

IN THE SUPREME COURT OF OHIO

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

MEMORANDUM OF STATE DEFENDANTS-APPELLEES IN RESPONSE TO APPELLANTS' MEMORANDUM IN SUPPORT OF JURISDICTION

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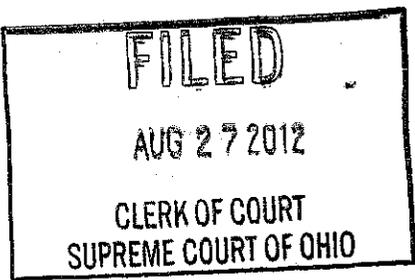


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INTRODUCTION

This case does not warrant review because it is a run-of-the-mill standing case. Despite the eye-catching substantive arguments in the underlying case, this appeal involves no more than basic—and well-settled—standing questions.

The Court should decline to review this case. Because the lower court limited its decision to the question of standing, constitutional challenges to the JobsOhio Act cannot be decided in this appeal (even though six of Appellants' seven propositions of law are devoted to arguing why the Act is unconstitutional or, in their opinion, bad public policy). And because the lower court analyzed standing according to well-established principles, nothing about this case warrants revisiting decades of settled jurisprudence on standing. In short, this appeal does not involve any substantial constitutional question or question of great public importance.

This Court has stated repeatedly that “standing to attack the constitutionality of a legislative enactment exists only where a litigant ‘has suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general.’” *Cuyahoga Cty. Bd. of Commsr’s v. State of Ohio*, 112 Ohio St.3d 59, 2006-Ohio-6499, 858 N.E. 2d 330, ¶ 22, citing *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 469-470, 1999-Ohio-123, 715 N.E.2d 1062 (“*Sheward*”).

Appellants have not alleged a direct, individualized injury resulting from enactment of the JobsOhio Act (R.C. 187.01, *et seq.* and R.C. 4313.01, *et seq.*) that would satisfy traditional standing requirements. Rather, they have asserted—to no avail in the courts below—three grounds for standing to challenge the JobsOhio Act: statutory standing under R.C. 187.09(B), standing as state legislators, and public-right standing as articulated in *Sheward*. Both the trial

court and Tenth District Court of Appeals (in a 3-0 decision) applied well-established Ohio law and found that ProgressOhio, Skindell and Murray lacked standing on all three grounds.

STATEMENT OF THE CASE AND FACTS

A. Summary of the JobsOhio Act

The JobsOhio Act consists of two parts. The first part, R.C. 187.01, *et seq.*, authorizes the Ohio Governor to form a nonprofit corporation, to be called JobsOhio, “with the purposes of promoting economic development, job creation, job retention, job training, and the recruitment of business to the state.” R.C. 187.01. The Act requires the Director of the Department of Development to execute a contract with JobsOhio whereby JobsOhio will undertake some of the Department's obligations, including “the operation and management of programs, offices, divisions, or boards.” R.C. 187.04(A). The Act imposes a reciprocal requirement on JobsOhio to negotiate a contract for services with the Department of Development. R.C. 187.01(F)(3).

The second part involves the transfer of “all or a portion of the capital or other assets of the spirituous liquor distribution and merchandising operations of the division of liquor control.” R.C. 4313.01(A). Under pre-existing law, the State operates the sale and distribution of spirituous liquor. The JobsOhio Act authorizes a transfer of a franchise on the liquor enterprise to JobsOhio in exchange for a payment in an amount to be negotiated with JobsOhio. R.C. 4313.02(A). The “project” includes the liquor distribution system and the inventory held by the division of liquor control, as well as the accounts receivable and the right to manage liquor distribution. R.C. 4313.01(A). Like the purchase price, the length of the transfer to JobsOhio is subject to negotiation, with the restriction that the term of the transfer agreement cannot exceed twenty-five years. R.C. 4313.02(A).

B. The trial court dismissed Appellants' Complaint for lack of standing.

Appellants filed suit in the Franklin County Court of Common Pleas seeking a ruling that R.C. Chapter 187 and R.C. 4313.02 are unconstitutional.

Appellees JobsOhio and the "State Defendants"¹ filed separate motions to dismiss for lack of standing, which the trial court granted. Appellants followed with an appeal to the Tenth District Court of Appeals.

C. The Tenth District affirmed the trial court and ruled that Appellants lacked standing under all proffered theories.

The Tenth District unanimously upheld the trial court's determination that Appellants, having alleged no concrete and direct injury to themselves, lacked standing. *ProgressOhio.org, Inc. v. JobsOhio*, 10th Dist. No. 11AP-1136, 2012-Ohio-2655. The appeals court held that R.C. 187.09(B) did not confer statutory standing because that section "does not contain any language conferring standing. Rather, it identifies where and when a suit may be brought." *Id.* at ¶ 23.

The Tenth District also rejected the legislator-standing argument because the Appellant legislators voted in the minority on the JobsOhio bill. The court likewise dispensed with the argument that the bill impaired their ability to appropriate state funds in the future if liquor revenue is obligated for more than two years as "a novel and speculative theory" that "bears no relationship to vote nullification—the narrow grounds for legislative standing recognized in Ohio." *Id.* at ¶ 29.

The appeals court also held that Appellants did not show "the kind of rare and extraordinary circumstances necessary to invoke public-interest standing." *ProgressOhio*, 2012-Ohio-2655, at ¶ 19. In contrast to the tort reform regime at issue in *Sheward* and the statutes

¹ The "State Defendants" are Ohio Governor John Kasich, Treasurer Josh Mandel, Timothy Keen, Director of the Ohio Department of Budget & Management, and Christiane Schmenk, Director of the Ohio Department of Development.

challenged in *State ex rel. AFL-CIO v. Ohio Bureau of Workers' Compensation*, 97 Ohio St. 3d 504, 2022-Ohio-6717, which affected every injured worker in Ohio seeking to participate in the State's worker's compensation system, the Court found that the concerns raised with respect to the JobsOhio Act were "not enough of a public concern to confer standing on appellants." *ProgressOhio*, at ¶¶ 31-32, citing *Sheward*, 86 Ohio St. 3d 451, 503, 1999-Ohio-123, 715 N.E.2d 1062.

Finally, the appeals court ruled that Appellants lacked standing to challenge R.C. 187.09, raised in Appellants' Eighth Assignment of Error and in a "Motion to Declare R.C. 187.09 Unconstitutional" (Dec. 23, 2011). *ProgressOhio*, at ¶¶ 34, 37. R.C. 187.09(B) requires any constitutional challenges to the JobsOhio Act to be filed within 90 days of its enactment. R.C. 187.09(C) requires any claim challenging the constitutionality of any action taken by JobsOhio to be filed within 60 days of the alleged action. The appeals court determined that Appellants lacked standing to challenge both R.C. 187.09(B) and (C). *Id.* at ¶ 35. Since Appellants *did* file within the time allotted, a ruling as to the constitutionality of R.C. 187.09(B) and (C) based merely on future contingencies would be advisory. *Id.* at ¶¶ 35, 36.

Appellants also challenged R.C. 187.09(E), which directs the court of appeals to expedite any appeal brought under R.C. 187.09(B) and (C) and to give the case priority over all other civil cases. *Id.* at ¶ 37. The court held that Appellants' challenge to R.C. 187.09(E), raised for the first time in the appeals court by motion, was procedurally improper. *Id.* at ¶ 38. The motion was also rendered moot by Appellants' lack of standing and the disposition of the case. *Id.*

The Tenth District therefore affirmed the trial court's dismissal of the action for lack of standing and did not address the merits of the constitutional challenges. *Id.* at ¶ 39.

Appellants then sought to certify a conflict, but the Tenth District denied the motion after the discretionary appeal was filed in this Court.

**THIS CASE DOES NOT PRESENT A SUBSTANTIAL CONSTITUTIONAL QUESTION
AND IS NOT OF PUBLIC OR GREAT GENERAL INTEREST**

A. The Tenth District's decision applied well-settled principles of standing and does not involve a substantial constitutional question.

This is not an appropriate case for discretionary review because the Tenth District's decision rests on uncontroverted principles of standing. Not every appeal raising standing issues merits further review in this Court. *See, e.g., Brown v. Columbus City Schs. Bd. of Educ.*, Case No. 2009-1486 (declining to review decision on taxpayer and public right standing); *Gildner v. Accenture, LLP*, Case No. 2009-2054 (declining to review decision finding that Ohio citizens and taxpayers lacked standing to challenge public contracts).

Appellants present no reason to revisit well-settled Ohio standing law. At each step, the Tenth District drew on established precedents to conclude that Appellants have no standing. They have no statutory standing because there is no language in R.C. 187.09(B) abrogating the traditional requirement of a particularized and concrete injury. *Id.* at ¶¶ 22-24 (citing *Bresnik v. Beulah Park Ltd. P'Ship, Inc.*, 67 Ohio St. 3d 302, 304, 617 N.E. 2d 1096. Appellants have no legislator standing because they did not suffer nullification of their votes. *ProgressOhio* at ¶ 28, citing *State ex rel. General Assembly v. Brunner*, 114 Ohio St. 3d 386, 2007-Ohio-3780, 872 N.E.2d 912, ¶¶ 17, 20. And Appellants have no public-right standing because the underlying issues do not equate to the handful of cases like *Sheward* that fit this rare exception to the personal-stake requirement. *Id.* at ¶¶ 31-32.

B. This appeal does not present any substantial constitutional where the courts below ruled only that Appellants lack standing.

This appeal does not present a substantial constitutional question as to the merits of the JobsOhio Act because standing was the only issue addressed below. After determining there was no standing, the Tenth District properly held it could not reach the merits of the constitutional challenges. *ProgressOhio*, 2012-Ohio-2655, ¶ 38, citing *State ex rel. Democratic Party v. Blackwell*, 111 Ohio St.3d 246, 2006-Ohio-5202, ¶ 50, 855 N.E.2d 1188; see also *State ex rel. Cordray v. Marshall*, 123 Ohio St.3d 229, 2009-Ohio-4986, ¶ 12 (“Before an Ohio court can consider the merits of a legal claim, the person or entity seeking relief must establish standing to sue”). The appellate decision was consistent with the principle of judicial restraint as set forth by this Court. *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948, ¶ 114 (“We decline to answer the . . . question on the constitutionality of R.C. 2315.20 for lack of standing”); *Util. Serv. Partners v. PUC*, 124 Ohio St. 3d 284, 294, 2009-Ohio-6764, ¶ 48 (same).

This appeal purports to raise various constitutional questions concerning JobsOhio. See Appellants’ Propositions of Law Nos. 1, 2, 4, 5, 6, 7. But those issues cannot be decided here on a discretionary where they were not reached by the appeals court. . *Cuyahoga Cty. Bd. of Commsr’s.*, 112 Ohio St. 3d 59, 2006-Ohio-6499, ¶ 29 (ruling that plaintiff lacked standing and declining to address remaining propositions of law); see also *Huff v. FirstEnergy Corp.*, 130 Ohio St. 3d 196, 2011-Ohio-5083, 957 N.E.2d 3, ¶ 21 n.4 (limiting discretionary review to issues actually reached by appeals court and declining to address remaining proposition of law). Rather, those issues should be litigated by parties with personal stakes in the outcome. The Court should therefore decline to address the constitutional issues raised in this appeal.

ARGUMENT

State Appellees' Proposition of Law No. 1

Appellants lack standing to assert a constitutional challenge to the JobsOhio Act absent a showing of individualized, concrete, and particularized injury.

A party has standing to challenge the constitutionality of a law only if the litigant “has suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general.” *Cuyahoga Cty. Bd. of Commsr's. v. Ohio*, 112 Ohio St.3d 59, 2006-Ohio-6499, 858 N.E. 2d 330, ¶ 22, citing *Sheward*, 86 Ohio St. 3d 451, 469-470, 715 N.E.2d 1062. None of the Appellants alleged a direct, individualized injury caused by the JobsOhio Act. Rather, they asserted three theories of standing: (1) statutory standing, (2) legislator standing, and (3) public-right standing, none of which has merit here.²

A. Appellants lack statutory standing under R.C. 187.09 to challenge the JobsOhio Act.

Appellants cite R.C. 187.09 as the statutory source of their alleged standing. R.C. 187.09(B) merely states that “any claim asserting that any one or more sections of the [JobsOhio Act] violates any provision of the Ohio Constitution shall be brought in the court of common pleas of Franklin county within ninety days after the effective date of the amendment of this section by H.B. 153 of the 129th general assembly.” A plain reading of R.C. 187.09(B) shows that it is (1) a venue provision identifying where a suit may be brought, and (2) a statute of limitations identifying when a suit may be brought. It does not confer standing. Nothing in this section is comparable to sections of the Revised Code that *do* unambiguously confer standing on

² The Court need not address taxpayer standing because this argument has been withdrawn. See Trial Ct. Decision, p. 16 (“At the hearing, Plaintiffs stated that two bases upon which they all seek standing are through “public right” standing and statutory standing under the JobsOhio Act. The legislator plaintiffs also assert that they have legislator standing.”). *Id.* at p. 19 (“Plaintiffs are not seeking taxpayer standing but rather that their classification as taxpayers or citizens qualifies them to assert ‘public right’ standing”).

certain affected parties. *See, e.g., Middletown v. Ferguson*, 25 Ohio St.3d 71, 75-76 (1986) (R.C. 133.71(B), now R.C. 133.70, expressly authorizes bond issuer to file bond validation action); *Ohio Valley Associated Builders & Contrs. v. Kuempel*, 192 Ohio App.3d 504, 2011-Ohio-756 (2nd Dist.) (Ohio's prevailing wage law grants an "interested party" standing to file a complaint (R.C. 4115.16(A)) and specifically defines who is an "interested party" (R.C. 4115.03(F)); R.C. 733.59 (conferring standing on municipal taxpayers to sue a municipal corporation).

Appellants read R.C. 187.09 as conferring standing upon *any* entity or person who cares to file suit against JobsOhio. This Court has never adopted such a theory of universal standing. To the contrary, it is a general rule of statutory construction that common law requirements, including standing, apply unless the statutory language "clearly expresses or imports" an intention to abrogate the common law. *Bresnik*, 67 Ohio St. 3d at 304. R.C. 187.09 does not abrogate the common law rules of standing.

B. Appellants Skindell and Murray lack standing as legislators to challenge the JobsOhio Act.

Ohio law *does* recognize that legislators have standing by virtue of their office in one very limited circumstance: when they have been prevented from casting an effective vote. *State ex rel. Ohio General Assembly v. Brunner*, 2007-Ohio-3780 at ¶ 19. Legislators do not have standing merely because they vote with the minority and then challenge the constitutionality of passed legislation. *Id.*, (citing *Raines v. Byrd*, 521 U.S. 811, 814, 117 S.Ct. 2312 (1997)). Legislators have no standing if "their votes were given full effect" but "they simply lost that vote." *Raines*, 521 U.S. at 824.

Skindell and Murray voted against the JobsOhio Act. They do not allege vote nullification or any interference in their ability to cast an effective vote. Rather, like the plaintiffs in *Raines*, Skindell and Murray voted with the minority and lost. Having participated

fully in the legislative process, Appellants cannot invoke the Court's powers to interfere with duly enacted legislation.

The appeals court properly declined to create a new theory of legislative standing. Skindell and Murray argue they have standing to sue because the JobsOhio statutes allegedly obligate state money for more than two years, in violation of the two-year limit on appropriations in Article II, Section 22 of the Ohio Constitution. (Appls. Jur. Mem. p.9). But even if there had been an appropriation that exceeded two years (which there was not), no court has ever recognized such a contention as a distinct injury to a sitting member of the General Assembly sufficient to create standing. *Sorrentino v. Ohio National Guard*, 53 Ohio St.3d 214, 560 N.E. 2d 186 (1990), (the only case Appellants cite), involved a lawsuit filed by a member of the Ohio National Guard challenging the State's reduction of tuition benefits to enlisted service members. *Sorrentino* has nothing to do with legislator standing and does not support Appellants' proposition.

C. Public-right standing is limited to "rare and extraordinary cases," and this lawsuit does not qualify.

Finally, Appellants argue at length that JobsOhio is a matter of great public interest, as if that alone creates standing for anyone to file suit. Public-right standing is reserved for "rare and extraordinary circumstances," which the appeals court correctly found were not present.

The touchstone for public-right standing is *Sheward*, 86 Ohio St.3d 451, 1999 Ohio 123, 715 N.E.2d 1062. There, the Court recognized the public action doctrine as an exception to the personal injury requirement to standing. *Id.* at 471. However, the Court warned that public-right standing is an extremely limited exception and does not confer standing "to challenge the constitutionality of every legislative enactment that allegedly violates the doctrine of separation of powers or exceeds legislative authority." *Id.* at 504. Rather, "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.’” *Id.* *Sheward* was a “rare and extraordinary case” because it involved sweeping changes to civil tort law across over one hundred sections of the Revised Code and the legislation “operated to directly and broadly divest the courts of judicial power” in that the General Assembly overruled the Ohio Supreme Court by re-enacting provisions the Court previously deemed unconstitutional.

The Court has applied the public-right doctrine very sparingly, recognizing that few cases raise issues fundamental enough to rival *Sheward*. In *State ex rel. Ohio AFL-CIO v. OBWC*, 97 Ohio St.3d 504, 2002-Ohio-6716, 780 N.E.2d 981, the Court held that the challenge to legislation imposing mandatory drug testing of injured workers *did* warrant review because it “affects every injured worker who seeks to participate in the workers’ compensation system” and thus “affects virtually everyone who works in Ohio.” *Id.* at ¶ 12. Apart from *AFL-CIO*, the Court has declined to apply the *Sheward* exception. See *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, ¶ 47 (challenge to disbursement of unclaimed funds not “rare and extraordinary” case); *State ex rel. United Auto., Aerospace & Agric. Implement Workers of Am. v. OBWC*, 108 Ohio St.3d 432, 2006-Ohio-1327, 844 N.E. 2d 335, ¶ 51 (*Sheward* exception is “narrow” and does not apply if case “presents only a general and abstract question concerning the constitutionality of a legislative act”).

Sheward is the high-water mark of public-rights standing. The Tenth District correctly held that this challenge to the JobsOhio Act did not rise to the level of *Sheward* and thus did not warrant a departure from common law standing requirements. See *State ex rel. Kuhar v. Medina County Bd. of Elections*, 108 Ohio St.3d 515, 2006-Ohio-1079, at ¶ 12 (constitutional challenge to legislation changing clerk of court to an elected position was not the rare case that broadly

divests the judiciary of its power). The alleged concern that the JobsOhio Act “makes significant changes to the organizational structure of state government” is “not enough of a public concern to confer standing on appellants,” since the same can be said of many statutes. *ProgressOhio*, 2012-Ohio-2655, ¶ 31.

With respect to public-right standing, Appellants want the Court “to clarify that the doctrine applies not only when a large number of individuals are directly affected, but also when the legislation in question is facially unconstitutional and that matter needs to be addressed as soon as possible.” (Applts. Jur. Mem., p.2). This sweeping argument has no support or precedent in Ohio law. Indeed, it flouts the Court’s admonition that *Sheward* did not open the doors of the courthouse to every litigant challenging the constitutionality of state law. *Sheward*, 86 Ohio St. 3d at 504. Appellant’s position would eliminate standing requirements for all constitutional challenges to statutes.

The jurisdictional briefs before this Court rely on another novel theory of public-right standing: that the limitations on state spending and corporate involvement in Articles VIII and XIII of the Ohio Constitution confer standing generally on the public. (Applts. Jur. Mem. pp. 11-13); (Amicus Jur. Mem. p. 15). According to Appellants, the mere existence of these limitations in Article VIII and XIII should automatically confer standing upon citizens to enforce those provisions. But nothing in Article VIII or Article XIII confers on all citizens the automatic right to sue under these provisions, and in the absence of such a provision, none should be added or implied to exist. *State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 45 (“We cannot generally add a requirement that does not exist in the Constitution or a statute”); *Perrysburg Twp. v. City of Rossford*, 103 Ohio St. 3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 7.

Under Appellants' standing theory the public-right exception swallows the general rule. Articles VIII and XIII are no different from other Constitutional provisions that also impose limitations on government power. Taken to its logical conclusion, this argument would dispense with the personal injury requirement altogether whenever a citizen or taxpayer challenges the constitutionality of a legislative enactment. As explained by the Court, the public-right exception is just that—an exception applied in rare and extraordinary circumstances—and was not intended to abrogate the personal injury requirement for standing altogether.

The cases Appellants cite do not stand for the proposition that the mere existence of Article VIII and XIII confers public-right standing. See Jur. Mem. pp. 11-12. In *State ex rel. Public Institutional Bldg. Auth. v. Griffith*, 135 Ohio St. 604, 22 N.E.2d 200 (1939) and *State ex rel. Bridge Commsn. of Ohio v. Griffith*, 136 Ohio St. 334, 25 N.E.2d 847 (1940), state officials authorized by law to issue economic development bonds sued the Secretary of State in mandamus to enforce his ministerial duty to attest or certify the bonds. In those cases, the Secretary—the public official charged with the statutory duty to certify the bonds at issue—was the proper party to question the constitutionality of the very same statute the parties sought to enforce against him in mandamus. . See *State ex rel. Bridge Commsn.*, 136 Ohio St. at 336-337 (“[w]here a question of general public interest is raised, some courts have taken the view that an *officer* may make such a defense in a mandamus suit”) (emphasis added). See also *State ex rel. Ohio Fund Management Bd. v. Walker*, 55 Ohio St. 3d 1 (1990) (mandamus action where respondent Treasurer of State challenged constitutionality of statute requiring Treasurer to disburse funds). The cases cited by Appellants did *not* create a public right in *any* person to sue over any matter which touches on Article VIII or state debt. *State ex rel. Allen v. Ferguson*, 155 Ohio St. 26, 97 N.E.2d 660 (1951), did not rest on public-right standing because the relators in

that case had a direct stake in the case: they were parties to a contract, and the case concerned the validity of that contract.

Likewise, the cases cited in the Amicus Brief do not support public-right standing for Appellants in this case. *State ex rel. Newell v. Brown*, 162 Ohio St. 147, 122 N.E.2d 105 (1954), which involves an elector's challenge to candidate nominating petitions, is part of a long line of cases recognizing that citizen-electors have standing to enforce public duties related to an election. See *State ex rel. Barth v. Hamilton Cty. Bd. of Elections*, 65 Ohio St. 3d 219, 221 602 N.E.2d 1130 (1992) (explaining *Newell*). *State ex rel. Cater v. N. Olmstead*, 69 Ohio St. 3d 315, 1994-Ohio-488, 631 N.E.2d, involved R.C. 733.59, which expressly confers standing on municipal taxpayers to sue a municipal corporation. Neither case holds that citizens have standing to sue merely by alleging that a challenged state legislative enactment runs afoul of constitutional debt limitations.

State Appellees' Proposition of Law No. 2

The issues raised in Appellants' Propositions of Law Nos. 1, 2, 4, 5, 6 and 7 were not considered by any court below and are therefore not properly before this Court.

The substantive questions raised in Appellants' Propositions of Law Nos. 1, 2, 4, 5, 6 and 7 were not decided by any court below because Appellants lacked standing. These questions, therefore, are not properly before the Court in this discretionary appeal. See *Cuyahoga Cty. Bd. of Commrs's.*, 112 Ohio St. 3d 59, 2006-Ohio-6499, ¶ 29 (declining to address remaining propositions of law where plaintiffs lacked standing); see also *Huff v. FirstEnergy Corp.*, 130 Ohio St. 3d 196, 2011-Ohio-5083, 957 N.E.2d 3, ¶ 21 n.4 (discretionary review limited to issues actually reached by appeals court). The Court should thus decline to review the constitutional issues raised in this appeal.

CONCLUSION

For the reasons stated above, the State Defendants-Appellees respectfully request that the Court decline jurisdiction over this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on August 27, 2012, by U.S. Mail and electronic mail to the following:

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