ORIGINAL

IN THE SUPREME COURT OF OHIO

PANTHER II TRANSPORTATION, INC.,	:	Case No. 2012-1589
	:	Case No. 2012-1592
	:	(Consolidated)
	:	
Plaintiff/Appellee,	:	On Appeal from the Ninth District
	:	Court of Appeals, Medina County, Ohio
v.	:	
	:	
VILLAGE OF SEVILLE BOARD OF	:	Court of Appeals
INCOME TAX REVIEW, ET AL.	:	Case Nos. 11CA0092-M
	:	11CA0093-M
	:	
Defendants/Appellants.	:	

MEMORANDUM IN SUPPORT OF THE APPELLANT'S MOTION FOR RECONSIDERATION AMICUS CURIAE THE OHIO MUNICIPAL LEAGUE

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Pursuant to Supreme Court Practice Rule 18.02(C), amicus curiae the Ohio Municipal League ("League") respectfully submits this memorandum in support of Appellant's motion to reconsider this Court's decision not to accept this discretionary appeal.

THE LEAGUE HAS AN IMPORTANT INTEREST IN THE COURT ACCEPTING JURISDICTION OF THIS CASE

The League was incorporated as an Ohio non-profit corporation in 1952 by city and village officials who saw the need for a statewide association to serve the interests of Ohio municipal government. The League is currently composed of a membership of more than 700 Ohio cities and villages.

Municipal taxes are the primary source of revenue for Ohio cities and villages. Municipal tax revenues are utilized to fund police, emergency medical, and fire services, improvements to roads and bridges, recreation programs for residents, economic and community development services, and daily government operations.

In *Cincinnati Bell Telephone Company v. City of Cincinnati*, 81 Ohio St.3d 599, 693 N.E.2d 212 (1998), this Court held that the taxing powers granted to municipal corporations by the Ohio Constitution can only be limited if the General Assembly **expressly** acts to preempt municipal taxation.

In *Panther II Transportation Inc. v. Village of Seville Board of Income Tax Review, et al*, 2012-Ohio-3525, the Ninth District held that a regulatory statute that does not contain express preemption language preempts the taxing authority of the Village of Seville. This holding is contrary to the Ohio Constitution and this Court's decision in *Cincinnati Bell Telephone Company.*

Panther involved a review of former R.C. 4921.25 and the Ninth District's decision jeopardizes the ability of municipal corporations throughout Ohio to impose an income tax on motor transportation companies.

The League and its members have an interest in ensuring that the taxing power of municipal corporations is not unconstitutionally preempted and that income taxes may continue to be imposed on motor transportation companies.

THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND A MATTER OF PUBLIC AND GREAT GENERAL INTEREST

The Ohio Constitution grants municipal corporations certain powers, including home rule powers and taxing powers. In *Cincinnati Bell Telephone Company*, this Court concluded that given the "general, broad grant of power that municipalities enjoy under Article XVIII, the Constitution requires that the provisions allowing the General Assembly to limit municipal taxing power be interpreted in a manner consistent with the purpose of home rule." *Cincinnati Bell Telephone Company* at 216.

This Court then held that the preemption of municipal taxing authority "requires an **express** act of restriction by the General Assembly." Id at 217. (Emphasis added.)

The statute in this case, former R.C. 4921.25, is a regulatory statute that prohibits municipal corporations from charging, fixing, or extracting funds for a license or registration fee. It does not **expressly** prohibit a municipal income tax and, therefore, the Ninth District's decision in *Panther* "contravene[s] the principle underlying Article XVIII – that municipal powers are derived from the Constitution and not from the General Assembly." Id. at 218.

Any attempt to preempt municipal taxing authority via a regulatory statute or other statute that is not an express act of the General Assembly involves a substantial constitutional question that is worthy of this Court's time and attention.

This case also involves a matter of public and great general interest. The unconstitutional erosion of municipal taxing authority will impact municipal revenues and the ability to deliver services. These services include police, fire and emergency medical services, snow removal services, street repair services, garbage collection services, recreational programs, and economic and community development activities. The unconstitutional erosion of municipal taxing authority will impact every Ohio resident and every business in Ohio.

CONCLUSION

The League respectfully requests that the Court reconsider its decision to decline jurisdiction and accept this case for review as it involves a substantial constitutional question and a matter of public and great general interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing *Memorandum in Support of the Appellant's Motion for the Reconsideration Amicus Curiae the Ohio Municipal League*, has been sent via regular U.S. mail, postage pre-paid this 1st day of February, 2013 to:

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