standing. (Dec. 2, 2011 Decision Granting Defendants' Motions to Dismiss.) Because Appellants lacked standing, the trial court never reached the merits of any of the constitutional challenges asserted.

On appeal before the Court of Appeals for the Tenth District, Franklin County, Appellants again asserted numerous theories to try to establish standing (although Appellants no longer claimed taxpayer standing). The appellate court considered and rejected all of Appellants' theories, and affirmed the trial court's conclusion that Appellants lacked standing to challenge the constitutionality of the Legislation. (June 14, 2012 Decision at 10-11.) Like the trial court, the appellate court never reached the merits of the underlying constitutional issues.

The appellate court also rejected Appellants' attempt to introduce new constitutional arguments. Appellants filed a motion in the Court of Appeals asking to have R.C. § 187.09 (the statute specifying the venue and statute of limitations for actions challenging the Legislation's constitutionality) declared unconstitutional as a violation of separation of powers. (Dec. 23, 2011 Motion.) The appellate court found that the motion was moot due to Appellants' lack of standing, and furthermore stated that "the proper procedure to challenge the constitutionality of a statute is not by way of motion in the court of appeals." (June 14, 2012 Decision at 12.)

### **RESPONSE TO APPELLANTS' PROPOSITIONS OF LAW**

**Proposition of Law 1: R.C. 187.09 is a statute of repose which attempts to prevent this Court from determining the constitutionality of R.C. 187 in violation of the principles of separation of powers.**

Appellants' first proposition has nothing to do with any of the standing issues decided by the Court of Appeals, and instead raises a substantive challenge to the constitutionality of R.C. § 187.09(B). That provision provides that any action challenging the constitutionality of the

Legislation is to be brought in the Franklin County Court of Common Pleas within 90 days of the Legislation's effective date.

Appellants argue in their first proposition of law that R.C. § 187.09(B) violates the "principle of separation of powers" because "the appellate court essentially found that *no one* had standing to file suit during the 90 day limitations period" and, as a result, the Legislation "would now be totally insulated from any determination of its constitutionality by the Courts of Ohio." (Appellants' Mem. at 5-6.)

Appellants' assertions are incorrect in several respects and do not warrant this Court's review. First, the Court of Appeals did not find that "no one" had standing during the statute's 90-day period—only that *Appellants* lack standing. The fact that Appellants lack standing has no bearing on the scope or constitutionality of the limitations period in R.C. § 187.09. Second, as the Court of Appeals observed, Appellants have no basis to challenge the 90-day limitations period in R.C. § 187.09 because they filed their suit *within* that time limit. (June 14, 2012 Decision at 11 ("Appellants' claims were dismissed because they lacked standing, not because of any issue with the statute of limitations."))

For the same reasons, this Court should decline to entertain Appellants' first proposition of law, which argues the merits of a claim that is not implicated on the facts of this case and was not addressed by either of the lower courts.

**Proposition of Law 2: R.C. 187.09 is a statute of repose preventing any constitutional challenges to the JobsOhio legislation, R.C. 187 et seq., after [60] days of the effective date of the legislation in violation of the open courts provision in Article 1.16 of the Ohio Constitution.**

Appellants' second proposition of law again challenges the constitutionality of R.C. § 187.09, only this time the focus is subsection (C), which states that any action challenging the constitutionality of an action by JobsOhio must be brought "within 60 days after the action is

taken.” Appellants appear to argue that the 60-day limitations period violates the “open courts” provision of Article I, Section 16 because the 60-day window could theoretically expire before a plaintiff knew about an action he or she might wish to challenge. (Appellants’ Mem. at 7.)

Like their first proposition of law, this second proposition again presents a claim that is not implicated in this case and has not been addressed by either of the lower courts. Appellants’ claims were dismissed for lack of standing—not for failure to comply with the 60-day limitations period in R.C. § 187.09(C). Moreover, the fact that Appellants cannot challenge R.C. § 187.09(C) in this action does not mean that it is immune from judicial review. As the Court of Appeals stated: “If appellants or other parties can establish standing, and believe the statute fails to provide an adequate remedy at law, they have already demonstrated an awareness of alternative options.” (June 14, 2012 Decision at 12.)

It should also be noted that Appellants’ “open courts” argument has absolutely no legal support. Appellants simply quote the language of Article I, Section 16 of the Constitution, and do not cite a single decision interpreting or applying that language. Appellants ignore this Court’s admonition that “[t]he period within which a claim must be brought . . . is a policy decision best left to the General Assembly.” *Leininger v. Pioneer Nat’l Latex*, 115 Ohio St.3d 311, 319 (2007). Moreover, Ohio courts have expressly rejected Appellants’ assertion that a statute of limitations is unconstitutional merely “because the statute of limitations would have expired before [the plaintiff] discovered its claim.” *State ex rel. Miami Overlook, Inc. v. Village of Germantown*, 2011-Ohio-3419 ¶ 73 (2d Dist.); see also *Pratte v. Stewart*, 125 Ohio St.3d 473 (2010) (holding that a statute of limitations need not include a discovery rule).

Because R.C. § 187.09(C) is constitutional and is not even implicated in this case, Appellants’ second proposition of law provides no basis for review by this Court.

**Proposition of Law 3: Plaintiffs have standing to bring this action.**

Appellants' third "proposition of law" is not even a valid proposition of law—it is simply a bare assertion that they have standing. This "proposition of law" does not present any legal issue that is appropriate for this Court's review or any rule that will provide guidance for lower courts in future cases.

Furthermore, none of the arguments that Appellants have compiled within this third "proposition of law" warrant this Court's review. Appellants argue, for example, that R.C. § 187.09 "provides a legislative grant of standing" that dispenses with all standing requirements. (Appellants' Mem. at 8-9.) This argument defies the plain language of R.C. § 187.09, which "does not contain any language conferring standing. Rather, it identifies where and when a suit may be brought." (June 14, 2012 Decision at 9.) Under this Court's settled decisions, a statute will not be deemed to abrogate common law principles "unless the legislation has stated so." *Id.*, citing *Bresnik v. Beulah Park Ltd. Partnership, Inc.*, 67 Ohio St.3d 302, 303 (1993). The appellate court properly applied settled law and there is no need for any further review.

Appellants next argue that the two legislator Appellants have standing as legislators "because of the statute's effect on the appropriations process." (Appellants' Mem. at 9.) The only basis that this Court has recognized for legislative standing is that of "vote nullification"—where a legislator has voted for a bill but the executive branch refuses to enforce the duly enacted law. *See State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007-Ohio-3780, ¶ 17, 20. In that situation, the legislator has suffered a distinct injury not shared by the general public and has standing to bring an action so that his or her vote is not nullified. *Id.* In contrast, a legislator that did not vote for the bill at issue would not have standing. *Id.* at ¶ 19. Here, neither of the legislator Appellants voted for the Legislation and, therefore, neither has legislative standing. (See June 14, 2012 Decision at 10.)

Because the legislator Appellants so obviously fail this test, Appellants instead assert that they have legislative standing because the Legislation “obligates state moneys for more than two years” and therefore violates Article II, Section 22 of the Ohio Constitution, which limits appropriations to two years. (Appellants’ Mem. at 9.) The Court of Appeals correctly concluded that there is absolutely no legal support for this theory of legislative standing:

Appellants have cited no legal authority for their theory. Such a novel and speculative theory of standing bears no relationship to vote nullification—the narrow grounds for legislative standing recognized in Ohio.

(June 14, 2012 Decision at 10.) Tellingly, the only case Appellants cite here, *Sorrentino v. Ohio Nat’l Guard*, 53 Ohio St.3d 214 (1990), does not discuss or involve standing and was not brought by legislators. There is simply nothing in Appellants’ third “proposition of law” that warrants this Court’s review.

**Proposition of Law 4: R.C. 187.01 et seq. violates Article 13 Section 1 of the Ohio Constitution since it is a statute conferring corporate powers on the legislatively created JobsOhio Corporation and this facial violation is sufficient to support standing; and**

**Proposition of Law 5: R.C. 187.02 et seq. violates Article 13 Section 2 of the Ohio Constitution because it creates a corporation, JobsOhio, which is not governed by the general laws of the State of Ohio and this facial violation is sufficient to support standing; and**

**Proposition of Law 6: JobsOhio violates the debt limits in Article VIII, Sections 1 and 3 of the Ohio Constitution because it allows the State to issue bonds greatly exceeding constitutional requirements and it does not comply with the special funds exception and this facial violation is sufficient to support standing; and**

**Proposition of Law 7: The JobsOhio legislative and bonding scheme violate Section 22, Article II of the Ohio Constitution because [sic] is an [sic] method by which the current General Assembly is attempting to force future General Assemblies to appropriate funds for JobsOhio.**

Propositions of Law 4-7 all suffer the same fundamental flaws and are therefore addressed collectively. At the outset, none of these propositions presents a proper issue for this Court’s review. In these propositions, Appellants simply argue the merits of their constitutional

claims. However, the merits of Appellants' claims are not the subject of this appeal—the sole issue decided by the lower courts was that Appellants lacked *standing*. And although Appellants incorporated the word “standing” into some of these propositions, the arguments supporting these propositions do not actually address any principles of standing. Rather, Appellants simply assert that these alleged constitutional violations are, standing alone, “sufficient to confer standing.” Because the merit-based arguments in Propositions of Law 4-7 have nothing to do with standing, they provide no basis for this Court’s review.

Furthermore, even assuming that Appellants intended to argue that the constitutional issues described in Propositions 4-7 confer standing under the public right doctrine described in *Sheward, supra*, there is still no basis for this Court to review those Propositions. This Court has cautioned that the public right doctrine is a narrow “exception to the personal-injury requirement of standing”:

We have expressed quite clearly in our preamble to the issue of relators’ standing that this court will entertain a public action only “*in the rare and extraordinary case*” where the challenged statute operates, “*directly and broadly, to divest the courts of judicial power.*”

*Sheward*, 86 Ohio St.3d at 503-04. For example, the Court found public right standing in *Sheward* where the laws at issue were part of sweeping tort reform legislation that the Court deemed to be an outright “[a]ttack on the [j]udiciary as a [c]oordinate [b]ranch of [g]overnment.” *Id.* at 455. The only other time the Court has found standing under the public right doctrine was in a case where the law at issue “affect[ed] virtually everyone who works in Ohio” by permitting warrantless drug and alcohol testing of workers participating in the State’s workers’ compensation system. *State ex rel. Ohio AFL-CIO v. Ohio Bur. of Workers’ Comp.*, 97 Ohio St.3d 504, 2002-Ohio-6717.

The issues in this case do not remotely compare to those that this Court has found sufficient to confer public right standing. As recognized by the Court of Appeals, “The [Legislation] is not the assault on the power of the judicial branch that concerned the Supreme Court of Ohio in *Sheward*,” and it “does not ‘transform [ ] the civil justice system’” as did the tort reform legislation in *AFL-CIO*. (June 14, 2012 Decision at 11.)

Moreover, Appellants cannot enhance their argument by claiming that the constitutional provisions at issue in this case are important. Every constitutional provision is important, but “not every constitutional violation justifies the recognition of public-right standing.” *Brinkman v. Miami University*, 2007-Ohio-4372, ¶ 60 (10th Dist.); see also *Smith v. Hayes*, 2005-Ohio-2961, ¶ 9 (10th Dist.) (“[T]he term ‘public right’ as used in the syllabus [of *Sheward*] requires more than a showing that a statute of questioned constitutionality is of widespread public interest, or even that it potentially may affect a large number of Ohio citizens.”).

Ohio courts, including the Court of Appeals in this case, have abided by this Court’s admonition that the public right doctrine of standing is to be narrowly applied. (See June 14, 2012 Decision at 8.) There is no need for this Court to issue yet another decision cautioning courts against overbroad applications of the public right doctrine.

### **RESPONSE TO THE AMICUS’ PROPOSITION OF LAW**

**Proposition of Law No. 1: The Ohio Constitution demands that citizens and taxpayers possess standing to enforce limits on tax, spending, and indebtedness legislation.**

Amicus 1851 Center for Constitutional Law (the “Center”) presents an additional proposition of law that is sweeping in its breadth and shows a staggering indifference to the volumes of settled law that it would overturn. The Court need not—and indeed should not—consider this additional proposition of law.

**A. The Center's Additional Proposition Of Law Is Improper.**

Even before considering the merits of the Center's additional proposition of law, several aspects of this proposition are facially objectionable. First, the Center's proposition is improper because it seeks to interject an entirely new issue that Appellants have not raised. The role of an amicus is to assist the court on issues presented by the *parties*, not to raise new issues or claims: "*Amici curiae* are not parties to an action and may not, therefore, interject issues and claims not raised by parties." *City of Lakewood v. State Employment Relations Board*, 66 Ohio App.3d 387, 394 (8th Dist. 1990); *see also Cruickshanks v. Haines*, 1994 Ohio App. LEXIS 5178, \*5 (11th Dist. 1994) (same). Accordingly, this Court has refused to consider new issues raised by an amicus. *Wellington v. Mahoning County Board of Elections*, 117 Ohio St.3d 143 (2008) ("Because Aey [an amicus] raises an issue that is not raised by the board of elections and was not raised by him at the board's protest proceeding, we will not address it.").

Here, the Center asks the Court to adopt a new and unprecedented rule of standing that would allow any citizen to challenge the constitutionality of any statute involving tax, spending, or debt. Although Appellants have asserted a variety of standing theories in this litigation, they have never before advanced the Center's sweeping proposition. Indeed, if Appellants tried to raise this new proposition themselves before this Court, it would certainly be deemed waived, and Appellants cannot circumvent that result by having an amicus raise the argument instead.

Moreover, the Center's new proposition is improper because none of the lower courts have had the opportunity to address the serious legal issues that it raises. This Court has consistently refused to hear issues where lower courts have not had the opportunity to weigh in. *State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, ¶24 (2004) (Court "generally does not consider issues that the court of appeals did not reach"). Despite this settled law, the Center now asks the Court to

consider a new and unprecedented theory of standing in the first instance. The Court should refuse to do so. The parties have already submitted volumes of briefing on numerous theories of standing in this case, and the time for adding yet another theory to the list has long since passed.

**B. Even On Its Merits, Review Of The Center's Proposition Is Not Warranted.**

Even if the Center's new proposition of law had been timely raised by a party, the Court should still decline to review it because it has absolutely no legal support and seeks to uproot settled Ohio law. By its very terms, the Center's proposition asks this Court to broadly hold that "citizens and taxpayers possess standing to enforce limits on tax, spending, and indebtedness legislation." This Court has never recognized such a sweeping rule of standing. To the contrary, the Court has rejected all the principles upon which the Center's argument is based.

This Court has clearly established the general rule of standing under Ohio law, which is that in order to challenge the constitutionality of a statute, a party must "show that he or she has suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general." *Sheward*, 86 Ohio St.3d at 469-470. The Court has recognized a narrow "exception to the personal-injury requirement of standing" only for cases that implicate a "public right" of sufficient gravity. *Id.* at 503.

In recognizing this exception for public right standing in *Sheward*, this Court considered and rejected the expansive rule of standing that the Center proposes here. The Court began by stating that although Ohio is not bound by federal constitutional limits on standing,<sup>1</sup> limitations on standing are necessary in order to maintain the proper balance of power among the branches of Ohio's government:

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<sup>1</sup> The Center's assertion that the Court of Appeals improperly relied on federal law is baseless. (Amicus Mem. at 6-8.) The appellate court simply applied the rule that this Court set forth in *Sheward*, in which this Court explicitly recognized that "federal decisions in this area are not binding." 86 Ohio St.3d at 470.

The concept of standing embodies general concerns about how courts should function in a democratic system of government. . . .

These concerns become more acute where there may be an intrusion into areas committed to another and coequal branch of government. The judicial “power to declare legislative enactments unconstitutional is not a superior power, neither one of veto nor of greater wisdom. It is rather a power burdened with a duty -- a duty to decide in particular cases whether the Legislature has reached and passed the extreme boundary of legislative power.” Thus, the judicial function does not begin until after the legislative process is completed and “the void law is about to be enforced against a citizen to his prejudice.” Otherwise, if “no private rights of person or property are in jeopardy, \* \* \* we are simply asked to regulate the affairs of another branch of government.”

*Id.* at 469 (citations omitted).

In light of these concerns, this Court emphasized that the exception for public right standing was extremely narrow, and explicitly rejected the dissent’s arguments that public right standing would allow citizens to challenge every new law:

We have not proposed, as the dissent suggests, that our citizens have standing as such to challenge the constitutionality of every legislative enactment that allegedly violates the doctrine of separation of powers or exceeds legislative authority. We have expressed quite clearly in our preamble to the issue of relators’ standing that this court will entertain a public action only “*in the rare and extraordinary case*” where the challenged statute operates, “*directly and broadly, to divest the courts of judicial power.*” (Emphasis added.)

*Id.* at 503-504. The Court went on to repeatedly emphasize that the exception for public right standing would only apply if the constitutional issues were of a scope and gravity comparable to the sweeping tort reform law in *Sheward*. *Id.* at 471 (limiting the exception to issues “of great importance and interest to the public”), 474 (finding exception applicable because the issues “are of a high order of public concern”), 503-504 (“We will not entertain a public action to review the constitutionality of a legislative enactment unless it is of a magnitude and scope comparable to that of Am. Sub. H.B. No. 350.”).

This Court’s ruling in *Sheward* forecloses the Center’s arguments for its new proposition of law. In narrowly defining the scope of the exception for public right standing, the Court has

previously rejected the Center's assertion that "subjection of 'most government actions' to judicial scrutiny is perfectly consistent with the Ohio Constitution." (Amicus Mem. at 14.) To the contrary, standing limitations are essential to preserving the proper separation of powers. *Sheward*, 86 Ohio St.3d at 469.

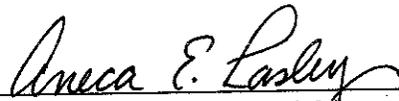
Furthermore, in limiting the exception for public right standing to cases raising constitutional issues comparable to those in *Sheward*, this Court has rejected the Center's assertion that it is improper for a court to "select which provisions of a state's constitution are sufficiently important to provide standing." (Amicus Mem. at 8.) If the exception for public right standing did not distinguish between different types and degrees of constitutional challenges, the exception would swallow the rule—no plaintiff would ever need to show standing to bring a constitutional challenge because *every* constitutional challenge would implicate a public right.

In sum, the Court should reject the Center's invitation to fundamentally re-write the rules of standing based on a legal theory that Appellants have never asserted and that this Court has previously considered and properly rejected.

### CONCLUSION

For all the above reasons, this Court should decline jurisdiction over this appeal.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true and accurate copy of the foregoing was served this 24th day of August, 2012, by U.S. mail and electronic mail to the following:

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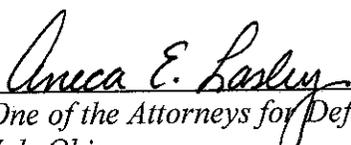
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